

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4609
September 19, 2013

R E S O L U T I O N

Resolution E-4609. Authorization for Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company to offer an amendment to Renewable Auction Mechanism (RAM) power purchase agreements (PPAs) executed as a result of the first three RAM solicitations.

PROPOSED OUTCOME: This Resolution authorizes Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company to offer an amendment to RAM PPAs executed as a result of the first three RAM solicitations, to align the regulatory delay extension provision in those contracts with the most recently adopted RAM PPAs.

SAFETY CONSIDERATIONS: Because this resolution only allows for the modification of an existing contract term for regulatory delay, there are not expected to be any incremental safety implications associated with approval of this resolution.

ESTIMATED COST: There are no expected costs associated with the changes made to the Renewable Auction Mechanism adopted by this Resolution.

By Energy Division's own motion pursuant to Commission Decision 10-12-048, as modified.

SUMMARY

In Decision (D.) 10-12-048 (the Decision or RAM Decision), the California Public Utilities Commission (CPUC or Commission) adopted the Renewable Auction

Mechanism (RAM) as a two-year program with the purpose of lowering transaction costs and promoting the development of system-side renewable distributed generation (DG), which is defined as projects up to 20 megawatts (MW) in size. The Commission approved Resolution E-4414 on August 18, 2011 to adopt RAM program implementation details, bidding protocols, and a standard PPA for each IOU.

This resolution authorizes the three investor-owned utilities (IOUs), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E) to offer an amendment to power purchase agreements (PPAs) executed as a result of the first three RAM solicitations to align the regulatory delay extension provision with that adopted in Resolution E-4582.

Within 30 days of the effective date of this resolution, PG&E, SCE, and SDG&E may each file a Tier 2 advice letter with the Energy Division requesting approval of any amendments made to PPAs to conform to the one-time, six-month extension granted in full regulatory delay extension provision, as clarified in Resolution E-4582.

BACKGROUND

On December 18, 2010, the CPUC approved a new procurement mechanism called the Renewable Auction Mechanism or RAM in D.10-12-048. The Decision ordered the IOUs to procure 1,330 MW¹ of system-side renewable distributed generation (for individual projects up to 20 MW in size) through a reverse auction using a standard PPA. The Decision ordered the IOUs to hold four auctions over two years and directed the IOUs to submit their bidding protocols and standard PPAs through a Tier 3 advice letter to implement the Decision's requirements.

¹ D.10-12-048 initially authorized 1000 MW. This capacity authorization was subsequently increased by D.12-02-002 (which authorized the transfer of 74 MW of capacity from SDG&E's PV Program to the RAM Program), D.12-02-035 (which authorized the transfer of 225 MW of capacity from SCE's PV Program into RAM), and D.13-05-033 (which authorized the transfer of 31 MW of capacity from the UOG portion of SCE's PV Program into RAM).

In D.10-12-048, and in Resolution E-4414² implementing that decision, the Commission delegated to Energy Division staff the authority to recommend modifications to the RAM program on its own motion. Section 12.1 of D.10-12-048 further expanded upon the Commission's intent to delegate authority to Energy Division to modify RAM:

We expect [Energy Division] and parties to continually monitor the RAM, and recommend modifications based on evidence, if and as necessary. [Energy Division] may act on its own motion to revise any aspect of the RAM program through resolutions proposed for Commission approval. Respondents and parties may seek modification by request to the Executive Director pursuant to Rule 16.4 of the Commission's Rules of Practice and Procedure. Any modifications proposed should be based on evidence that the modification is necessary to improve the RAM program.

In Resolution E-4582, which followed the third RAM solicitation, the Commission modified the capacity allocation for the fourth RAM solicitation and authorized a fifth RAM solicitation to close no later than June 27, 2014. In that resolution, the Commission also authorized the IOUs to submit non-substantive changes to their RAM protocols and PPAs for the fourth RAM solicitation via Tier 1 advice letter. Among the non-substantive changes the Commission authorized was a modification to the RAM PPA, if necessary, to reflect a clarification on the provision for an extension of the commercial operation deadline (COD) due to regulatory delay beyond the developer's control. Specifically, the Commission clarified that the regulatory delay extension provision should be implemented as a one-time, six-month extension granted in full and should not be administered on a day-for-day basis up to six months.

Energy Division staff, on its own motion, is recommending modifications to the RAM program to allow PG&E, SCE, and SDG&E to conform their PPAs from the first three RAM solicitations to include the regulatory delay provision adopted in Resolution E-4582. This is necessary to reduce the risk of unnecessary project terminations.

² Resolution E-4414, Ordering Paragraph 41 (adopting the RAM Program Rules, including provision 7(a), which states in full, "The Commission can modify any element of the program at any time through a Commission resolution").

DISCUSSION

Authorization to amend the regulatory delay extension provision for PPAs executed as a result of the first three RAM solicitations

In the RAM Decision, the Commission required the IOUs to include a provision in their RAM PPAs that provided for an extension of the project's COD for regulatory delay. Specifically, the Commission adopted Energy Division's proposal: "RAM projects should be given 18 months from contract execution to begin commercial operation or lose RAM eligibility, subject to one 6-month extension provided the seller can prove a regulatory delay."³ The Commission notes that projects now have 24 months⁴ from the date of CPUC approval⁵ to begin commercial operation.

In comments to Draft Resolution E-4582, SCE noted that its existing provision for regulatory delay extension allowed for extensions of the COD for regulatory delays on a day-for-day basis for a maximum of six months until the regulatory delay is resolved. SCE explained that this provision, as written, has been difficult to implement because the provision does not allow time to construct the project once the regulatory delay has been resolved. In order to prevent potential disputes related to interpretation of the regulatory delay provision, SCE requested authorization to modify its RAM 4 PPA to allow for a single six-month extension for regulatory delay, rather than one that was offered day-for-day up to six months.

In response to SCE's comments, the Commission clarified that the six-month extension for regulatory delay should exist as a one-time, single extension granted in full upon a demonstration by the seller that its project has encountered regulatory delay outside of its control.⁶ In Resolution E-4582, the Commission further clarified that it did not intend for this extension to have been granted on a day-for-day basis up to a maximum of six months, and that if one of

³ D.10-12-048 at Conclusions of Law #31, p. 90.

⁴ Resolution E-4489, Ordering Paragraph #5, p. 19.

⁵ Resolution E-4414, Ordering Paragraph #16, p. 43.

⁶ Resolution E-4582, p.9.

the three IOUs needed to modify its RAM PPA going forward to conform to this clarification, it should do so in its Tier 1 advice letter filing demonstrating compliance with that resolution.⁷

While the Commission authorized the IOUs to modify the regulatory delay extension provision in their RAM PPAs for the fourth RAM solicitation, it did not address whether the IOUs were authorized to amend this provision in PPAs executed as a result of the first three RAM solicitations to also conform with the clarification in Resolution E-4582.

Energy Division, on its own motion, now seeks to authorize the IOUs to offer an amendment to PPAs executed as a result of the first three RAM solicitations to align the provision for regulatory delay extension in those contracts with the clarification provided in Resolution E-4582 for RAM PPAs going forward. It is appropriate now to authorize the IOUs to offer this amendment to previously executed PPAs for several reasons.

First, as the Commission clarified in Resolution E-4582, the RAM Decision's intent for the provision of a regulatory delay extension was that the six-month extension should exist as a one-time, single extension granted in full upon a demonstration by the seller that its project has encountered regulatory delay outside of its control. The PPAs SCE executed for projects resulting from the first three RAM solicitations included a more stringent provision for regulatory delay extension than that originally intended by the Commission. For this reason, the Commission finds that it is appropriate that the IOUs be provided the opportunity to align their previously executed PPAs with the regulatory delay extension provision adopted in Resolution E-4582.

Second, the Commission finds that authorizing the IOUs to harmonize the regulatory delay extension provision in these executed PPAs with the provision as offered in the currently authorized version of the PPA provides consistency in RAM contract administration and is consistent with the goals of the RAM program.

⁷ Resolution E-4582, p.9-10.

Finally, initial CODs for projects resulting from the first RAM solicitation are scheduled for October 31, 2013. Due to the proximity of the RAM 1 CODs, the Commission finds that it is necessary to authorize the IOUs to offer a PPA amendment now to ensure that RAM projects do not face the risk of terminating due to an unnecessarily stringent regulatory delay extension provision. Authorizing the IOUs to offer a PPA amendment now would allow time to execute amendments to previously executed PPAs in advance of the initial RAM 1 CODs, in the event that any of these projects may require six-month extensions.

Public Safety

California Public Utilities Code Section 451 requires that every public utility maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment and facilities to ensure the safety, health, and comfort of the public.

This resolution authorizes the IOUs to offer an amendment to executed PPAs for the RAM program. Because this resolution only allows for the modification of an existing contract term for regulatory delay, there is not expected to be any incremental safety implications associated with approval of 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 for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on August 16, 2013.

No comments were filed.

FINDINGS AND CONCLUSIONS

1. Resolution E-4582 clarified that the RAM Decision's intent for the provision of a regulatory delay extension was that the six-month extension should exist as a one-time, single extension granted in full upon a demonstration by the seller that its project has encountered regulatory delay outside of its control.

2. It is appropriate that the IOUs be provided the opportunity to align their previously executed PPAs with the regulatory delay extension provision adopted in Resolution E-4582.
3. Authorizing the IOUs to harmonize the regulatory delay extension provision in these executed PPAs with the provision as offered in the currently authorized version of the PPA provides consistency in RAM contract administration and is consistent with the goals of the RAM program.
4. It is necessary to authorize the IOUs to offer a PPA amendment now to ensure that RAM projects do not face the risk of terminating due to an unnecessarily stringent regulatory delay extension provision.
5. Authorizing the IOUs to offer a PPA amendment now would allow time to execute amendments to previously executed PPAs in advance of the initial RAM 1 CODs, in the event that any of these projects may require six-month extensions.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company may offer an amendment to power purchase agreements executed as a result of the first three Renewable Auction Mechanism auctions to reflect that the previously authorized extension of the deadline for projects to achieve commercial operation should be implemented as a one-time, six-month extension granted in full and should not be administered on a day-for-day basis up to six months.
2. Within 30 days of the effective date of this resolution, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company may each file a Tier 2 advice letter with Energy Division for approval of any amendments to the power purchase agreements from the first three Renewable Auction Mechanism auctions made to conform to the one-time, six-month extension granted in full regulatory delay extension provision, as clarified in Resolution E-4582.

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 19, 2013; the following Commissioners voting favorably thereon:

/s/ Paul Clanon
PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
CARLA J. PETERMAN
Commissioners