MAILED 7/16/07

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-4084**
July 12, 2007

REDACTED

R E S O L U T I O N

Resolution E-4084**.** Pacific Gas and Electric Company (PG&E) requests approval of three consolidated and restructured power purchase agreements (PPA) between PG&E and FPL Energy, LLC (FPL). These PPAs are approved without modification

By Advice Letter (AL) 3001-E filed on March 9, 2007.

SUMMARY

PG&E's consolidated and restructured PPAs, which relates to six existing Qualifying Facilities (QF), complies with the Restructuring Advice Letter filing (RALF) procedure and are approved

PG&E's request for approval of three consolidated and restructured power purchase agreements (Agreement) is granted pursuant to the RALF procedure adopted in Decision (D.) 98-12-066.

	Nameplate Capacity (MW)		Avg. Annual Production (MWh)		Termination Date	
PPAs	Pre-Transaction	Post-Transaction	Pre-Transaction[1]	Post-Transaction[2]	Pre-Transaction	Post-Transaction
01W004	113.1	222.3	166,505	364,979	12/31/2013	12/31/2015
01W035	70	54	109,207	84,246	1/31/2015	1/31/2015
16W011	23.8	10.8	35,388	16,058	12/31/2016	12/31/2016
01W144	30.4	0	49,174	0	12/31/2012	Terminated
06W146A	19.9	0	45,985	0	12/31/2015	Terminated
01W146B	30	0	59,023	0	3/31/2016	Terminated
Total	287	287	465,283	465,283		

[1] Based on historic output for years 1996-2005, AL 3001-E, Confidential Appendix H.
[2] Analysis for generation forecasts take into account historical output, mechanical degradation of turbines, and seasonal shutdowns to minimize avian mortality.

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 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 Commission encourages QF contract restructuring and implementation through an expedited advice letter process

The Commission sought to encourage QF contract restructuring in its Preferred Policy Decision, D.95-12-063, as modified by D.96-01-009, by proposing an incentive mechanism to encourage the restructuring of QF contracts so that total transition costs might be reduced. Specifically, shareholders would be allowed to retain 10% of the net ratepayer benefits resulting from a renegotiation:

> "We endorse an approach that involves both a monetary incentive to shareholders and conditions which foster voluntary, nondiscriminatory negotiations. We will allow shareholders to retain 10% of the net ratepayer benefits resulting from a renegotiation, which will be reflected by an adjustment to the transition cost total." (D.95-12-063, p.132)

In D.96-12-088 (the Roadmap 2 Decision), the Commission stated its interest in "establishing a generic and possibly expedited process by which we can assess the reasonableness of contract restructuring in a manner which respects the principles outlined in our Preferred Policy Decision" (D.96-12-088, p.79-80).

In 1998, the Commission adopted the Restructuring Advice Letter Filing (RALF)[3] process in D.98-12-066:

> "The restructuring Advice Letter [filing] process attached as Attachment B to this decision, shall be adopted subject to the modifications and clarifications set forth in Section 7 of this decision." (D.98-12-066, Ordering Paragraph 1).

The Commission adopted the RALF process with modifications that were not included in Attachment B to D.98-12-066 but were instead set forth in the

[3] Restructuring Advice Letter Filing ("RALF") Procedure For Review of QF Contract Restructurings.

decision. A modified version of Attachment B to D.98-12-066 was attached to a previous RALF resolution, E-3898,[4] which reflects the determinations in D.98-12-066.

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 (Chapter 516, statutes of 2002, effective January 1, 2003) and codified at California Public Utilities Code Section 399.11, et seq. The statute requires that a retail seller of electricity such as PG&E purchase a certain percentage of electricity generated by Eligible Renewable Energy Resources (ERR). Originally, each utility was required to increase its total procurement of ERRs by at least 1 percent of annual retail sales per year so that 20 percent of its retail sales are supplied by ERRs by 2017.

The State's Energy Action Plan (EAP) called for acceleration of this RPS goal to reach 20 percent by 2010.[5] This was reiterated again in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004,[6] which encouraged the utilities to procure cost-effective renewable generation in excess of their RPS annual procurement targets[7] (APTs), in order to make progress towards the goal expressed in the EAP.[8] On September 26, 2006, Governor Schwarzenegger signed Senate Bill 107,[9] which officially accelerates the State's RPS targets to 20 percent by 2010.

In response to SB 1078, the Commission has issued a series of decisions that establish 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. On June 9, 2004, the Commission adopted its Market

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[4] E-3898, www.cpuc.ca.gov/Published/Final_resolution/41760.htm regarding PG&E AL 2537-E.
[5] The Energy Action Plan was jointly adopted by the Commission, the California Energy Resources Conservation and Development Commission (CEC) and the California Power Authority (CPA). The Commission adopted the EAP on May 8, 2003.
[6] http://www.cpuc.ca.gov/Published/Final_decision/36206.htm
[7] APT - An LSE's APT for a given year is the amount of renewable generation an LSE must procure in order to meet the statutory requirement that it increase its total eligible renewable procurement by at least 1% of retail sales per year.
[8] Most recently reaffirmed in D.06-05-039
[9] SB 107, Chapter 464, Statutes of 2006

Price Referent methodology[10] for determining the Utility's share of the RPS seller's bid price, as defined in Public Utilities Code Sections 399.14(a)(2)(A) and 399.15(c). On the same day the Commission adopted standard terms and conditions for RPS power purchase agreements in D.04-06-014 as required by Public Utilities Code Section 399.14(a)(2)(D). Instructions for evaluating the value of each offer to sell products requested in a RPS solicitation were provided in D.04-07-029.

In addition, the Commission established an 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[11] (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.

PG&E requests approval of three consolidated and restructured PPAs

On March 9, 2007, PG&E filed AL 3001-E requesting approval of the Agreement between PG&E and FPL. Pursuant to the Agreement relating to six Qualifying Facility (QF) Interim Standard Offer 4 (ISO4) PPAs; (1) PG&E customers will benefit from energy and capacity price reductions, (2) three PPAs will be terminated, three will have capacity modifications, and PG&E will receive incremental output of approximately 350 GWh, and (3) PG&E will eliminate the contractual restriction on utility ownership of the facilities.

PG&E requests that the Commission issue resolution findings that:

1. Approves the Transaction as reasonable and prudent;

2. Authorizes recovery of all payments made under the Transaction Documents, subject only to ongoing CPUC review with respect to the reasonableness of PG&E administration of the PPAs, as amended by the Transaction Documents;

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[10] D.04-07-015

[11] 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

3. Finds that any procurement pursuant to the Transaction 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.) D.03-06-071, or other applicable law;

4. Finds that any procurement pursuant to the Transaction constitutes incremental procurement or procurement for baseline replenishment by PG&E from an eligible renewable energy resource 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 D.03-06-071, or other applicable law;

5. Authorizes the recovery of the requested shareholder incentive associated with this PPA restructuring, as authorized by the Commission in D. 95-12-063 and modified by D. 96-01-009; and

6. Authorizes recovery of payments under the PPAs, as modified by the Transaction Documents, in PG&E's Energy Resource Recovery Account ("ERRA") including an above-market portion in the Ongoing Competition Transition Charge (Ongoing CTC), or any other cost recovery mechanism subsequently authorized by the Commission, subject only to PG&E's prudent administration of the Amended and Restated PPA.

PG&E's Procurement Review Group (PRG) participated in review of the agreement

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), the Commission's Energy Division, Natural Resources Defense Council (NRDC), Union of Concerned Scientists (UCS), Division of Ratepayer Advocates (DRA), Aglet Consumer Alliance (Aglet), and The Utility Reform Network (TURN).

PG&E briefed its PRG on July 19, 2006, on the restructuring Agreement with FPL. PRG members commented favorably on the potential ratepayer savings and the additional generation per the Agreement.

None of the PRG members have expressed any objection to the price or terms presented to them in connection with the proposed Agreement. Although Energy Division is a member of the PRG, it reserved its conclusions for review and recommendation on the contracts to the resolution process.

The Agreement relates to six QF facilities (Six Projects) located in the Altamont Wind Resource Area

All Six Projects are wind facilities located in Altamont Pass, California and deliver to NP-15. PG&E entered into the original Six Projects between March 1984 and April 1985 for terms up to 30 years. The Six Projects have a total nameplate capacity of 287 MW and deliver an average of 465 GMWh/yr based on historic output from 1995 through 2005. The Six Projects historically have received capacity payments in the range of $164-188/kw-Yr, subject to minimum performance requirements and obligations defined in the PPA.

NOTICE

Notice of AL 3001-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 III-G of General Order 96-A.

PROTESTS

Merced Irrigation District and Modesto Irrigation District filed a protest against AL 3001-E

On March 29, 2007, Merced Irrigation District and Modesto Irrigation District ("the Districts") filed a joint protest against Advice Letter 3001-E. The Districts

did not object to the terms of the Restructuring Advice Letter itself; however the protest is based on the grounds that the relief requested in the advice letter would violate statute or Commission order. The Districts protest PG&E's request for above-market cost recovery, as ongoing competition transition charge (CTC), beyond the date of original termination of the PPAs being consolidated. The Districts also protest PG&E's vague request to recover the above-market costs of the Consolidated PPA pursuant to "any other cost recovery mechanism subsequently authorized by the Commission." Finally, the Districts state that issues regarding stranded cost recovery for "new resources" are being determined in R.06-02-013, but that a determination there should not affect the Consolidated PPA which are consider "old resources".

On April 5, 2007, PG&E responded to the Districts protest. PG&E states that it does not request that the Commission determine the method for how above-market costs may be recovered, but requests that the Commission find that above-market costs are eligible for cost recovery from all customers, including future departing load customers. PG&E states that in D.04-12-048,[12] the Commission has adopted policies and conditions allowing utilities to recover stranded cost, and findings in Resolutions E-4046, E-4047 and E-4055 confirm Commission policy. Finally, PG&E states that the Districts assertion that the FPL resources are not "new world" procurement, and therefore beyond the scope of R.06-02-013, is without merit because the Consolidated PPA was negotiated as a part of PG&E's Renewables Portfolio Standards procurement activities.

On April 30, 2007, Altamont Winds Inc. (AWI) filed a late protest of AL 3001-E on the grounds that the AL contains material errors and the proposed restructuring is unjust, unreasonable, and discriminatory. Specifically, AWI argues the consolidation agreement was executed without their knowledge, and they may be negatively impacted by decreased capacity ratings on two PPAs they have a contractual agreement with. On May 3, 2007, Energy Division notified the parties that the late-filed protest would be considered.

On May 10, 2007, PG&E responded to AWI's late-filed protest. PG&E states the protest concerns a commercial matter between AWI and FPL, and that FPL has affirmed it was authorized to enter into the agreements submitted as AL 3001-E.

[12] D.04-12-048 page 57, as modified by D.05-09-022

Therefore, PG&E states that AL 3001-E is correct as filed. On June 1, 2007, AWI formally withdrew its late-filed protest of AL 3001-E.

DISCUSSION

The following table summarizes the substantive features of the Consolidation Agreement. See confidential Appendix A for a detailed discussion of contract terms and conditions:

	Nameplate Capacity (MW)		Avg. Annual Production (MWh)		Termination Date	
PPAs	Pre-Transaction	Post-Transaction	Pre-Transaction[13]	Post-Transaction[14]	Pre-Transaction	Post-Transaction
01W004	113.1	222.3	166,505	364,979	12/31/2013	12/31/2015
01W035	70	54	109,207	84,246	1/31/2015	1/31/2015
16W011	23.8	10.8	35,388	16,058	12/31/2016	12/31/2016
01W144	30.4	0	49,174	0	12/31/2012	Terminated
06W146A	19.9	0	45,985	0	12/31/2015	Terminated
01W146B	30	0	59,023	0	3/31/2016	Terminated
Total	287	287	465,283	465,283		

PG&E's RALF concerns six PPAs in the Altamont Wind Resource Area

Pursuant to the consolidation and restructuring Agreement:

- PG&E customers will benefit from energy and capacity price reductions.
- Three ISO4 PPAs will be terminated and three ISO4 PPAs will have capacity modifications. PG&E will receive incremental output of approximately 350 GWh from an extension to the consolidated PPA.
- PG&E will eliminate the contractual restriction on utility ownership of the facilities.

[13] Based on historic output for years 1996-2005, AL 3001-E, Confidential Appendix H.
[14] Analysis for generation forecasts take into account historical output, mechanical degradation of turbines, and seasonal shutdowns to minimize avian mortality.

PG&E's Advice Letter 3001-E complies with Commission adopted RALF requirements

The Commission incents restructuring of ISO4 PPAs, wherein the utility is eligible for a shareholder incentive reward equal to 10% of net ratepayer benefits. The Commission's RALF process requires that PG&E submit comprehensive information regarding: the QF's history, PG&E's analysis for calculating ratepayer benefits, and a letter of approval from the Division of Ratepayer Advocates (DRA). PG&E submitted all required information for the Commission to make an informed decision. Energy Division finds PG&E's calculation of the net ratepayer benefit correct; consequently, the 10% shareholder incentive is deemed reasonable.

Ratepayers benefit from QF price restructuring

Ratepayers benefit from the difference between the PPAs current contract price and the price following the restructuring agreement.

Sensitivity Analysis

PG&E included workpapers in the RALF demonstrating its analysis of net ratepayer benefit. PG&E forecasted energy payments and capacity payments based on the expected future generation of the facilities. To calculate future generation from the projects, PG&E applied a "Historical Production Correction Factor" (Correction Factor) to the average annual production value based on historical output from 1996–2005. The Correction Factor takes into account impacts of seasonal shutdowns and equipment degradation based on information provided by FPL. The net present value of future payments under current pricing terms vs. reduced pricing terms of the Agreement, yield the total estimated net ratepayer benefit. Energy Division reviewed PG&E's workpapers and finds the analysis valid, and the results reasonable. Therefore, Energy Division recommends Commission approval of the Agreement.

Agreement preserves the Projects generation and increases PG&E's future RPS deliveries

The Agreement affects all six ISO4 PPAs; however, the total nameplate capacity, 287 MW, remains unchanged. QFID 01W004, the Consolidated PPA, will increase capacity from 113.1 MW to 222.3 MW. PPAs QFID 01W035 and 16W011, will have capacity reductions from 70MW to 54MW, and 23.8MW to 10.8MW respectively. The three remaining PPAs, QFID 01W144, 01W146B and 06W146A are terminated under the Agreement. The Agreement extends the Consolidated

PPA (222.4MW) from 2013 to 2015, resulting in incremental generation of approximately 350 GWh of renewable energy.

The Agreement permits FPL to take a majority interest in the Projects

Under the original ISO4 PPAs FPL was obligated to comply with the PURPA, which in part required a utility own less than 50% of a facility in order to be eligible for QF status. This provision has subsequently changed pursuant to the Energy Policy Act of 2005.[15] Commission approval of the Agreement requires FPL compliance with PURPA, but waives the contractual restriction on utility ownership of the projects.

Division of Ratepayer Advocates (DRA) supports the terms in the RALF

PG&E provided DRA with AL 3001-E, including all confidential attachments discussed herein. DRA performed their own analysis and submitted a letter to PG&E on March 1, 2007. In its letter, DRA states they believe the terms of the consolidation and restructuring agreement submitted as Advice Letter 3001-E is reasonable and in the ratepayer's best interest. See Confidential Appendix B for a copy of DRA's letter conditionally supporting the Agreement.

PG&E believes the project is viable based on the following assumptions:

- The all-in consolidated price leaves a favorable operating margin, estimating direct operating cost for long standing wind facilities of $7 to $10/MWh.[16] While the facility is not new, FPL has a comprehensive maintenance program to keep its turbines performing through the benefit period without a significant drop-off in efficiency that in turn could cause a dramatic increase in operating costs.
- FPL has valid County conditional use permits to operate the turbines throughout the restructured PPA term.

[15] http://thomas.loc.gov/cgi-bin/bdquery/z?d109:h.r.00006:

[16] Northwest Power & Conservation Council, Biennial Review of the Cost of Wind Power, July 26, 2006. Yen-Nakafuji, Dora, Strategic Value Analysis, Economics of Wind Energy in California, June 2005 (CEC-500-107-SD).

Fuel Availability

The Altamont Wind Resource Area is a known wind resource and the Six Projects have a long operating history. The Six Projects have historically operated at capacity factors ranging from 17%-26%. The average generation of the Six Projects from 1996-2005 was 465 GWh per year. FPL's future production estimates take into account mechanical degradation of the turbines and impacts of seasonal shutdowns to minimize avian mortality. Repowering may be used to increase annual deliveries from these projects.

Permitting and Transmission

As existing and operating facilities, these facilities have no transmission problems or concerns.

Legal Authority for Proposed Agreement

There are no current or anticipated legal or regulatory disputes between the parties to the proposed consolidated and restructuring Agreement. PG&E has no ownership interest in any of the generating facilities in the Altamont Pass. PG&E Corporation and its affiliate, Pacific Gas and Electric Company, are not and have never been affiliated in any way with FPL Energy, LLC or Green Ridge Power, LLC, an affiliate of FPL Energy, LLC.

Developer Experience

With over 4000MW of installed wind capacity generating electricity in 15 states, FPL has significant experience evaluating a wind projects operational and financial viability.[17] Wind facilities are capital cost intensive; however, as existing facilities, the expenses will be largely limited to operation costs. Following the consolidation, the all-in price for the PPAs should be above the facilities operating costs.

Other Potential Viability Concerns

None.

[17] http://www.fplenergy.com/portfolio/contents/portfolio_by_source.shtml

The protest by Merced Irrigation District and Modesto Irrigation District is granted in part and denied in part, without prejudice.

The Districts filed a joint protest against PG&E's request; (1) for above-market cost recovery, as ongoing Competition Transition Charge (ongoing CTC), beyond the date of original termination of the PPAs being consolidated; and (2) to recover the above-market costs of the Consolidated PPA pursuant to "any other cost recovery mechanism subsequently authorized by the Commission."
The Districts' protest of PG&E's request for cost recovery, as ongoing CTC, beyond the date of original termination of the PPAs, is supported by California law. Accordingly, this component of the Districts' protest is granted; however, we add that recovery of ongoing CTC is appropriately addressed in an annual ERRA forecast proceeding. Specifically, Public Utilities Code section 367(a) (2) states, in its entirety:

> Power purchase contract obligations shall continue for the duration of the contract. Costs associated with any buy-out, buy-down, or renegotiation of the contracts shall continue to be collected for the duration of any agreement governing the buy-out, buy-down, or renegotiation of the contract; provided, however, no power purchase contract shall be extended as a result of the buy-out, buy-down, or renegotiation.

The Districts' protest is denied in part because we are not addressing stranded cost recovery and non-bypassable charges in this resolution.

PG&E's request for above-market cost recovery will not be addressed in this resolution.

In response to the District's protest of PG&E's request to recover above-market costs of the PPAs, PG&E references D.04-12-048, and Commission approved resolutions E-4046, E-4047, and E-4055. However, PG&E is misguided when it states that "…the three Resolutions clearly determine that the above-market costs are eligible for cost recovery…".[18] The consistent language of the three cited Resolutions is that the issue of above-market cost recovery will not be addressed in a resolution. PG&E correctly references previous Commission findings in Resolution E-4046, E-4047, and E-4055 as guidance for how to proceed on the issue of cost recovery, and we repeat it here; the Long Term Procurement Proceeding (R.06-02-013) is the appropriate procedural forum for addressing cost

[18] PG&E response to protest of Merced Irrigation District and Modesto Irrigation District to Advice 3001-E, filed March 29, 2007

recovery issues. D.04-12-048, which adopted PG&E, SCE and SDG&E's Long-Term Procurement Plans, addressed the general policy of stranded cost recovery, but did not address specific cases in which such recovery would be allowed.[19] Moreover, D.04-12-048 did not identify the implementation mechanism for recovering stranded costs when such recovery is allowed.[20] Both of these issues are currently the subject of the Long Term Procurement Proceeding, R.06-02-013, and are appropriately addressed in that proceeding.[21]

The protest by Altamont Winds Inc. is not addressed in this resolution.

Altamont Winds Inc. withdrew its protest of AL 3001-E; therefore, is not addressed in this resolution.

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 was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

Comments were filed on July 2, 2007 by PG&E, both addressing the issue of stranded cost recovery and non-bypassable charges, as well as, where the shareholder incentive should be recorded. PG&E also noted that the draft resolution misreported nameplate capacity for two of the PPAs. The errors did not affect the economic analysis of the transaction; corrections were made to the final resolution in order to be consistent with the PPAs.

Reply comments were filed on July 6, 2007 by Merced Irrigation District and Modesto Irrigation District, addressing the issue of whether PG&E should be

[19] D.04-12-048. Conclusion of Law 16, http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/43224.PDF
[20] Id.
[21] http://www.cpuc.ca.gov/EFILE/RULINGS/68198.pdf

allowed to record and recover the shareholder incentive in its Modified Transition Cost Balancing Account (MTCBA).

The Ordering Paragraph section has been clarified to state where PG&E may record the shareholder incentive pursuant to the restructuring agreement.

In response to PG&E's comments, Ordering Paragraph 4 has been modified to reflect that PG&E may record 10% of the net ratepayer benefits in the Modified Transition Cost Balancing Account (MTCBA). We find this consistent with PG&E's MTCBA tariff, Preliminary Statement, section CQ (5)(c), which states in its entirety:

> A debit entry equal to bundled, DA, MDL, and CGDL customers' share of ten percent of the total net-present value of the ratepayer benefits from a restructured QF contract, at the time the restructured contract is signed.

FINDINGS OF FACT

1. The RPS Program requires each utility, including PG&E, to increase the amount of renewable energy in its portfolio to 20 percent by 2010, increasing by a minimum of one percent per year
2. PG&E filed AL 3001-E on March 9, 2007 requesting approval of the transaction and consolidation agreement between PG&E and FPL Energy, LLC, pursuant to the Restructuring Advice Letter filing (RALF) procedure adopted in Decision (D.) 98-12-066.
3. A protest to AL 3001-E was filed by the Merced Irrigation District and Modesto Irrigation District on March 29, 2007.
4. PG&E responded to the protest on April 5, 2007.
5. The protest by Merced Irrigation District and Modesto Irrigation District is denied without prejudice.
6. A late-filed protest to AL 3001-E was filed by Altamont Winds Inc. on April 30, 2007.
7. Energy Division notified parties the late-filed protest would be considered on May 3, 2007.
8. PG&E responded to the late-filed protest on May 10, 2007.

9. Altamont Winds Inc. withdrew its late-filed protest on June 1, 2007.
10. Comments to the Draft Resolution were filed by PG&E on July 2, 2007.
11. Reply comments to the Draft Resolution were filed by Merced Irrigation District and Modesto Irrigation District on July 6, 2007.
12. PG&E complied with the Restructuring Advice Letter filing (RALF) requirements pursuant to the RALF procedure adopted in Decision (D.) 98-12-066.
13. PG&E's modeling of the net savings from the PPA restructuring is reasonable for purposes of calculating a net ratepayer benefit.
14. The transaction and consolidation agreement between PG&E and FPL is reasonable and prudent.
15. PG&E may recover the payments associated with the restructured contracts as ongoing CTC up to the original termination date of the restructured PPAs. The recovery of ongoing CTC revenue requirements shall be addressed as part of PG&E's annual Energy Resource Recovery Account (ERRA) proceeding.
16. PG&E's request to recover payments for stranded costs or above-market costs associated with these contracts is not appropriate to address by resolution.
17. PG&E should be allowed to recover 10% of the net ratepayer benefits as calculated in Confidential Appendix G to AL 3001-E; not the value identified in the Advice Letter itself.
18. AL 3001-E should be approved.

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 2010, increasing by a minimum of one percent per year.
2. The Commission requires 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. PG&E complied with the Restructuring Advice Letter filing (RALF) requirements pursuant to the RALF procedure adopted in Decision (D.) 98-12-066.

4. These Agreements are reasonable and should be approved in their entirety.
5. PG&E may recover the payments associated with the restructured contracts as ongoing CTC up to the original termination date of the restructured PPAs. The recovery of ongoing CTC revenue requirements shall be addressed as part of PG&E's annual Energy Resource Recovery Account (ERRA) proceeding.
6. PG&E's request to recover payments for stranded costs or above-market costs associated with these contracts should be addressed in R.06-02-013.
7. 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.
8. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, 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.
9. PG&E should be allowed to recover 10% of the net ratepayer benefits as calculated in Confidential Appendix G to AL 3001-E; not the value identified in the Advice Letter itself.
10. AL 3001-E should be approved without modifications.

THEREFORE IT IS ORDERED THAT:

1. The request of Pacific Gas and Electric Company, regarding the transaction and consolidation agreement between PG&E and FPL Energy LLC, pursuant to the Restructuring Advice Letter filing (RALF) procedure adopted in Decision (D.) 98-12-066, as requested in Advice Letter AL 3001-E, is approved.
2. PG&E may recover the payments associated with the restructured contracts as ongoing CTC up to the original termination date of the restructured PPAs. Recovery of the ongoing CTC revenue requirement shall be considered as part of PG&E's annual Energy Resource Recovery Account (ERRA) proceeding.

3. To the extent that PG&E requests the recovery from its customers of stranded costs or above-market costs associated with these contracts, that request will be addressed in R.06-02-013.
4. PG&E is authorized to record 10% of the net ratepayer benefits in the Modified Transition Cost Balancing Account (MTCBA), based upon the estimate of the restructured PPAs as calculated in Confidential Appendix G of AL 3001-E; not the value identified in AL 3001-E itself.
5. Other than the costs or charges identified in Ordering Paragraph 2 and 3, which will be addressed in other proceedings, payments made by PG&E are fully recoverable in rates over the life of the project, subject only to Commission review of PG&E's administration of the PPAs.

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, 12, 2007; the following Commissioners voting favorably thereon:

_____
PAUL CLANON
Executive Director

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

Confidential Appendix A

Consolidated and Restructured PPAs Summary

Confidential Appendix B

Division of Ratepayer Advocates (DRA) Assessment of AL 3001-E

Confidential Appendix C

Consolidated and Restructured PPA Analysis

Appendix D

RALF Requirements

Formerly ATTACHMENT B to D.98-12-066

Revised Exhibit A[22]

RESTRUCTURING ADVICE LETTER FILING ("RALF") PROCEDURE FOR REVIEW OF QF CONTRACT RESTRUCTURINGS

THIS ATTACHMENT B IS SUBJECT TO THE MODIFICATIONS SET FORTH IN SECTION 7 OF D.98-12-066, INCLUDING:

- "We will require that a statement of support or neutrality from ORA be attached to any restructuring Advice Letter filing. We will not limit the use of the restructuring Advice Letter in any other way, such as by dollar size or by type of QF (including affiliates of utilities). (D.98-12-066, p.27, and Conclusion of Law 9)
- "While an ORA statement must be included with the restructuring Advice Letter, any other party may file a protest to the Advice Letter in the proper timeframe. We believe the procedural safeguards set forth in Attachment B, as modified by the following discussion, will ensure fairness in addressing the protests. Energy Division will review such protests (and any responses), and prepare a Resolution for the Commission pursuant to Section 9 of Attachment B [to D.98-12-066]. However, we modify Section 9 so that Energy Division, at its discretion, may advise the utility that the matter is too complex and should be filed as an Application. Energy Division may also advise the utility to file an Application even if there are no protests, should the Division determine that there are complexities to the filing that the Division does not believe it is in the best position to resolve. The Energy Division should discuss any such recommendation with the Coordinating Commissioner for QF matters before advising the utility to file an Application." (D.98-12-066, p.17)
- "We do not adopt Section 4 in Attachment B addressing confidentiality. Confidentiality issues shall be consistent with the current practice for

[22] Attachment C to Resolution E-4084 also appeared as Attachment 1 to Resolution E-389 regarding PG&E Advice Letter 2537-E.

utility Advice Letters." (D.98-12-066, p.28).

1. The utility will submit a restructuring advice letter to the Commission's Energy Division which will contain the essential information necessary to establish the reasonableness of the proposed voluntarily negotiated QF restructuring. Each such filing, and all protests, responses and replies concerning the filing, shall indicate a postal address and (where appropriate) a FAX number or e-mail address at which the advice letter filer, protestant or respondent, agrees to receive subsequent documents and notices relevant to the advice letter. Each such filing will be reported in the Daily Calendar.

2. Service of the restructuring advice letter shall be as follows:

On or before the date a restructuring advice letter is submitted for filing, and unless otherwise directed by Commission order, the utility shall serve the restructuring advice letter (1) on the Consumer Services Division and the Office of Ratepayer Advocates (service on these parties may be made by Internet); and (2) on the utility's restructuring advice letter service list and any other third parties as specified by the Energy Division, other Commission order, or statute.

The utility's restructuring advice letter service list shall include the postal and e-mail address, as appropriate, of persons on the list. The utility shall include on the requested list any person that requests such inclusion and may periodically confirm the desire of any currently listed person to remain on the list.

After the filing of a restructuring advice letter, and pending its disposition, the utility shall promptly provide a copy of the advice letter to anyone so requesting. Such provision shall be without charge to anyone who is a current customer for utility services from the utility, or to anyone receiving the advice letter by Internet.

3. The restructuring advice letter shall contain the following categories of information, including all relevant work papers and other relevant supporting documents:

a. Identification of the QF, location of the QF's generating facility, brief description of the generating facility size, type of technology and other pertinent or unique characteristics.

b. Ownership of the QF project and related companies, including affiliate relationships of the parties involved in the transaction, if any.

c. A detailed description of the historical operational performance of the project, including historical production and compliance with performance and efficiency monitoring standards.

d. A summary of the proposed contract restructuring.

e. A summary of the ratepayer benefits.

f. A description of any significant, pending legal or regulatory disputes between the Utility and the QF, and their resolution or status.

g. An assessment of the QF's projected economic and operational viability under the existing contract.

h. A detailed description of ratepayer benefits, shareholder incentive, and sensitivity analyses.

i. A copy of the QF's existing contract, including any amendments.

j. A copy of the executed or unexecuted restructured agreement for which approval is sought and copies of all related agreements between the QF and the Utility.

~~4. The publicly available version of the restructuring advice letter may be redacted to delete the following types of confidential information, which redaction would be approved in advance by the Commission in its orders authorizing the use of the advice letter process:~~

~~a. The schedule of any restructuring payments to be made to the QF, including the total amount thereof.~~

~~b. The Utility's non-public projection of replacement energy and capacity costs.~~

~~c. The Utility's projection of future production by and payments to the QF under the existing contract.~~

~~d. Non-public financial and operating data provided on a confidential basis by the QF to the Utility.~~

~~e. The Utility's assessment of the QF's financial and operating viability under the existing contract.~~

~~f. The Utility's analysis of ratepayer savings under expected, best case and worst case scenarios (except that the projected range of savings under each scenario shall not itself be deemed confidential).~~

~~g. Portions of restructuring agreements that are deemed to be confidential by the parties and which, if made public, would place the Utility and/or the QF at a competitive disadvantage.~~

~~h. Other information which constitutes a protectable trade secret of a party or which, if publicly disclosed, would place the Utility or the QF at a competitive disadvantage.~~ [Deleted per D.98-12-066, p.18]

5. The restructuring advice letter shall only take effect upon Commission approval.

6. Any person may protest or respond to a restructuring advice letter as follows:

Within 20 days after the date that the advice letter is reported in the Daily Calendar, the protest or response shall be submitted to the Energy Division and served on the same day on the utility filing the restructuring advice letter. After filing a protest, and pending disposition of the restructuring advice letter, the protestant shall promptly provide a copy of the protest to anyone so requesting.

A restructuring advice letter may be protested on one or more of the following grounds:

a. The utility did not properly serve or give notice of the restructuring advice letter;

b. The relief requested in the restructuring advice letter would violate statute or Commission order;

c. The restructuring advice letter contains material errors, or does not follow the Commission's approved methodology, if any.

In addition, a restructuring advice letter may be protested on the grounds that the proposed restructuring is unjust, unreasonable, or discriminatory, provided,

however, that a restructuring advice letter is not subject to protest on these grounds where such protest would require relitigating a prior order of the Commission.

The utility filing the restructuring advice letter shall reply to each protest and may reply to any response. Any such reply shall be submitted to the Energy Division not later than five business days after the last day to serve a protest or response, and shall be served on the same day on the person making the protest or response. If there are multiple protests or responses to a restructuring advice letter, the utility's reply may be to all such protests and responses.

The Energy Division may consider a late-filed protest or response. If the Energy Division considers a late-filed protest or response, it shall notify the utility filing the restructuring advice letter, and the utility shall have five business days from the date of issuance of the notice within which to reply to the late-filed protest or response.

7. The utility filing the restructuring advice letter may make minor revisions or corrections to the filing at any time before the effective date by filing and serving a supplement or substitute sheet. The utility shall withdraw the advice letter without prejudice in order to make major revisions. Supplements, substitute sheets, and withdrawals shall be filed and served in the same manner and on the same persons as was the original advice letter.

Minor revisions do not automatically extend the protest period. The Energy Division on its own motion or at the request of any person, may issue a notice extending the protest period. Any protest during the extended period shall be confined to the substance of the revision.

8. A supplement to a restructuring advice letter may be used to make minor revisions. The following revisions are examples of what commonly, but not necessarily, qualify as minor: a modification in response to a protest; a language clarification; or a later effective date. The supplement shall bear the same identifying number as the original advice letter but shall have a letter suffix "A" for the first supplement, "B" for the second supplement, etc.

9. Upon completion of the protest, response and reply period, the Energy Division will have 40 days within which to review the proposed restructuring to determine whether the information provided under paragraph 2 above and in response to any protest establishes that the proposed restructuring is reasonable under the Commission's standards and should be approved.

"Energy Division will review such protests (and any responses), and prepare a Resolution for the Commission pursuant to Section 9 of Attachment B. However, we modify Section 9 so that Energy Division, at its discretion, may advise the utility that the matter is too complex and should be filed as an Application. Energy Division may also advise the utility to file an Application even if there are no protests, should the Division determine that there are complexities to the filing that the Division does not believe it is in the best position to resolve. The Energy Division should discuss any such recommendation with the Coordinating Commissioner for QF matters before advising the utility to file an Application." (D.98-12-066, p.17)

When such review has been completed, and within such 40-day period, the Energy Division will prepare and submit to the Commission for consideration at the Commission's next public meeting which is at least 10 days thereafter a proposed resolution either approving or rejecting the restructuring advice letter. (To facilitate this process, the utility may submit a proposed form of resolution as part of the advice letter package.) A proposed resolution approving the restructuring advice letter shall make at least the following finding:

(a) That the restructuring is reasonable;

(b) That all payments to be made pursuant to the restructuring shall be recovered by the utility through its Annual Transition Cost Proceeding or other mechanism authorized by the Commission, subject only to the utility's prudent administration of the restructuring agreement.

The Commission may then adopt the proposed resolution or modify it in whole or in part. After the Commission has acted on the resolution, its action will be reported in the Daily Calendar and the resolution will be served on the utility filing the restructuring advice letter, the affected QF and on any person filing a protest or response to the restructuring advice letter.

10. Pursuant to Public Utilities Code Sections 1731 to 1736 and Rules 85 to 86.7 of the Commission's Rules of Practice and Procedure, the utility filing the restructuring advice letter, the affected QF, or any person filing a protest to the restructuring advice letter may apply for rehearing of a resolution approving or rejecting the restructuring advice letter pursuant to paragraph 9 above. The application for rehearing shall set forth specifically the grounds on which the

applicant considers the resolution to be unlawful. Other than the affected QF, a person filing a response does not have standing to apply for rehearing.

The application for rehearing shall be submitted to the Commission's Docket Office, which will assign a docket number to the application, and with the Energy Division. If the applicant is the utility filing the restructuring advice letter, it shall serve all persons filing protests or responses to the restructuring advice letter. If the applicant is the affected QF or a person filing a protest, the applicant shall serve the utility and all other persons filing protests or responses to the restructuring advice letter.

11. If the Commission's final resolution does not approve the proposed restructuring in its entirety, then the terms of the agreement between the utility and the QF will determine whether or not the restructuring effort will terminate or whether the proposed restructuring will be resubmitted for consideration through a formal application process. Also, subject to its agreement with the QF, the utility will have the right to withdraw a restructuring advice letter without prejudice at any time prior to Commission action on the draft resolution prepared by the Energy Division, or to pursue a formal application process in lieu of the advice letter procedure.

12. Nothing in the restructuring advice letter filing procedure shall preclude the utility from electing not to use the advice letter process.