

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4110

September 6, 2007

REDACTED

R E S O L U T I O N

Resolution E-4110. Pacific Gas & Electric (PG&E) Company requests approval of the amended Global Ampersand (Global), LLC, renewable resource procurement contracts. These contracts are approved without modification

By Advice Letter 3044-E filed on April 30, 2007.

SUMMARY

PG&E's renewable contracts comply with the Renewables Portfolio Standard (RPS) procurement guidelines and are approved without modification

PG&E's request for approval of the renewable resource procurement contracts is granted. The energy acquired from these contracts will count towards PG&E's Renewables Portfolio Standard (RPS) requirements. In addition, the price for the contracts has been deemed by the Commission to be reasonable and fully recoverable in rates over the life of the contracts, subject to Commission review of PG&E's administration of the contracts.

Generating facility	Type	Term Years	MW Capacity	GWh Energy	Online Date	Location
El Nido	Biomass	15	9 MW	72 GWh	9/30/07	Fresno, CA
Chowchilla	Biomass	15	9 MW	72 GWh	12/31/07	Fresno, CA

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 California Renewables Portfolio Standard (RPS) Program was established by Senate Bill 1078¹ and codified at California Pub. Util. 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 2010.² This was reiterated again in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004³, which encouraged the utilities to procure cost-effective renewable generation in excess of their RPS annual procurement targets⁴ (APTs), in order to make progress towards the goal expressed in the EAP.⁵ On September 26, 2006, Governor Schwarzenegger signed Senate Bill 107, 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 Price Referent (MPR) methodology⁶ for determining the Utility's share of the RPS seller's bid price, as defined in Pub. Util. Code Sections 399.14(a)(2)(A) and 399.15(c). On the same day the Commission adopted standard terms and

¹ Chapter 516, Statutes of 2002, effective January 1, 2003 (SB 1078).

² 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.

³ http://www.cpuc.ca.gov/Published/Final_decision/36206.htm

⁴ 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.

⁵ Most recently reaffirmed in D.06-05-039.

⁶ D.04-07-015.

conditions for RPS power purchase agreements in D.04-06-014, as required by Pub. Util. 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 APT⁷ 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 target⁸ (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.

The Commission has established bilateral procurement guidelines for the RPS Program

While the focus of the RPS program is procurement through competitive solicitations, D.03-06-071⁹ allows for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process. Specifically, D.03-06-071 states that bilateral contracts will only be allowed if they do not require Public Goods Charge (PGC) funds.¹⁰

In D.06-10-019, the Commission interprets D.03-06-071, stating that bilaterals are not eligible for Supplemental Energy Payments (SEPs), and that bilateral contracts must be deemed reasonable. Going forward, D.06-10-019 states that the Commission will look further at evaluation criteria for bilateral RPS contracts, including the issue of whether some RPS bilateral contracts should be eligible for SEPs, as SB 107 may allow¹¹. However, in the interim, utilities' bilateral contracts can be evaluated prior to establishing formal evaluation criteria.

⁷ D.06-10-050, Attachment A, (http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/61025.PDF) as modified by D.07-03-046 (http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/65833.PDF).

⁸ The 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

⁹ http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/27360.htm

¹⁰ SB 107 (Public Resources Code section 25473(b)(1)(F)) provides that, to receive SEPs, a project must have resulted from a competitive solicitation; see also § 399.13(e).

¹¹ D.06-10-019 pp. 31-32.

PG&E requests approval of two amended renewable energy contracts

PG&E executed the original bilateral PPAs with Global Common and filed Advice Letter (AL) 2718-E on September 28, 2005 for Commission approval. After filing AL 2718-E, Global Common subsequently notified PG&E that the intended financier for the project had withdrawn, and it was unable to proceed with the project at the original price, and filed an amended PPA with a higher price on July 28, 2006. On November 13, 2006, PG&E filed Supplemental AL 2865-E-A, bringing the PPA terms and conditions into compliance with D.04-06-014. Resolution E-4047 approved both AL 2865-E and supplemental AL 2865-E-A on December 14, 2006.

On April 30, 2007, PG&E filed AL 3044-E, for PPA amendments (the Third Amendments) to its Commission approved PPAs with Global Ampersand, LLC (successor in interest to Global Common, LLC). The Third Amendments will facilitate the financing of the projects and clarify pricing terms, with or without CEC subsidies, throughout the contract term.

The PPAs result from bilateral negotiations and will contribute energy deliveries towards PG&E's 20 percent renewable procurement goal required by California's RPS statute.¹²

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 each PPA as amended by the Third Amendments, in their entirety, including payments to be made by PG&E, subject to CPUC review of PG&E's administration of the PPAs;
2. Finds that any procurement pursuant to these PPAs, as amended by the Third Amendments, 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

¹²California Pub. Util. Code section 399.11 et seq..

Portfolio Standard (Public Utilities Code Section 399.11 et seq.),
Decision 03-06-071, or other applicable law;

3. Finds that procurement pursuant to these amended PPAs, as amended by the Third Amendments, 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, (Pub. Util. Code Section 399.11 et seq.), Decision 03-06-071 and D.06-10-050, or other applicable law;
4. Finds that there is a risk that the proposed development and deliveries will not occur as described by the agreement due to factors that are beyond PG&E's control; that PG&E has made reasonable attempts to reduce the risk of nonperformance associated with the PPAs, as amended by the Third Amendments, without unduly increasing its cost; and that PG&E shall not be subject to penalties for RPS delivery shortfalls due to seller nonperformance, consistent with previous decisions.
5. Finds that payments under the PPAs, as amended by the Third Amendments, and any indirect costs of renewables procurement identified in Section 399.15 (d) shall be recovered in rates;
6. Finds that any cost of bringing generation from the delivery point to PG&E's load center is a transmission cost associated with procurement that will be recorded in the Energy Resource Recovery Account for rate recovery;
7. Finds that any stranded costs that may arise from this contract are subject to the provisions of D.04-12-048 authorizing stranded cost recovery over the life of the contract. Implementation of these provisions will be addressed in Rulemaking 06-02-013.

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), 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 provided its PRG with reports on the progress of negotiations with Global on several occasions. On June 27, 2005, PG&E described the process by which it evaluated the Chowchilla and El Nido projects and provided a comparison with shortlisted projects from the 2004 solicitation. On October 27, 2005, the PRG was informed via e-mail that Global had notified PG&E that the project was uneconomic at the original contract price. Global's proposed price increase was discussed at the January 12, 2006 meeting. The Third Amendments to the Commission approved PPAs do not affect price or expected generation, therefore, no additional presentation was provided to the PRG.

Although Energy Division is a member of the PRG, it reserved its judgment on the contracts until the resolution process. Energy Division reviewed the transactions independent of the PRG, and allowed for a full protest period before concluding its analysis.

NOTICE

Notice of AL 3044-E was 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.

PROTESTS

PG&E's Advice Letter 3044-E was timely protested by Merced Irrigation District and Modesto Irrigation District (Districts) on May 21, 2007. While the Districts did not object to the terms of the Global PPAs, both parties objected to PG&E's request for approval of stranded cost recovery in connection with the PPAs. The Districts state that the issue regarding implementation of stranded cost recovery, pursuant to D.04-12-048,¹³ is presently being considered by the Commission.

On May 29, 2007, PG&E responded to the Districts protest by stating that AL 3044 -E does not request the Commission to determine how above market costs will be recovered, but that they are eligible for recovery over the life of the contract. PG&E substantiates its argument by pointing to instances of Commission approved Resolutions that confirm the Commission's policy on stranded cost recovery. PG&E filed supplemental testimony on the issue of stranded cost recovery on February 2, 2007, in R.06-02-013, the Long-Term Procurement Plan Proceeding.

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, terms, and conditions:

Generating facility	Type	Term Years	MW Capacity	GWh Energy	Online Date	Location
El Nido	Biomass	15	9 MW	72 GWh	9/30/07	Fresno, CA
Chowchilla	Biomass	15	9 MW	72 GWh	12/31/07	Fresno, CA

¹³ http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/43224.PDF

PG&E's Advice Letter concerns amendments to Commission approved PPAs

- PG&E's PPAs with Global are amended to clarify pricing terms, with and without CEC subsidies, throughout the contract term.
- PG&E's PPA with El Nido is amended to facilitate the financing of the project.

PPAs are amended to eliminate a potential misinterpretation of pricing terms

The CEC modified its Existing Renewable Facilities Program (ERFP) guidelines on March 15, 2007.¹⁴ The change in the ERFP regulations made the projects eligibility for the subsidy less clear. The Third Amendments clarify and restate the Parties original agreed upon contract price throughout the contract term, with and without the CEC subsidy. (See confidential Appendix A)

PG&E's PPA with El Nido is amended to facilitate the financing of the project

Global requested a modification to the terms of the commercial online date (COD) for its El Nido facility, in order to secure project financing. See confidential Appendix A.

The PPAs are Consistent with Adopted Standard Terms and Conditions

In D.04-06-014 the Commission set forth standard terms and conditions to be incorporated into RPS agreements, including bilateral contracts. The PPAs conform to all non-modifiable Standard Terms and Conditions as defined in D.04-06-014, Appendix A. The Third Amendments do not affect Standard Terms and Conditions of the Commission approved PPAs.

The PPAs' levelized price is reasonable

The Third Amendments do not affect pricing terms of the PPAs. Resolution E-4047 approved the price of the projects on December 14, 2006. Bilateral contracts are not currently subject to the MPR, pursuant to D.06-10-019.¹⁵

¹⁴The Existing Renewable Facilities Program provides funding in the form of production incentives to eligible renewable energy facilities for each kilowatt hour of eligible energy generated. http://www.energy.ca.gov/renewables/existing_renewables/index.html

¹⁵ "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 (D.03-06-017, *mimeo.*, p. 59)... ." D.06-10-019, pp.31-32.

The PPAs are viable projects

PG&E believes that the projects are viable because:

Project Milestones

The PPAs identify the agreed-upon project milestones, including the interconnection agreement, project financing, construction start and commercial operation deadlines.

Maturity of Technology and Fuel Availability

Biomass is a proven technology. The projects have completed fuel studies adequate to demonstrate access to adequate fuel supplies consisting of urban wood waste and agricultural waste.

No Transmission Upgrades Needed

Global has completed a system interconnection study for each facility and the Generator Interconnection Agreements are currently pending FERC approval. No major transmission upgrades are required to interconnect to the system.

Financeability of resource

PG&E believes the amendments increase the likelihood of the projects being financed and completed as required by the PPAs, and will be available to deliver energy under the terms of the agreement.

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.

Sponsor's creditworthiness and experience

The bidders were required to provide credit-related information as part of their bid. PG&E has reviewed this information and is satisfied that the seller possesses the necessary credit and experience to perform as required by the PPAs.

Other Potential Viability Concerns

None.

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 Global PPAs represent an opportunity for the Commission to promote near-term biomass development in California.

The protest by Merced Irrigation District and Modesto Irrigation District is granted.

The Districts filed a joint protest against PG&E's request for stranded cost recovery through a Commission resolution approving AL 3044-E. The Districts accurately state in its protest that, "...recovery of any stranded costs that may arise from the PPAs is subject to any Commission determination(s) in Rulemaking 06-02-013 (or any other proceeding) regarding implementation of the cost recovery provisions of D.04-12-048."¹⁶ This statement is consistent with recent Commission approved resolutions. For example, in Resolution E-4084, approved July 12, 2007, the Commission states in Conclusions of Law 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" and in Ordering Paragraph 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." Accordingly, the Districts' protest is granted.

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 referenced Resolutions clearly determine that the above-

¹⁶ Merced Irrigation District and Modesto Irrigation District protest to Advice 3044-E, filed May 21, 2007

market costs are eligible for cost recovery..."¹⁷ 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 Plan Proceeding (R.06-02-013) is the appropriate procedural forum for addressing cost 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.¹⁸ Moreover, D.04-12-048 did not identify the implementation mechanism for recovering stranded costs when such recovery is allowed.¹⁹ Both of these issues are currently the subject of the Long Term Procurement Plan Proceeding, R.06-02-013, and are appropriately addressed in that proceeding.²⁰

PG&E's request for rate recovery of its transmission costs is not addressed in this resolution.

PG&E requests that the Commission make a finding related to undefined transmission costs, specifically requesting that the Commission:

Finds that any cost of bringing generation from the delivery point to PG&E's load center is a transmission cost associated with procurement that will be recorded in the Energy Resource Recovery Account for rate recovery.

In its request, PG&E really seeks two findings from the Commission. First, a determination that the cost of bringing generation from the delivery point to PG&E's load center is a transmission cost associated with procurement, and second, a finding that these costs should be recorded in its Energy Resource Recovery Account for rate recovery.

¹⁷ PG&E response to protest of Merced Irrigation District and Modesto Irrigation District to Advice 3044-E, filed May 29, 2007

¹⁸ D.04-12-048. Conclusion of Law 16,
http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/43224.PDF

¹⁹ Id.

²⁰ <http://www.cpuc.ca.gov/EFILE/RULINGS/68198.pdf>

PG&E makes its request without providing sufficient information and/or citing relevant Commission Decisions. Moreover, the issue of cost recovery should be addressed using the appropriate process provided by the Commission, and not by resolution.

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 Pub. Util. Code Section 583, General Order (G.O.) 66-C, 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

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

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

Comments were filed on August 27, 2007 by PG&E, addressing the issue of stranded cost recovery. Merced Irrigation Districts and Modesto Irrigation Districts filed reply comments on the same issue on August 31, 2007.

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 Advice Letter 2865-E on July 28, 2006, requesting Commission review and approval of two amended renewable energy contracts with Global Common's El Nido and Chowchilla facilities. On November 13, 2006, PG&E filed Supplemental Advice Letter (AL) 2865-EA, bringing the PPA

- terms and conditions into compliance with D.04-06-014. On December 14, 2006, the Commission approved AL 2865-E, and supplemental AL 2865-E-A.
3. PG&E filed Advice Letter 3044-E on April 30, 2007, requesting Commission review and approval of two amended renewable energy contracts with Global Ampersand's El Nido and Chowchilla facilities.
 4. A protest to AL 3044-E was filed by the Merced Irrigation District and Modesto Irrigation District on May 21, 2007.
 5. PG&E responded to the protest on May 29, 2007.
 6. Comments to the Draft Resolution were filed by PG&E on August 27, 2007.
 7. Reply comments were filed by the Merced Irrigation District and Modesto Irrigation District on August 31, 2007.
 8. The protest by Merced Irrigation District and Modesto Irrigation District is granted.
 9. The PPAs are consistent with Commission rules regarding bilateral RPS contracts, are reasonably priced, and are consistent with adopted standard terms and conditions.
 10. 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 and should be addressed in R.06-02-013.
 11. PG&E's request concerning the costs of bringing generation from the delivery point to PG&E's load center is not appropriate to address by resolution.
 12. AL 3044-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. D.03-06-071 allows a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process.
4. D.04-06-014 set forth standard terms and conditions to be incorporated into RPS PPAs.

5. The Commission previously approved the PPAs in Resolution 4047-E.
6. These Agreements are reasonable and should be approved.
7. The costs of the contracts between PG&E and Seller 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.
8. 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.
9. PG&E's request concerning the costs of bringing generation from the delivery point to PG&E's load center should be addressed using the appropriate process provided by the Commission and not by resolution.
10. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583, General Order (G.O.) 66-C and, 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.
11. Procurement pursuant to these Agreements is procurement from an eligible renewable energy resource for purposes of determining PG&E's compliance with any obligation 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.
12. Any indirect costs of renewables procurement identified in Section 399.15(d) shall be recovered in rates.
13. AL 3044-E should be approved without modification.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter AL 3044-E is approved without modification.
2. Consistent with the Findings of Facts and Conclusions of Law above, 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. 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. 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 September 6, 2007; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

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

Confidential Appendix A

Contract Summaries

Confidential Appendix B

Projects' Contribution Toward RPS Goals

MAILED 9/11/07