

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**  
ENERGY DIVISION

Agenda ID 14925  
RESOLUTION E-4786  
June 9, 2016

**REDACTED**  
**RESOLUTION**

Resolution E-4786. Pacific Gas and Electric Company requests Commission approval of an amendment to its Power Purchase Agreement with Sierra Pacific Industries.

PROPOSED OUTCOME:

- This Resolution approves a wood tolling Letter 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 4818-E, filed on April 1, 2016.

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**SUMMARY**

The proposed Letter Agreement amending Pacific Gas and Electric Company's renewable energy power purchase agreement with Sierra Pacific Industries in response to the Governor's Tree Mortality Emergency Proclamation is approved without modifications. The amendment does not modify the terms or other substantial conditions of the existing agreement, but rather temporarily allows for incremental power deliveries produced with additional forest biomass fuel delivered by or on behalf of Pacific Gas and Electric Company.

Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 4818-E on April 1, 2016, requesting California Public Utilities Commission (Commission) approval of a Letter Agreement (Agreement) amending its existing power purchase agreement (PPA) with Sierra Pacific Industries (SPI).

This resolution approves cost recovery for the SPI PPA as amended by AL 4818-E without modifications. PG&E’s execution of this Agreement is consistent with PG&E’s 2015 RPS Procurement Plan as approved in Decision 15-12-025, especially pursuant to Commission Resolution E-4770 which permitted PG&E to bilaterally procure RPS power in response to the Governor’s Tree Mortality Proclamation. Deliveries under the SPI PPA as amended are reasonably priced and fully recoverable in rates over the life of the amendment, subject to Commission review of PG&E’s administration of the PPA. Table 1 provides a brief overview of the Agreement.

**Table 1: Summary of SPI Letter Agreement**

<b>SPI Facility</b>	<b>Generation Type</b>	<b>Size (MW)</b>	<b>Estimated Energy (GWh/Yr)</b>	<b>Agreement Effective Date</b>	<b>Agreement End Date</b>	<b>Location</b>
Anderson II, Burney, Lincoln, Quincy, Sonora	Biomass	58	Maximum of 186 GWh between five facilities	First day of first month after CPUC approval	9/8/19	Anderson, CA; Burney, CA; Lincoln, CA; Quincy, CA; 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) and SB 350.<sup>1</sup> The RPS program is codified in Public Utilities Code Sections 399.11-399.31.<sup>2</sup> The RPS program requires each retail seller to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources is an amount that equals an average of 20 percent of the total electricity sold to retail customers in California for compliance period 2011-2013; 25 percent of retail sales by December 31, 2016; 33 percent of retail sales by December 31, 2020 and corresponding increases up to 50% by December 31, 2030.

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/RPS\\_Homepage/](http://www.cpuc.ca.gov/RPS_Homepage/) and [http://www.cpuc.ca.gov/RPS\\_Decisions\\_Proceedings/](http://www.cpuc.ca.gov/RPS_Decisions_Proceedings/)

### **Relevant Provisions in the 2015 RPS Procurement Plans**

Pursuant to the authority provided in Public Utilities Code § 399.13(a)(1), D.15-12-025 accepted, with some modifications, the draft 2015 RPS Procurement Plans, including the related solicitation protocols, filed by the utilities including PG&E. D.15-12-025 accepted PG&E's position that it was well-positioned to meet its RPS targets and would therefore not issue a 2015 RPS solicitation. D.15-12-025 also specified that PG&E was required to first seek the Commission's permission before entering into any solicitations or bilateral contracts for RPS-eligible resources during the time period covered by their respective 2015 RPS solicitation cycles.

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<sup>1</sup> 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); and SB 350 (De León, Chapter 547, Statutes of 2015)

<sup>2</sup> All further statutory references are to the Public Utilities Code unless otherwise specified.

## **Overview of the Governor’s Tree Mortality Emergency Proclamation**

Severe drought conditions and an epidemic infestation of bark beetles have caused tree mortality in several regions of California. On October 30, 2015, Governor Brown issued an Emergency Proclamation (Proclamation)<sup>3</sup> to protect public safety and property from falling dead trees and wildfire. Ordering Paragraph 1 of the Proclamation tasked the Department of Forestry and Fire Protection (CAL FIRE), the California Natural Resources Agency, Caltrans, and the California Energy Commission to immediately identify “high hazard zones for wildfire and falling trees” and ordered the California Public Utilities Commission (Commission) to take various measures to ensure that contracts with bioenergy facilities that receive feedstock from high hazard zones will be expedited.

## **Provisions Permitting Bilateral Contracting in Response to Emergency**

On March 17, 2016, the Commission approved Energy Division’s Resolution E-4770 addressing some of the Proclamation’s directives to the Commission. In addition to directing new Renewable Auction Mechanism procurement of bioenergy from facilities processing high hazard zone fuel, E-4770 also lifted the prohibition in D.15-12-025 on bilateral RPS procurement for PG&E and for San Diego Gas & Electric Company; SCE already had permission. Specifically, E-4770 stated “To implement the Proclamation, it is essential that PG&E and SDG&E be allowed to enter into bilateral contracts to facilitate any potential contracts with existing forest bioenergy facilities receiving feedstock from high hazard zones. Therefore, PG&E and SDG&E are allowed to enter into bilateral contracts with existing forest bioenergy facilities receiving feedstock from high hazard zones during the duration of the 2015 RPS solicitation cycle.”<sup>4</sup>

Pursuant to this provision, PG&E executed the Agreement on March 17, 2016.

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<sup>3</sup> [https://www.gov.ca.gov/docs/10.30.15\\_Tree\\_Mortality\\_State\\_of\\_Emergency.pdf](https://www.gov.ca.gov/docs/10.30.15_Tree_Mortality_State_of_Emergency.pdf)

<sup>4</sup> Commission Resolution E-4770, pages 6-7.

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M159/K652/159652363.PDF>

## **NOTICE**

Notice of Advice Letter 4818-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 4818-E was not protested.

## **DISCUSSION**

**Pacific Gas and Electric Company (PG&E) requests approval of an amendment to its power purchase agreement with Sierra Pacific Industries (SPI).**

### **Overview of the Existing SPI PPA**

In July 2012, PG&E selected the most competitive shortlisted offers from its 2011 Renewables Portfolio Standards (RPS) bid solicitation for execution, including a bid from SPI. On August 9, 2012, PG&E and SPI executed a PPA, which PG&E filed via 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 an amendment to the SPI PPA that transitioned four of the facilities from Qualifying Facility (QF) contracts to a single RPS contract, and added a new facility (Anderson II), which was built on the same site as a previous facility (Anderson I). The Commission approved the current SPI PPA, as amended on January 16, 2014, via Resolution E-4632.

The SPI PPA had an initial commercial operation date of September 9, 2015 and covers delivery from five existing biomass facilities (Burney, Lincoln, Quincy, Sonora, and Anderson II). These five existing biomass facilities (SPI facilities) are currently online and delivering under the PPA, which will expire in 2035. In aggregate, over the 20-year term the PPA provides 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. A summary of the SPI PPA is provided in Confidential Appendix C.

## **Overview of the Letter Agreement**

To respond in part to the Governor's Proclamation, PG&E executed the instant Agreement amending the SPI PPA. The Agreement filed in AL 4818-E amends the PPA to provide a wood tolling agreement whereby PG&E or its designee will deliver forest biomass fuel to the SPI facilities at no cost, and buy the electricity generated from that fuel that is incremental to the power contracted for under the PPA. The Agreement does not *mandate* incremental generation or fuel deliveries. The price for incremental generation is confidential. The Agreement per year terms limit maximum fuel deliveries at 205,800 bone dry tons (BDT) split across the SPI facilities; with a contracted conversion rate of 1.1 BDT per megawatt-hour (MWh), this limits maximum incremental power deliveries under the Agreement to about 187 GWh annually.

Fuel deliveries under the Agreement will begin no earlier than the first day of the first month following Commission approval of AL 4818-E. The Agreement will expire on September 8, 2019. The Agreement does not add capacity; it utilizes the SPI facilities' existing excess generation capacity. It does not cover the cost of the incremental delivered fuel, nor is SPI paying for the fuel. The Agreement contains multiple terms and provisions limiting generation and fuel deliveries, to ensure that power produced under the Agreement is incremental to that which is governed by the underlying long term SPI PPA. These include provisions for verifying and coordinating fuel deliveries and structuring incremental generation.

See Confidential Appendix A for additional detail on the Agreement.

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

1. Approves the Letter Agreement in its entirety, including payments to be made by PG&E pursuant to the Letter Agreement, subject to the Commission's review of PG&E's administration of the Letter Agreement.
2. Finds that any procurement pursuant to the Letter Agreement 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 Letter Agreement shall be recovered in rates.
4. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:
  - a. The Letter Agreement is consistent with PG&E's 2015 RPS procurement plan.
  - b. The terms of the Letter Agreement, including the price of delivered energy, are reasonable.
5. Adopts the following findings of fact and conclusions of law in support of cost recovery for the Letter Agreement and PG&E's provision of fuel to SPI pursuant to the Letter Agreement:
  - a. The utility's payments to SPI under the Letter Agreement shall be recovered through PG&E's Energy Resource Recovery Account.
  - b. The utility should take practicable measures to support the response to the Governor's October 30, 2015, Emergency Proclamation on Tree Mortality, including by removing dead and dying trees and harvesting, chipping, and transporting wood debris to biomass facilities.
  - c. The utility's incremental costs to remove dead and dying trees and harvest, chip, and deliver wood fuel to biomass facilities, including to SPI pursuant to the Letter Agreement, shall be recovered through a Catastrophic Events Memorandum Account (CEMA), though the Commission may analyze these costs to determine if they are truly incremental and reasonable and do not constitute double-counting.
6. Adopts the following findings with respect to resource compliance with the EPS adopted in R.06-04-009:
  - a. The Letter Agreement 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.

7. Adopts a finding of fact and conclusion of law that deliveries from the Letter Agreement 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 that Incremental Product, as defined in the Letter Agreement, will not be deducted from excess generation in any Renewables Portfolio Standard compliance period pursuant to California Public Utilities Code Section 399.13(a)(4)(B) and CPUC decisions implementing that statutory provision.

**Energy Division Evaluated the Letter Agreement on the following criteria:**

- RPS Portfolio Need and Consistency with PG&E's 2015 RPS Procurement Plan
- Consistency with Least-Cost Best-Fit Requirements
- Price Reasonableness and Value
- Compliance with Bilateral Contracting Requirements
- 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



### **RPS Portfolio Need and Consistency with PG&E's 2015 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.<sup>5</sup> The Commission must then accept or reject proposed a PPA based on its consistency with the utility's approved Plan. PG&E's 2015 RPS Procurement Plan was approved in D.15-12-025.

A range of unique circumstances characterize this Agreement. It is the first wood tolling agreement between PG&E and a bioenergy facility. It is also the result of bilateral procurement specifically permitted to respond to an Emergency Proclamation. Although PG&E had not anticipated a need for bilateral RPS procurement in the 2015 RPS Plan period, the Commission provided authorization in E-4770 for this type of procurement pursuant to the Proclamation and expressly to remove a barrier to potential expedited actions that could implement the Proclamation. Thus, despite the fact that PG&E expects to meet its Compliance Period (CP) 2 and 3 RPS procurement requirements, PG&E executed the Agreement under the auspices of the Emergency Proclamation and with the expectation that it could "bank" the Renewable Energy Credits (REC)s associated with the resulting incremental generation. Additionally, the Agreement is consistent with the long term strategy identified in PG&E's 2015 RPS Plan of conducting incremental procurement and of developing a bank of surplus procurement to manage risks at reasonable cost. Lastly, the Agreement supports the State's goal of meeting 20% of renewable needs with bioenergy under Executive Order S-06-06.

In light of these facts, the Agreement is consistent with PG&E's 2015 RPS Procurement Plan as approved in D.15-12-025, and per the bilateral contracting authorization in E-4770.

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<sup>5</sup> Pub. Util. Code, § 399.14.

### **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

In AL 4818, PG&E evaluated the reasonableness of the Agreement against its most recent renewable energy solicitations, and against a range of other transactions or procurement alternatives such as the average levelized post-TOD Renewable Auction Mechanism (RAM) 5 bid price from biomass resources. (See Confidential Appendix A for more detail.) The Agreement ranked favorably compared to this other procurement. PG&E also considered additional qualitative factors specific to the Agreement such as the SPI facilities' ability to accept fuel as-available, their online status, and available excess capacity.

PG&E adequately examined the reasonableness of the Agreement utilizing its LCBF methodology that was in place during the time that the Agreement was being negotiated and executed.

### **Price Reasonableness and Value**

PG&E evaluated the attributes of the Agreement both quantitatively and qualitatively to determine its net market value (NMV)<sup>6</sup>, and then applied a

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<sup>6</sup> 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.

secondary ranking using portfolio adjusted value (PAV)<sup>7</sup>. The Agreement compared favorably against other alternatives based on price, 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 Agreement.

Despite the lack of recently-executed bilateral wood tolling contracts with which to directly compare it, the price of the Agreement is reasonable, particularly in the context of a response to a state of emergency.

The price and net market value of the Agreement are reasonable. Cost recovery for the Agreement amending the PPA between PG&E and Sierra Pacific Industries is approved. PG&E shall recover the costs of the Agreement in rates.

### **Compliance with Bilateral Contracting Requirements**

The Commission provided guidelines for bilateral RPS contracting in D.06-10-019 and D.03-06-071, requiring the following: 1) bilateral contracts should be filed via Advice Letter, 2) bilateral contracts should be longer than one month in duration, 3) the contract should not receive above-market funds, and 4) the contract is deemed reasonable by the Commission. Subsequently, D.09-06-050 stated that bilateral contracts should be subject to the same standards as contracts resulting from solicitations.

The Agreement meets requirements applicable to bilateral contracting.

### **Independent Evaluator (IE) Report**

The Independent Evaluator, Arroyo Seco Consulting (Arroyo), evaluated the Agreement. Arroyo states that it is “not aware of any comparable biomass transaction” akin to this wood tolling agreement, and because PG&E did not hold a 2015 RPS solicitation, the most recent comparable indications of market pricing would be its RAM 5 solicitation. However, both the RAM auctions and

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<sup>7</sup> 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.

the RPS solicitations required terms of ten years or more, and Arroyo does not consider pricing therein to be directly comparable to an incremental energy amendment with a term of less than four years. However, Arroyo does estimate the expected non-renewable energy prices over the Agreement term plus the expected price of Portfolio Content Category (PCC) 1 RECs to compare with the incremental Agreement cost. It also evaluates the potential costs to ratepayers of PG&E's fuel delivery operations to supply the incremental fuel, but concludes that the uncertainty is too great to estimate them.

Arroyo's finds the Agreement qualitatively ranks low in portfolio fit, due to PG&E's lack of immediate need for RPS procurement. Also, Arroyo states that adding generation to SPI's profile "will make it flatter and more baseload-like, whereas PG&E needs more flexible resources to deal with periods of overgeneration and negative market prices." These are relevant considerations in the procurement of additional biomass resources; the as-available and scheduling terms of this Agreement, in whole light of the current situation in which it was executed, balance these specific concerns.

Arroyo further evaluates the Agreement's consistency with RPS goals and PG&E's RPS plan, overall portfolio fit, viability, and overall merit. See Confidential Appendix B for more details.

Consistent with D.06-05-039, an independent evaluator oversaw PG&E's negotiations with Sierra Pacific Industries and compared the costs, value and viability of the Agreement against peer groups consisting of alternative competing proposals currently or recently available to PG&E.

The independent evaluator recommends that the Commission approve the SPI PPA.

### **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 existing SPI PPA includes, and the Agreement does not modify, 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 4818-E, PG&E claims that the incremental product procured pursuant to the Agreement will be classified as Portfolio Content Category 1. To support its claim, PG&E asserts that the existing, underlying SPI PPA requires SPI to provide both the energy and renewable energy credits associated with generation from the PPA. PG&E also states in AL 4818-E that the facilities 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 4818-E regarding the expected portfolio content category classification of the renewable energy credits to be procured pursuant to the Agreement.

In this resolution, the Commission makes no upfront determination regarding the Agreement’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 Agreement 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.<sup>8</sup> 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).<sup>9</sup> The Commission found in Resolution E-4632 that the SPI PPA was greater than ten years in length, and thus determined the SPI PPA counted towards these long-term contracting requirements in the period in which it was executed.

As an amendment to the existing long term PPA with SPI, the Agreement does not alter or modify the Commission's previous determination of the PPA's compliance with long-term contracting requirements.

### **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

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<sup>8</sup> 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).

<sup>9</sup> 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.

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 Office of Ratepayer Advocates, Coalition of California Utility Employees (CUE), Coast Economic Consulting, The Utility Reform Network (TURN), Union of Concerned Scientists, and Woodruff Expert Services (representing TURN). The Agreement was presented to the PRG on February 10, 2016.

Pursuant to D.02-08-071, PG&E complied with the Commission's rules for involving the Procurement Review Group in its execution of the Agreement.

### **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.<sup>10</sup> Generating facilities using certain renewable resources, including biomass, are deemed compliant with the EPS.<sup>11</sup>

The SPI PPA consists of five biomass generating facilities as identified to be pre-approved as EPS-compliant in D.07-01-039. The Commission found in E-4632 that the SPI PPA was pre-approved as meeting the EPS as the SPI facilities are

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<sup>10</sup> "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).

<sup>11</sup> D.07-01-039, Conclusion of Law 35(d), p. 269.

“generating biomass facility[ies] covered by Conclusion of Law 35(d) of D.07-01-039.” The Agreement does not alter these determining factors.

As an amendment to the EPS-compliant SPI PPA, the Agreement meets EPS.

### **Project Viability Assessment and Development Status**

The Burney, Lincoln, Quincy, Anderson II, and Sonora facilities (SPI facilities) are fully developed and operational, and SPI has full site control. SPI has extensive ownership and operational experience. The SPI facilities are permitted and interconnected. The facilities use primarily processing waste from on-site saw mills as the fuel source for their generation under the existing PPA. Arroyo scored the Agreement as having a Project Viability score of 100, using the calculator developed by Energy Division. From a technical and contractual standpoint, the Agreement is highly viable.

Arroyo identified factors that may impact the viability of the fuel stream under the Agreement. These include logistical challenges PG&E or its contractors may face identifying, collecting, and delivering forest fuel, especially because tracking and documenting the use of high hazard zone (HHZ) fuel may be complex. Arroyo notes that harvesting and transporting this fuel to the SPI facilities may be non-economic because HHZ locations may be scattered and remote.

The Commission acknowledges potential fuel source complexities, but expects PG&E to treat them as coordination challenges with practical solutions, not as insurmountable barriers to fulfilling its fuel delivery role under the Agreement. PG&E does have the administrative responsibility of adequately identifying, processing, and delivering fuel for the Agreement to produce benefits. The various working groups of the Governor’s Tree Mortality Task Force are developing fuel gathering and storage guidelines and working to mobilize and coordinate HHZ fuel removal. PG&E should continue to coordinate with these efforts, and commit fully to all efforts that are consistent with its vegetation management responsibilities and directives under the Proclamation. To the greatest extent reasonable, PG&E should focus on the most hazardous fuel as well as on areas where partnerships with local governments, state agencies, and others permit greater efficiency, lower costs, and higher volumes of fuel removal.



While the Agreement does not mandate that all incremental fuel will be from HHZs, PG&E is reminded that the Agreement is justified in part due to its responsiveness to the Emergency Proclamation. The HHZs as designated pursuant to the Proclamation<sup>12</sup> are sufficiently broad, yet are specific to the types of areas where PG&E is likely be removing fuel. HHZs have two Tiers: Tier 1 designates areas of elevated tree mortality within 200 feet of structures, utility infrastructure, and other resources. In other words, Tier 1 appears to align completely with vegetation management work PG&E may conduct. (Tier 2 designates broader (to watershed levels) areas at indirect elevated risk.) Additionally, the Agreement's as-available fuel delivery terms –and the lack of any mandated level of incremental generation – sufficiently account for the unpredictability in fuel supply.

Confidential Appendix A includes additional discussion about other confidential viability considerations.

It is reasonable to expect PG&E and SPI will meet the terms and conditions of the Agreement.

### **Recovery under the Catastrophic Event Memorandum Account**

While the Agreement does not mandate that PG&E will only provide hazardous or HHZ fuel, PG&E states it expects to seek recovery for its incremental fuel costs under the Agreement via its Catastrophic Event Memorandum Account (CEMA). This is appropriate for incremental fuel costs related to hazardous or HHZ fuel. Costs related to forest fuel that is a product of non-incremental vegetation management and is not related to emergency conditions should not be booked to CEMA.

PG&E should seek recovery of the costs of its incremental, qualifying activities removing, harvesting, chipping, and delivering wood fuel to biomass facilities

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<sup>12</sup> See formal designation letter on the Tree Mortality Task Force website at [http://www.fire.ca.gov/treetaskforce/downloads/HHZ\\_ltr\\_to\\_CPUC\\_President\\_Picker.pdf](http://www.fire.ca.gov/treetaskforce/downloads/HHZ_ltr_to_CPUC_President_Picker.pdf)

through its Catastrophic Events Memorandum Account. Any cost recovery requests therein will be subject to Commission review.

### **Safety Considerations**

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. Under the terms of the existing SPI PPA, SPI is required to abide with all applicable requirements of law related to the construction, ownership, operation, maintenance, and decommissioning of the facilities. The Agreement does not modify these terms. Based on the information before us, the amendment does not appear to result in any adverse safety impacts on the facilities or operations of PG&E. Further, PG&E's obligation to comply with Public Utilities Code Section 451 continues to apply. Lastly, PG&E's contracting practices for performing work pursuant to this Resolution must comply with the Contractor Safety Standard approved by the Commission in D.15-07-014.

### **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.<sup>13</sup>

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

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<sup>13</sup> See, e.g. D.08-04-009 at Appendix A, STC 6, Eligibility.

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.”<sup>14</sup>

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 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.

The SPI PPA is a long-term RPS PPA executed after June 1, 2010. The Agreement does not modify the SPI PPA length or any of its standard RPS PPA terms and conditions. The Agreement does not change the generating facilities, the existing generation terms under the PPA, or the responsibilities of the buyer and seller therein. For RPS compliance purposes the Agreement does not impact the SPI PPA.

The SPI PPA as modified herein remains a long term RPS PPA for RPS compliance purposes.

### **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

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<sup>14</sup> See, e.g. D.08-04-009 at Appendix A, STC 1, CPUC Approval.

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 in “an uncontested matter in which the decision grants the relief requested.” The Commission’s Rules of Practice and Procedure also provides that public review and comment may be waived or reduced in an “unforeseen emergency situation” specifically where there are “[a]ctivities that severely impair or threaten to severely impair public health or safety (Rule 14.6(a)(1) and/or where there are “[c]rippling disasters that severely impair public health or safety” (Rule 14.6(a)(2)).

The 30-day comment period for the draft of this resolution was waived pursuant to these authorities. Accordingly, this draft resolution is scheduled for a vote at the Commission meeting on June 9, 2016.

### **FINDINGS**

1. Governor Brown issued an Emergency Proclamation on October 30, 2015, to protect public safety and property from falling dead trees and wildfire, and the Proclamation directs the Commission to take various measures to ensure expedited contracts may be executed.

2. Commission Resolution E-4770 lifted the prohibition on bilateral procurement in Renewables Portfolio Standard D.15-12-025, to ensure the utilities could quickly respond to the emergency via bilateral procurement.
3. The Letter Agreement amending the existing Power Purchase Agreement between Pacific Gas and Electric Company (PG&E) and Sierra Pacific Industries is consistent with PG&E's 2015 Renewables Portfolio Standard Procurement Plan as approved by D.15-12-025, and per the bilateral contracting authorization in E-4770.
4. Renewables Portfolio Standard generation from the Sierra Pacific Industries facilities fits the long term strategy identified in PG&E's Renewables Portfolio Standard portfolio of conducting incremental procurement and of developing a bank of surplus procurement.
5. PG&E adequately examined the reasonableness of the Letter Agreement amending the Sierra Pacific Industries Power Purchase Agreement utilizing its Least-Cost Best-Fit methodology during the time Letter Agreement was being negotiated and executed.
6. The Letter Agreement amending the Sierra Pacific Industries Power Purchase Agreement is characterized by, and executed pursuant to, unique circumstances including the Governor's October 30, 2015 Tree Mortality Emergency Proclamation.
7. The price and net market value of the Letter Agreement are reasonable based on available comparisons.
8. PG&E should take practicable measures to support the response to the Governor's October 30, 2015 Tree Mortality Emergency Proclamation, including by removing dead and dying trees and harvesting, chipping, and transporting wood debris to biomass facilities.
9. The Letter Agreement meets applicable guidelines in D.06-10-019, D.03-06-071, and D.09-06-050 for bilateral Renewables Portfolio Standard contracting.
10. Consistent with D.06-05-039, an independent evaluator oversaw PG&E's negotiations with Sierra Pacific Industries and compared the costs, value and viability of the Letter Agreement against peer groups consisting of alternative competing proposals currently or recently available to PG&E.

11. The Letter Agreement does not modify the terms within the existing, approved Sierra Pacific Industries Power Purchase Agreement, which 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.
12. The terms of the Letter Agreement, including the price of delivered energy, are reasonable.
13. Consistent with D.11-12-052, PG&E provided information in Advice Letter 4818-E regarding the expected Portfolio Content Category classification of the Renewable Energy Credits to be procured pursuant to the Letter Agreement.
14. Pursuant to D.02-08-071, PG&E complied with the Commission’s rules for involving the Procurement Review Group.
15. The Letter Agreement is pre-approved as meeting the Emissions Performance Standard because it is for existing biomass facilities covered by Conclusion of Law 35(d) of D.07-01-039.
16. It is reasonable to expect the Sierra Pacific Industries facilities will meet the terms and conditions of the Letter Agreement.
17. Procurement pursuant to the Sierra Pacific Industries Power Purchase Agreement as amended herein 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.
18. 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 Letter Agreement.
19. Deliveries under the Letter Agreement 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.

20. The Letter Agreement does not modify the existing Sierra Pacific Industries Power Purchase Agreement length or any of its standard terms and conditions; thus the Sierra Pacific Industries Power Purchase Agreement as amended herein remains a long term contract for Renewables Portfolio Standard purposes.
21. 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.
22. The Letter Agreement amending the Sierra Pacific Industries Power Purchase Agreement should be approved in its entirety.
23. Advice Letter 4818-E, should be approved effective today.
24. Payments made by PG&E under the Letter Agreement are fully recoverable in rates over the life of the Letter Agreement, subject to Commission review of PG&E's administration of the Agreement. PG&E should seek recovery of these costs through its Energy Resource Recovery Account.

**THEREFORE IT IS ORDERED THAT:**

1. The Letter Agreement amending the power purchase agreement between Pacific Gas and Electric Company and Sierra Pacific Industries as proposed in Advice Letter 4818-E is approved without modifications. Advice Letter 4818-E is approved without modification.
2. PG&E should seek recovery of the costs of its incremental, qualifying activities removing, harvesting, chipping, and delivering wood fuel to biomass facilities pursuant to the Letter Agreement through its Catastrophic Events Memorandum Account. Any cost recovery requests therein will be subject to Commission review.

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 June 9, 2016 the following Commissioners voting favorably thereon:

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TIMOTHY J. SULLIVAN  
Executive Director



**CONFIDENTIAL APPENDIX A**

Confidential Letter Agreement Details

**[REDACTED]**

**CONFIDENTIAL APPENDIX B**

Independent Evaluator Conclusions and  
Recommendations

**[REDACTED]**

**CONFIDENTIAL APPENDIX C**

Major Contract Provisions of Existing SPI PPA

**[REDACTED]**