Date of Issuance – 1/21/14

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-4632**
January 16, 2014

REDACTED

R E S O L U T I O N

Resolution E-4632. Pacific Gas and Electric Company requests Commission approval of a Power Purchase Agreement with Sierra Pacific Industries.

PROPOSED OUTCOME: This Resolution approves cost recovery for the Power Purchase Agreement between Pacific Gas and Electric Company and Sierra Pacific Industries.

SAFETY CONSIDERATIONS: The Power Purchase Agreement between Pacific Gas and Electric Company and Sierra Pacific Industries has terms which require Sierra Pacific Industries to comply with all relevant safety and permitting requirements.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter 4102-E filed on September 7, 2012 and supplemental Advice Letter 4102-E-A filed on September 17, 2013.

SUMMARY

Cost recovery for Pacific Gas and Electric Company's renewable energy power purchase agreement with Sierra Pacific Industries is approved without modifications. This Resolution does not conclude at this time that the Anderson II facility is eligible to be counted toward PG&E's greenhouse gas emissions reduction targets under the Combined Heat and Power Settlement Agreement, adopted by the Commission in D.10-12-0335.

Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 4102-E on September 7, 2012, requesting California Public Utilities Commission (Commission) approval of a power purchase agreement (PPA) with Sierra Pacific Industries (SPI).

PG&E currently receives deliveries from the SPI-owned and operated Anderson I, Burney, Lincoln, Quincy, and Sonora biomass facilities under their existing Qualifying Facilities (QF) contracts.[1] The facilities are located in Anderson, California; Burney, California; Lincoln, California; Quincy, California; and Sonora, California, respectively. These five existing biomass facilities are currently online and delivering under their standard offer QF contracts, which will expire in either 2016 or 2017.

The proposed SPI PPA under review would transition four of the existing SPI facilities currently delivering power to PG&E from a QF contract to a RPS contract. The fifth facility, Anderson I, would be decommissioned and be replaced by a new Anderson II biomass facility located directly adjacent to the Anderson I facility. The Anderson II facility is expected to achieve commercial operation on April 1, 2014. On April 4, 2014, all five of the existing QF contracts would be terminated and the single SPI PPA concerning the four existing and one new biomass facility (SPI facilities) would commence. The SPI facilities have an aggregate contracted capacity of 58 megawatts (MW) and are contracted to generate approximately 294 gigawatt-hours (GWh) of RPS-eligible energy annually in contract years 1 and 2, 322 GWh/year in contract year 3, and 406 GWh/year in contract years 4-20 during the 20-year contract term with PG&E. PG&E subsequently filed supplemental AL 4102-E-A on September 17, 2013. This

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[1] A QF is defined as an electric energy generating facility that complies with the qualifying facility definition established by Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 824a-3 (2006) (PURPA) and any Federal Energy Regulatory Commission (FERC) regulations as amended from time to time (18 Code of Federal Regulations Part 292) implementing PURPA and has filed with FERC (i) an application for FERC certification, pursuant to 18 C.F.R. § 292.207(b)(1), which FERC has granted, or (ii) a notice of self-certification pursuant to 18 C.F.R. § 292.207(a).

supplemental AL requests Commission approval of an amendment to the SPI PPA that changes the permitted extensions provision in the PPA.
This resolution approves cost recovery for the SPI PPA as amended by AL 4102-E-A between PG&E and Sierra Pacific Industries without modifications. PG&E's execution of this PPA is consistent with PG&E's 2011 RPS Procurement Plan as approved in Decision 11-04-030. Deliveries under the SPI PPA are reasonably priced and fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.

The following table provides a summary of the SPI PPA:

Generating facilities	Type	Term Years	MW Capacity	GWh Energy	COD	Location
Anderson II, Burney, Lincoln, Quincy, and Sonora	4 existing and 1 new (Anderson II) biomass facilities	20 years	58	Contract Years 1-2: 294/year Contract Year 3: 322 GWh/year Contract Years 4-20: 406/year	4/1/14	Anderson, CA; Burney, CA; Lincoln, CA; Quincy, CA; and Sonora, CA

BACKGROUND

Overview of the Renewables Portfolio Standard (RPS) Program

The California RPS program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036, and SB 2 (1X).[2] The RPS

[2] SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

program is codified in Public Utilities Code Sections 399.11-399.31.[3] Under SB 2 (1X), the RPS program administered by the Commission requires each retail seller to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources be an amount that equals an average of 20 percent of the total electricity sold to retail customers in California for compliance period (CP) 2011-2013; 25 percent of retail sales by December 31, 2016; and 33 percent of retail sales by December 31, 2020.[4]

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm and http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm.

NOTICE

Notice of Advice Letter 4102-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

Advice Letter 4102-E was timely protested by the California Cogeneration Council (CCC) on September 27, 2012. PG&E responded to this protest on October 4, 2012.

CCC does not protest the reasonableness of the SPI PPA or contest the approval of the PPA. Rather, CCC recommends that the greenhouse gas (GHG) reductions associated with operation of the Anderson II facility not count toward the GHG reduction targets under the Combined Heat and Power (CHP) Program

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[3] All further references to sections refer to Public Utilities Code unless otherwise specified.

[4] Decision (D.)11-12-020 established a methodology to calculate procurement requirement quantities for the three different compliance periods set forth in Section 399.15 (2011-2013, 2014-2016, and 2017-2020).

Settlement so long as the power output of the Anderson II facility counts towards meeting PG&E's RPS obligations. Additionally, CCC asserts that it is unclear whether the Anderson II facility qualifies as an eligible CHP facility as defined by the CHP Program Settlement.[5]

PG&E believes the Commission should reject CCC's protest and adopt a finding of fact and conclusion of law conditionally approving Anderson II's eligibility to count toward GHG reduction targets under the CHP Settlement since:
1) Anderson II will likely meet the eligibility criteria for a New CHP facility[6], and
2) Counting renewable CHP toward both the CHP and RPS GHG reduction goals is consistent with the CHP Settlement.[7]

DISCUSSION

Pacific Gas and Electric Company (PG&E) requests approval of a power purchase agreement between Sierra Pacific Industries and PG&E.

In July 2012 PG&E selected the most competitive shortlisted offers from its 2011 Renewables Portfolio Standards (RPS) bid solicitation for execution, including the SPI PPA. On August 9, 2012, PG&E and SPI executed the SPI PPA. PG&E filed Advice Letter (AL) 4012-E on September 7, 2012 seeking Commission approval of the SPI PPA. Subsequently, PG&E filed supplemental AL 4102-E-A on September 17, 2013, seeking Commission approval of the SPI PPA as amended by AL 4102-E-A.

The PPA covers delivery from four existing biomass facilities (Burney, Lincoln, Quincy, Sonora) that are currently under contract with PG&E as QFs, and one

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[5] The CHP Program Settlement (or CHP Settlement) was adopted by the Commission in D.10-12-035 on December 16, 2010.

[6] As defined under 18 C.F.R. § 292.205 of the CHP Settlement Term Sheet.

[7] Settlement Term Sheet at Section 16.2.8 states "To the extent the Generating Facility has Green Attributes associated with the Related Product, such Green Attributes shall be counted or credited toward the purchasing IOU's RPS Program."

new project, the Anderson II facility, which will replace the existing Anderson I QF biomass facility. In aggregate, the PPA will provide 58 MW of contract capacity and approximately 294 gigawatt-hours (GWh) of RPS-eligible generation annually in contract years 1 and 2, 322 GWh/year in contract year 3, and 406 GWh/year in contract years 4-20 during the 20-year contract term with PG&E, which will begin on April 4, 2014.

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

1. Approves the PPA in its entirety, including payments to be made by PG&E pursuant to the PPA, subject to the Commission's review of PG&E's administration of the PPA.
2. Finds that any procurement pursuant to the PPA is 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 RPS (Public Utilities Code Section 399.11 et seq.), D. 11-12-020 and D.11-12-052, or other applicable law.
3. Finds that all procurement and administrative costs, as provided by Public Utilities Code section 399.13(g), associated with the PPA shall be recovered in rates.
4. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:
    a. The PPA is consistent with PG&E's 2011 RPS procurement plan.
    b. The terms of the PPA, including the price of delivered energy, is reasonable.
5. Adopts the following finding of fact and conclusion of law in support of cost recovery for the PPA:
    a. The utility's costs under the PPA shall be recovered through PG&E's Energy Resource Recovery Account.

   b. Any stranded cost that may arise from the PPA is subject to the provisions of D.04-12-048 that authorize recovery of stranded renewables procurement costs over the life of the contract. The implementation of the D.04-12-048 stranded cost recovery mechanism is addressed in D. 08-09-012.

6. Adopts the following findings with respect to resource compliance with the EPS adopted in R.06-04-009:

   a. The PPA is pre-approved as meeting the EPS because it is for an existing biomass facility covered by Conclusion of Law 35(d) of D.07-01-039.

   b. PG&E has provided the notice of procurement required by D.06-01-038 in its Advice Letter filing.

7. Adopts a finding of fact and conclusion of law that deliveries from the PPA shall be categorized as procurement under the portfolio content category specified in Section 399.16(b)(1)(A), subject to the Commission's after-the-fact verification that all applicable criteria have been met.

8. Adopts a finding of fact and conclusion of law that, to the extent the Anderson II facility receives all necessary approvals to be designated as a CHP Facility defined by the QF/CHP Settlement adopted by D.10-12-035:

   a. Anderson II will be counted as a GHG Credit from a New CHP Facility pursuant to section 7.3.1.1 of the QF/CHP Settlement Agreement Term Sheet.

   b. Anderson II will not be counted toward the MW targets pursuant to section 5.2.5 of the QF/CHP Settlement Agreement Term Sheet.

Energy Division Evaluated the SPI PPA on the following criteria:

- Consistency with PG&E's 2011 RPS Procurement Plan
- Consistency with Least-Cost Best-Fit Requirements
- RPS Portfolio Need

- Price Reasonableness and Value
- Independent Evaluator (IE) Report
- Consistency with RPS Standard Terms and Conditions
- Consistency with Portfolio Content Categories Requirements
- Consistency with Long-Term Contracting Requirement
- Procurement Review Group Participation
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard
- Project Viability Assessment and Development Status
- Consistency with the QF/CHP Settlement

Consistency with PG&E's 2011 RPS Procurement Plan

California's RPS statute requires the Commission to direct each utility to prepare an annual RPS Procurement Plan (Plan) and then review and accept, modify, or reject the Plan prior to the commencement of a utility's annual RPS solicitation.[8] The Commission must then accept or reject proposed a PPA based on its consistency with the utility's approved Plan.

The SPI PPA was executed on August 9, 2012. At the time the PPA was executed, the most recent Commission-approved Plan was PG&E's 2011 Plan, which was conditionally approved in Decision 11-04-030. Pursuant to statute, PG&E's Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.[9]

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[8] Pub. Util. Code, § 399.14.

[9] Pub. Util. Code, §399.14(a)(3).

In its 2011 Plan, PG&E's stated preferences for RPS projects included: 1) projects that allow PG&E to address its long-term 33% RPS mandate under the third compliance period (CP 3) from 2017-2020, and 2) projects with high viability. PG&E is currently purchasing RPS-eligible generation from SPI under the existing QF agreements, which individually expire in either the latter half of 2016 or early 2017. PG&E asserts that, for the period that the new RPS SPI PPA commences through the original termination dates of the existing QF contracts, the amount of RPS deliveries from the SPI facilities under the RPS SPI PPA will not exceed the amount of expected RPS deliveries from the five existing QF contracts. Therefore, the termination of the existing QF contracts and commencement of the RPS SPI PPA has no material impact on PG&E's RPS need through 2016 due to the continuation of the expected RPS deliveries from the existing QF contracts. Beginning in 2017, the SPI PPA is expected to deliver approximately 406 GWh of incremental RPS generation per year, when PG&E has stated a need for new incremental deliveries of RPS-eligible generation during CP 3.

Four of the five SPI facilities are already online and fully viable. PG&E scored the fifth facility, Anderson II, as highly viable using the project viability calculator because the project has achieved important project development milestones.

<u>The SPI PPA is consistent with PG&E's 2011 RPS Procurement Plan as approved by D. 11-04-030.</u>

Consistency with PG&E's Least-Cost Best-Fit (LCBF) Requirements

The basic components of PG&E's LCBF evaluation and selection criteria and process for RPS PPAs were established in the Commission's LCBF Decisions D.03-06-071 and D.04-07-029. Consistent with these decisions, PG&E's process for selecting LCBF RPS resources focuses on five primary areas:

1. Market Valuation
2. Portfolio Fit
3. Project Viability
4. RPS Goals
5. Transmission

The LCBF decision directs the utilities to use certain criteria in their bid selection.[10] The decision offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations.

In AL 4102-E, PG&E evaluated the reasonableness of the SPI PPA against other RPS bids received in its 2011 RPS Solicitation and against RPS contracts executed by PG&E in the previous 12 months using PG&E's LCBF evaluation criteria from the 2011 RPS Solicitation. When compared against these cohorts, the SPI PPA ranked favorably compared to competing offers.

<u>PG&E adequately examined the reasonableness of the SPI PPA utilizing its LCBF methodology that was in place during the time that the PPA was being negotiated and executed.</u>

RPS Portfolio Need

The California RPS Program was established by Senate Bill (SB) 1078 and has been recently modified by SB 2 (1X), which became effective on December 10, 2011. SB 2 (1X) made significant changes to the RPS Program.[11] SB2 (1X) established new RPS procurement targets such that retail sellers must procure "…from January 1, 2011 to December 31, 2013…an average of 20 percent of retail sales…25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020."[12]

PG&E's stated RPS portfolio need falls within CP 3 (2017-2020). The April 1, 2014 Guaranteed Commercial Online Date (GCOD) of the SPI PPA is prior to PG&E's stated need. However, PG&E is already purchasing RPS-eligible generation from the SPI facilities under the existing QF agreements, which individually expire in

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[10] *See* D.04-07-029.

[11] The Commission opened Rulemaking (R.) 11-05-005 (May 5, 2011) to implement the new RPS law.

[12] *See* § 399.15(b)(2)(B), SB 2 (1X).

the latter half of 2016 and early 2017. The same level of RPS-eligible generation will continue under the SPI RPS PPA from 2014 until 2017. Therefore, the termination of the existing QF contracts and commencement of the RPS SPI PPA has no material impact on PG&E's RPS need through 2016 due to the continuation of the historical RPS generation associated with the QF contracts. Since PG&E is expected to be over-procured for RPS compliance during CP 2, the RPS generation in the PPA is lower during the first three years (CP 2) than it is during the remainder of the PPA. The incremental RPS deliveries from the SPI PPA beginning in 2017 align with PG&E's stated RPS procurement need in CP 3. See Confidential Appendix A for more details.

<u>RPS generation from the SPI PPA fits the portfolio need requirements of PG&E's RPS portfolio.</u>

Price Reasonableness and Value

The appropriate cohorts to compare the SPI PPA's price and value against are shortlisted bids from PG&E's 2011 RPS solicitation and RPS contracts executed by PG&E in the 12 months prior to the execution of the SPI PPA. The PPA was executed on August 9, 2012, and submitted to the Commission for approval on September 7, 2012.

PG&E evaluated the attributes of each RPS bid both quantitatively and qualitatively in order to rank them for their shortlist based on net market value (NMV)[13], and then applied a secondary ranking using portfolio adjusted value (PAV)[14]. The SPI PPA compared favorably against other offers based on price,

[13] The NMV is a standardized valuation metric used by the IOUs to calculate the overall costs and benefits of an RPS Project. The NMV calculation was standardized by the Commission in D.12-11-016.

[14] The Portfolio Adjusted Value methodology uses the Net Market Value results as an initial valuation and then makes additional adjustments that take into account the impact a transaction will have on PG&E's portfolio, many of which are elements of portfolio fit.

non-price factors and portfolio fit using both the NMV and PAV methodologies. See Confidential Appendix A for a price and value comparison of the SPI PPA.

<u>The price and net market value of the SPI PPA are reasonable when compared against shortlisted projects resulting from PG&E's 2011 RPS solicitation and RPS contracts recently executed by PG&E.</u>
<u>The CPUC approves cost recovery for the SPI PPA between PG&E and Sierra Pacific Industries.</u>

Independent Evaluator (IE) Report

The Independent Evaluator, Arroyo Seco Consulting (Arroyo), evaluated the SPI PPA. Arroyo compared the price and value of the SPI PPA against competing offers from PG&E's 2011 RPS solicitation using Arroyo's proprietary NMV evaluation model. Based on this comparison, Arroyo opines that the SPI PPA ranks low for price and high for value when compared against relevant peer groups of competing proposals. Additionally, Arroyo opines that the SPI contract ranks very high for viability when compared against competing offers from PG&E's 2011 RPS Solicitation. See Confidential Appendix B for a detailed explanation of the IE's findings.

<u>Consistent with D.06-05-039, an independent evaluator oversaw PG&E's RPS procurement process. Additionally, an independent evaluator oversaw PG&E's negotiations with Sierra Pacific Industries and compared the costs, value and viability of the SPI PPA against peer groups consisting of alternative competing proposals currently or recently available to PG&E.</u>

<u>The independent evaluator recommends that the Commission approve the SPI PPA.</u>

Consistency with RPS Standard Terms and Conditions

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, four of which are considered "non-modifiable." The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028. More recently in D.10-03-021, as modified by D.11-01-025, the Commission further refined these STCs.

The SPI PPA includes the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.

Consistency with Portfolio Content Category Requirements

In D.11-12-052, the Commission defined and implemented portfolio content categories for the RPS program and authorized the Director of Energy Division to require the investor-owned utilities to provide information regarding the proposed contract's portfolio content category classification in each advice letter seeking Commission approval of an RPS contract. The purpose of the information is to allow the Commission to evaluate the claimed portfolio content category of the proposed RPS PPA and the risks and value to ratepayers if the proposed PPA ultimately results in renewable energy credits in another portfolio content category.

In AL 4102-E, PG&E claims that the product procured pursuant to the SPI PPA will be classified as Portfolio Content Category 1. To support its claim, PG&E asserts that the SPI PPA requires SPI to provide both the energy and renewable energy credits associated with generation from the PPA. PG&E also states in the AL that the facilities have or expect to have their first point of interconnection with the California Independent System Operator (CAISO), a California balancing authority.

Consistent with D.11-12-052, PG&E provided information in AL 4102-E regarding the expected portfolio content category classification of the renewable energy credits to be procured pursuant to the SPI PPA.

In this resolution, the Commission makes no determination regarding the SPI PPA's portfolio content category classification. The RPS contract evaluation process is separate from the RPS compliance and portfolio content category classification process, which requires consideration of several factors based on various showings in a compliance filing. Thus, making a portfolio content category classification determination in this resolution regarding the procurement considered herein is not appropriate. PG&E should incorporate the procurement resulting from the SPI PPA and all applicable supporting documentation to demonstrate portfolio content category classification in the appropriate compliance showing(s) consistent with all applicable RPS program rules.

Consistency with Long-Term Contracting Requirement

In D.12-06-038, the Commission established a long-term contracting requirement that must be met in order for retail sellers to count RPS procurement from contracts less than 10 years in duration for compliance with the RPS program.[15] In order for the procurement from any short-term contract(s) signed after June 1, 2010 to count for RPS compliance, the retail seller must execute long-term contract(s) in the same compliance period in which the short-term contract(s) is signed. The volume of expected generation in the long-term contract(s) must be sufficient to cover the volume of generation from the short-term contract(s).[16]

Because the SPI PPA is considered greater than 10 years in length, the PPA may be construed as counting toward the minimum quantity requirements that the Commission established in D.12-06-038.

Procurement Review Group Participation

The Procurement Review Group (PRG) process was initially established in D.02-08-071 to review and assess the details of the investor-owned utilities' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission as a mechanism for procurement review by non-market participants.
According to PG&E, participants in its PRG included representatives from the Commission's Energy Division and the Division of Ratepayer Advocates, the

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[15] For the purposes of the long-term contracting requirement, contracts of less than 10 years duration are considered "short-term" contracts. (D.12-06-038).

[16] Pursuant to D.12-06-038, the methodology setting the long-term contracting requirement is: 0.25% of Total Retail Sales in 2010 for the first compliance period; 0.25% of Total Retail Sales in 2011-2013 for the second compliance period; and 0.25% of Total Retail Sales in 2014-2016 for the third compliance period.

Department of Water Resources, the Union of Concerned Scientists, the Utility Reform Network, the California Utility Employees, and Jan Reid, as a PG&E ratepayer. The SPI PPA was presented to the PRG as a potential contract for execution on June 19, 2012.

<u>Pursuant to D.02-08-071, PG&E complied with the Commission's rules for involving the Procurement Review Group.</u>

Compliance with the Interim Greenhouse Gas Emissions Performance Standard (EPS)

California Public Utilities Code Sections 8340 and 8341 require the Commission to consider emissions associated with new long-term (five years or greater) PPAs procured on behalf of California ratepayers.

D.07-01-039 adopted an interim EPS that establishes an emission rate for obligated facilities at levels no greater than the GHG emissions of a combined-cycle gas turbine power plant. The EPS applies to all energy PPAs for baseload generation that are at least five years in duration.[17] Generating facilities using certain renewable resources, including biomass, are deemed compliant with the EPS.[18]

The SPI PPA consists of five biomass generating facilities as identified to be pre-approved as EPS-compliant in D.07-01-039.

<u>The SPI PPA is pre-approved as meeting the EPS because it is for a generating biomass facility covered by Conclusion of Law 35(d) of D.07-01-039.</u>

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17 "Baseload generation" is electricity generation at a power plant "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." Pub. Util. Code § 8340(a).

18 D.07-01-039, Conclusion of Law 35(d), p. 269.

Project Viability Assessment and Development Status

The Burney, Lincoln, Quincy, and Sonora facilities are operational and are therefore considered fully viable. The Anderson II facility is considered highly viable although it is still under development. Arroyo provided the following viability information about the SPI facilities and their development statuses in its IE report.

Project development experience
SPI developed the existing powerhouses at its Anderson, Burney, Lincoln, and Quincy saw mills; the Sonora powerhouse was purchased along with that lumber operation from a prior owner. Anderson II, at 30.15 MW, will be larger in turbine-rated capacity than any of those individual existing powerhouses.

Ownership/O&M experience
SPI has owned and operated the powerhouses since they were constructed or, in the case of Sonora, purchased in 1995 from Fibreboard Inc. during its bankruptcy proceeding.

Technical feasibility
The Anderson II facility, like the four other facilities, will use a biomass-fed boiler and steam turbine generator, a commercialized and mature technology.

Resource quality
SPI's existing facilities use the company's mill waste as the primary source of fuel; this is augmented by in-forest waste from the extensive private forestry holdings of the company as well as other sources.

Manufacturing supply chain
The existing powerhouses do not rely on new sources of equipment. For Anderson II, one would not expect manufacturing supply constraints for equipment given the lead time available to SPI.

Site control
SPI owns the sites of all five mills and their co-generators. The new Anderson II power plant will be constructed on the grounds of SPI's Anderson mill property, near the existing boiler and fuel house.

Permitting
SPI holds all required permits for continued operation of the four existing power plants, including air permits and wastewater discharge permits. The Anderson II facility is currently undergoing the application process for receiving the Prevention of Significant Deterioration (PSD) permit from the United States Environmental Protection Agency (US EPA). The PSD is required before certain work on the Anderson II unit can take place.

Interconnection progress
In August 2013, SPI, the CAISO, and PG&E executed a Large Generator Interconnection Agreement (LGIA) for the Anderson II facility.

Transmission requirements
The grid infrastructure for delivery of power from the existing power plants is already in place and Arroyo expects that grid upgrade work will not impede SPI's ability to achieve its guaranteed on-line date for the Anderson II facility.

Reasonableness of COD
As existing generators, there are no physical impediments to continued operation of the four operating SPI facilities over the contract term, barring catastrophic failure. Additionally, it appears likely that Anderson II can achieve commercial operation by its GCOD as allotted by the permitted delay extension in the PPA.

<u>It is reasonable to expect the SPI facilities will meet the terms and conditions of their PPAs.</u> Confidential Appendix A includes additional discussion about other project development milestones for the SPI PPA that are confidential.

Safety Considerations

PG&E responded to a safety data request and stated that local, state, and federal agencies that have review and approval authority over the SPI facilities are responsible for enforcing safety, environmental, and other regulations for the SPI PPA, including decommissioning. The data request also directed PG&E to provide a history of safety violations at the four existing SPI facilities. PG&E's initial response included a matrix of safety violations provided by SPI that was not verified by PG&E. As the data request was for PG&E to provide a response, submitting an unverified matrix developed by SPI as the response was insufficient. After Energy Division Staff found PG&E's response incomplete and instructed PG&E to conduct an additional search, PG&E submitted a supplemental data response. PG&E's supplemental data response included additional safety information for the existing SPI facilities that PG&E retrieved from a Google search and a search of Cal-OSHA's database. Under the terms of the PPA, SPI is required to abide with all applicable requirements of law related to the construction, ownership and operation of the facilities. Further, PG&E's obligation to comply with Public Utilities Code Section 451 continues to apply.

Consistency with the QF/CHP Settlement

PG&E requests that the Commission adopt a Finding of Fact and Conclusion of Law that, "to the extent the Anderson II facility receives all necessary approvals to be designed a CHP Facility defined by the QF/CHP Settlement adopted by D.10-12-035 […] Anderson II will be counted as a GHG Credit from a New CHP Facility pursuant to section 7.3.1.1 of the QF/CHP Settlement Agreement Term Sheet." The Commission declines to grant this request at this time. As discussed below, once the Anderson II facility receives appropriate QF certification and otherwise meets all requirements for a New CHP facility, PG&E may file an additional Tier 2 advice letter requesting a Commission finding that the Anderson II facility can be counted as a GHG Credit under the CHP Settlement; the Commission will consider making such a Finding and Conclusion at that time.

The CHP Settlement Term Sheet as adopted by D.10-12-035 defines a CHP Facility as a facility that meets the federal definition of a qualifying cogeneration facility under 18 C.F.R. §292.205.[19] To meet the CHP Settlement Term Sheet's definition of a CHP Facility, a CHP facility must be certified as a QF by the Federal Energy Regulatory Commission (FERC). FERC has not yet certified the Anderson II facility as a QF. Thus, it is unknown at this time if the Anderson II facility meets the necessary requirements to be designated as a CHP Facility as defined by the CHP Settlement Term Sheet.[20]

The Commission accepts CCC's protest that it is unclear whether the Anderson II facility qualifies as a new CHP facility. For the Commission to make a finding regarding the Anderson II facility's designation as a New CHP Facility as defined by the QF/CHP Settlement the Commission must first be able to confirm that the Anderson II facility qualifies as a New CHP Facility. For the Commission to make this finding, PG&E must file an additional Tier 2 Advice Letter that includes: 1) the Anderson II facility's FERC certification as a QF; and 2) a FERC determination that the Anderson II facility otherwise meets all requirements for a new QF facility, including the Fundamental Use Test under 18 C.F.R. § 292.205(d).[21] Upon PG&E's filing of an additional Tier 2 Advice Letter, the Commission will consider PG&E's request to count the Anderson II facility as a New CHP Facility for the purposes of Section 7.3.1.1 of the CHP Settlement Term Sheet.

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[19] CHP Settlement, Term Sheet Section 17.

[20] *See* Res. E-4554 (August 15, 2013) at 3 ("[A] New CHP Facility under the Settlement is subject to the federal Fundamental Use Test."); see also *id.* at Finding/Conclusion 8. Pursuant to 18 C.F.R. 292.205(d)(3) and Section 1253 of the 2005 Energy Policy Act (16 U.S.C. § 824a-3(n)), the Fundamental Use Test requires new cogeneration facilities to use at least 50% of its annual energy output for industrial, commercial, residential, or institutional purposes, or else obtain a FERC determination of meeting the Fundamental Use Test based on "evidence … that the facilities should nevertheless be certified given state laws applicable to sales of electric energy or unique technological, efficiency, economic, and variable thermal energy requirements."

[21] *See*, e.g., Elk Hills Power LLC, 142 FERC ¶ 62,156 (2013) for a FERC determination of meeting the Fundamental Use Test.

CCC further protests that PG&E should not be permitted to double count the GHG emissions reductions associated with the Anderson II facility. CCC states that the California Air Resources Board's (ARB's) Climate Change Scoping Plan contains "both the RPS program and new CHP development as separate and distinct program elements,"[22] each of which the ARB has assigned emissions reductions goals. CCC believes that counting the Anderson II power output toward the RPS program's associated GHG reductions, while simultaneously counting the same GHG reductions toward the CHP Settlement's GHG reduction targets, will improperly double count the GHG reductions under the ARB's Scoping Plan.

The Commission rejects this part of CCC's protest. The CHP Settlement allows renewable CHP facilities to count towards both CHP and RPS GHG reduction goals. The CHP Settlement Term Sheet: 1) allows eligible CHP facilities to participate in RPS solicitations[23]; 2) states that eligible renewable CHP facilities count toward GHG emissions reduction targets[24]; and 3) allows green attributes of CHP facilities to count toward RPS program requirements.[25]

The Commission will take the proper steps to ensure it does not "double count" the GHG emission reductions from the Anderson II facility when reporting GHG emission reductions to a state agency, such as the California Environmental Protection Agency (CalEPA) or California Air Resources Board (CARB). If the Commission determines that the Anderson II facility meets the definition of a New CHP facility, the Commission will highlight the fact that the Anderson II facility is being counted towards PG&E's progress in meeting both the CHP program's GHG emissions reduction targets and the RPS program's procurement requirements. However, when reporting actual GHG emissions reductions from CPUC programs, the Anderson II facility will be counted only once. As a result

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[22] CCC protest to AL 4102-E at 2.

[23] *See* Settlement Term Sheet at Section 4.2.5.1

[24] *See* Settlement Term Sheet at Section 6.4.3

[25] *See* Settlement Term Sheet at Section 16.2.8

of this transparent reporting, the Commission will be able to adjust any procurement targets as appropriate at a future date, if desired.

The Commission denies CCC's protest that PG&E should not be able to count the GHG reductions from a New CHP Facility against both the GHG reduction targets for CHP and RPS Programs.

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Public Utilities Code Section 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS PPA, the Commission has required standard and non-modifiable "eligibility" language in all RPS PPAs. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an "Eligible Renewable Energy Resource," that the project's output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.[26]

The Commission requires a standard and non-modifiable clause in all RPS PPAs that requires "CPUC Approval" of a PPA to include an explicit finding that "any 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.*), D.11-12-020 and D.11-12-052, or other applicable law."[27]

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is not an eligible renewable energy resource, nor can the Commission determine prior to final CEC certification of a project, that "any

[26] *See, e.g.* D.08-04-009 at Appendix A, STC 6, Eligibility.

[27] *See, e.g.* D.08-04-009 at Appendix A, STC 1, CPUC Approval.

procurement" pursuant to a specific contract will be "procurement from an eligible renewable energy resource."

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract enforcement activities shall be reviewed pursuant to the Commission's authority to review the utilities' administration of such contracts.

CONFIDENTIAL INFORMATION

The Commission, in implementing Public Utilities Code Section 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS PPAs. Such information, including price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.
The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

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 December 13, 2013 and comments were received from PG&E on January 3, 2013.

The Commission carefully considered comments which focused on factual, legal, or technical errors and made appropriate changes to the draft resolution.

PG&E recommends that the Commission modify the language in the Safety Considerations section of the Draft Resolution.

PG&E recommends that the Commission modify the language in the Safety Considerations section so that it is consistent with the terms of the PPA. PG&E asserts that the PPA does not provide PG&E with a right to dictate or enforce safe operations at the SPI facilities. Furthermore, PG&E filed a supplemental data response that included additional, publicly available safety violations for the existing SPI facilities.

Based on PG&E's comments and supplemental data response, the language in the Safety Considerations section has been updated to: 1) acknowledge the fact that PG&E is not the responsible body for enforcing safety laws at the SPI facilities; and 2) recognize the fact that PG&E made an additional effort to provide more complete safety data for the existing SPI facilities.

FINDINGS AND CONCLUSIONS

1. The Sierra Pacific Industries Power Purchase Agreement is consistent with PG&E's 2011 Renewables Portfolio Standard Procurement Plan as approved by D. 11-04-030.
2. PG&E adequately examined the reasonableness of the Sierra Pacific Industries Power Purchase Agreement utilizing its Least-Cost Best-Fit methodology during the time the Power Purchase Agreement was being negotiated and executed.
3. Renewables Portfolio Standard generation from the Sierra Pacific Industries facilities fits the portfolio need requirements of PG&E's Renewables Portfolio Standard portfolio.
4. The price and net market value of the Sierra Pacific Industries Power Purchase Agreement are reasonable when compared against shortlisted projects resulting from PG&E's 2011 Renewables Portfolio Standard

solicitation and Renewables Portfolio Standard contracts recently executed by PG&E.

5. Consistent with D.06-05-039, an independent evaluator oversaw PG&E's Renewables Portfolio Standard procurement process. Additionally, an independent evaluator oversaw PG&E's negotiations with Sierra Pacific Industries and compared the costs, value and viability of the Sierra Pacific Industries Power Purchase Agreement against peer groups consisting of alternative competing proposals currently or recently available to PG&E.
6. The Sierra Pacific Industries Power Purchase Agreement includes the Commission-adopted Renewables Portfolio Standard "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.
7. Consistent with D.11-12-052, PG&E provided information in Advice Letter 4102-E regarding the expected portfolio content category classification of the renewable energy credits to be procured pursuant to the Sierra Pacific Industries Power Purchase Agreement.
8. Because the Sierra Pacific Industries Power Purchase Agreement is considered greater than 10 years in length, the Power Purchase Agreement may be construed as counting toward the minimum quantity requirements that the Commission established in D.12-06-038.
9. Pursuant to D.02-08-071, PG&E complied with the Commission's rules for involving the Procurement Review Group.
10. The Sierra Pacific Industries Power Purchase Agreement is pre-approved as meeting the Emissions Performance Standard because it is for a generating biomass facility covered by Conclusion of Law 35(d) of D.07-01-039.
11. It is reasonable to expect the Sierra Pacific Industries facilities will meet the terms and conditions of their PPAs.
12. California Cogeneration Council's protest questioning the Anderson II facility's designation as a new Combined Heat and Power facility should be accepted.
13. California Cogeneration Council's protest that PG&E should not be able to count the greenhouse gas reductions from a New Combined Heat and

Power Facility against both the greenhouse gas reduction targets for Combined Heat and Power and Renewables Portfolio Standard Programs should be denied.

14. Procurement pursuant to the Sierra Pacific Industries Power Purchase Agreement 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.11-12-020 and D.11-12-052, or other applicable law.

15. The immediately preceding finding shall not be read to allow generation from a non-Renewables Portfolio Standard eligible renewable energy resource under the Power Purchase Agreement to count towards a Renewables Portfolio Standard compliance obligation. Nor shall that finding absolve PG&E of its obligation to enforce compliance with the Sierra Pacific Industries Power Purchase Agreement.

16. The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

17. The Sierra Pacific Industries Power Purchase Agreement should be approved in its entirety.

18. Advice Letter 4102-E, as supplemented by Advice Letter 4102-E-A, should be approved effective today with modifications.

19. Payments made by PG&E under the Sierra Pacific Industries Power Purchase Agreement are fully recoverable in rates over the life of the Power Purchase Agreement, subject to Commission review of PG&E's administration of the Power Purchase Agreement.

<u>THEREFORE IT IS ORDERED THAT:</u>

1. The power purchase agreement between Pacific Gas and Electric Company and Sierra Pacific Industries as proposed in Advice Letter 4102-E, and as supplemented by Advice Letter 4102-E-A, is approved without modifications. Advice Letter 4102-E, as supplemented by Advice Letter 4102-E-A, is approved with modifications.

2. Pacific Gas and Electric Company may file an additional Tier 2 Advice Letter requesting a Commission determination that the Anderson II facility meets the definition of a New CHP Facility pursuant to section 7.3.1.1 of the Combined Heat and Power Settlement Agreement Term Sheet.

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 16, 2014; 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

Confidential Appendix A

Price/Value Reasonableness, Need, and Viability

[REDACTED]

Confidential Appendix B

Independent Evaluator Conclusions and Recommendations

[REDACTED]

Confidential Appendix C

SPI PPA Major Contract Provisions

[REDACTED]