

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**AGENDA ID #18343
RESOLUTION E-5037
May 28, 2020**

R E S O L U T I O N

Resolution E-5037. Pacific Gas and Electric Company seeks approval of three power purchase agreements with Qualifying Facilities and associated cost recovery.

PROPOSED OUTCOME:

- Approves three Pacific Gas and Electric Company (PG&E) power purchase agreements with Aera Energy, LLC; Berry Petroleum, LLC; and EIF Haypress, LLC.

SAFETY CONSIDERATIONS:

- The terms of the Agreements state Aera Energy, LLC; Berry Petroleum, LLC; and EIF Haypress, LLC must operate and maintain the facilities within the terms of prudent electrical practices. PG&E submitted safety plans for each of the facilities that were certified by a licensed California engineer.

ESTIMATED COST:

- Payment for PPA energy will be at PG&E's posted Short Run Avoided Cost price as posted by PG&E.

By Advice Letter 5592-E, filed on July 24, 2019, and supplemental Advice Letter 5592-E-A, filed on January 17, 2020.

SUMMARY

This Resolution approves:

- One modified As-Available Combined Heat and Power (CHP) Power Purchase Agreement (PPA).

- Two modified standard contracts for Qualifying Facilities with a Power Rating that is Less than or Equal to 20 MW.
- Associated cost recovery.

Aera Energy, LLC's South Belridge Cogeneration facility is a Qualifying Facility (QF) that currently has an existing 7-year As-Available CHP PPA with PG&E that expired on September 30, 2019, and seeks to sign another 7-year As-Available CHP PPA.¹ The South Belridge Cogeneration facility is a 20 MW CHP facility fueled by natural gas.

Berry Petroleum, LLC's Tannehill facility is an existing Qualifying Facility whose Legacy QF contract with PG&E expired in September, 2019, and now seeks a ≤ 20 megawatt (MW) PURPA contract for a duration of 7 years. The Tannehill facility is a 15.5 MW CHP facility fueled by natural gas.

EIF Haypress, LLC's facility named "Haypress Creek-Lower Haypress, Middle" is an existing QF whose Legacy QF contract with PG&E expired in April 2019, and sought to execute the ≤ 20 MW PURPA contract for a duration of 8 months. Subsequently, EIF Haypress, LLC requested an extension for their ≤ 20 MW PURPA contract term from 8 to 16 months and PG&E filed a supplemental Advice Letter, AL 5592-E-A, on January 17, 2020, to request approval of this change. The Haypress Creek-Lower Haypress, Middle facility is a 12.5 MW hydroelectric facility.

BACKGROUND

Background on PURPA

Congress enacted PURPA to encourage the development of QFs, which are either small renewable generation facilities or gas-fired cogeneration, and to reduce

¹ As part of implementing the federal Public Utility Regulatory Policies Act of 1978 (PURPA), the CPUC has approved a series of standard offer contracts available to facilities with varying terms. The As-Available CHP PPA and the ≤ 20 MW PURPA contract are examples of such standard offer contracts.

reliance on fossil fuels nationally. PURPA most importantly requires a utility to purchase energy, capacity, or both, from a QF that is under or equal to a certain megawatt threshold. The requirement that the utilities purchase this power is known as the “must-take” requirement, and in California the threshold is 20 MW. PURPA requires that the amount a utility pays a QF for this purchase – known as avoided cost rates – not exceed the incremental cost to the utility of alternative electric energy to ensure ratepayer indifference to whether the capacity or energy comes from the utility or a QF.

QFs fall into two categories: small power production facilities whose primary energy source is renewable, biomass, waste or geothermal; and cogeneration facilities that sequentially produce electricity and another form of useful thermal energy in a way that is more efficient than the separate production of both forms of energy. In order to be considered a qualifying small power production facility, a facility must meet all of the requirements of 18 C.F.R. §§ 292.203(a), 292.203(c) and 292.204 for size and fuel use, and be certified as a QF pursuant to 18 C.F.R. § 292.207. In order to be considered a qualifying cogeneration facility, a facility must meet all of the requirements of 18 C.F.R. §§ 292.203(b) and 292.205 for operation, efficiency and use of energy output, and be certified as a QF pursuant to 18 C.F.R. § 292.207.

Background on Relevant terms of the CHP/QF Settlement and PG&E’s Bankruptcy

On December 16, 2010, the CPUC adopted the Qualifying Facility and Combined Heat and Power Program Settlement Agreement (QF/CHP Settlement) with the issuance of Decision (D).10-12-035. The QF/CHP Settlement resolved several longstanding issues regarding the contractual obligations and procurement options for facilities operating under qualifying facility contracts.

The QF/CHP Settlement includes several standard offer contracts for QFs, including the As-Available CHP PPA and the ≤20 MW PURPA PPA. Under the QF/CHP Settlement, the Investor-Owned Utilities are required to offer these contracts to QFs on a must-take basis.

On January 29, 2019, PG&E filed for Chapter 11 Bankruptcy. The As-Available CHP PPA and the ≤20 MW PURPA PPA include provisions that are implicated

by PG&E's Chapter 11 Bankruptcy Status. Aera Energy LLC requested to execute the As-Available CHP PPA for its South Belridge Cogeneration Facility. Both EIF Haypress, LLC and Berry Petroleum, LLC requested to execute the ≤20 MW PURPA PPA for their respective facilities. As such, PG&E is required to execute the As-Available CHP PPA and the ≤20 MW PURPA PPAs but must also modify certain terms that are implicated by PG&E's status in Chapter 11 bankruptcy.

Under Section 4.10.2 of the QF/CHP Settlement, PG&E would not normally require CPUC approval to execute these standard offer contracts. Due to the modifications necessitated by PG&E's bankruptcy, PG&E must now seek CPUC approval for these modified contracts.

Background on Rider and Amendments

PG&E is seeking approval of four changes to the new agreements with Aera Energy, LLC; Berry Petroleum, LLC; and EIF Haypress, LLC. All four changes stem from PG&E's bankruptcy status. In order to maintain the contracts to the extent possible, PG&E has submitted to the CPUC a rider² to each contract to cure the bankruptcy related deficiencies, rather than modify the contracts themselves.

First, both forms of standard offer contracts apply representations and warranties to the counterparties as of the contract's Effective Date. However, due to PG&E's Chapter 11 status, it cannot represent and warrant that "there is not pending, or to its knowledge, threatened against it or,...any legal proceeding that could materially adversely affect its ability to perform under this Agreement," as stated in Section 9.01(a)(iv) of the standard offer contract. Section I of the Rider removes this Representation and Warranty with respect to PG&E. As such, PG&E can execute the contracts without conflict with Section 9.01(a)(iv).

² A rider is an addendum to a contract with additional information, requirements or term that is not found in the main contract. In this instance, the rider only amends and adds provisions that are necessary to eliminate the conflicts created by PG&E's status in Chapter 11 bankruptcy.

Second, both forms of standard offer contracts construe an Event of Default as: 1) either party becomes bankrupt, or 2) either party consolidates, merges, or transfers assets to another entity and the contract obligations are not assumed. It is necessary to amend these provisions because PG&E would be in default immediately upon contract execution due to its status in Chapter 11 bankruptcy. Section II of the Rider amends the two Event of Default provisions so that they do not apply to PG&E until its exit from Chapter 11 has occurred.

Third, in order to ensure a common understanding of amendment two above, it is necessary to define when PG&E's bankruptcy status terminates, and thus when the original Event of Default provisions in Section 6.01 apply to PG&E. Following, Section II of the Rider also defines "Chapter 11 Cases," so that there is a shared understanding between counterparties of when PG&E is no longer in Chapter 11 bankruptcy.

Fourth, both forms of standard offer contracts do not require CPUC approval for PG&E to execute. As such, both are normally "effective" at the execution date. However, due to the riders and amendment the CPUC must now approve these contracts. To address the possibility that the CPUC could reject or amend the contracts, the Rider adds a provision that either party may elect to terminate the contract if (1) CPUC approval is not granted or (2) the CPUC modifies the Rider in a manner that is unacceptable to either party.

NOTICE

Notice of both AL 5592-E and AL 5592-E-A was made by publication in the CPUC's Daily Calendar. Pacific Gas and Electric Company states that a copy of the Advice Letter and Supplement was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

Neither AL 5592-E nor AL 5592-E-A were protested.

DISCUSSION

On July 24, 2019, PG&E filed Advice Letter 5592-E requesting CPUC approval of three power purchase agreements and the associated cost recovery. In Advice Letter 5592-E, PG&E requested that the CPUC:

1. Approve the modified As-Available CHP PPA with Aera Energy, LLC in its entirety.
2. Approve the modified PURPA PPAs with EIF Haypress, LLC and Berry Petroleum, LLC in their entirety.
3. Determine that all costs incurred from execution date of the modified PURPA PPAs and As-Available CHP PPA are reasonable and recoverable through rates.
4. Determine that all costs incurred from execution date of the modified As-Available CHP PPA with AERA Energy, LLC, are recoverable through the Cost Allocation Mechanism.
5. Determine that all costs incurred from execution date of the modified PURPA PPA with Berry Petroleum, LLC are recoverable through the Cost Allocation Mechanism.
6. Determine that all costs incurred from execution date of the modified PURPA PPA with EIF Haypress, LLC are recoverable through the Portfolio Allocation Balancing Account on a non-vintaged basis.
7. Issue a finding of fact that both Tannehill facility and South Belridge Cogeneration Facility comply with the Emissions Performance Standard.

PG&E then filed supplemental Advice Letter 5592-E-A on January 17, 2020 which extended the power purchase agreement with EIF Haypress, LLC from 8 to 16 months and provided safety plans for the facilities.

Energy Division evaluated the Proposed PPAs based on the following criteria

- Consistency with the QF/CHP Settlement
- Reasonableness of the Riders
- Need for Procurement
- Cost Reasonableness
- Cost Recovery
- Public Safety

- Consistency with the Emissions Performance Standard
- Cost Allocation Mechanism Group Participation
- Disadvantaged Community Designation

Consistency with the QF/CHP Settlement

In D.10-12-035, the CPUC approved the QF/CHP Settlement Agreement, which includes several standard offer contracts for Qualifying Facilities, including the As-Available CHP PPA and the ≤ 20 MW PURPA PPA. PG&E cannot execute the pro-forma Agreements as written due to its bankruptcy. Section 4.10.2 of the QF/CHP Settlement Term Sheet permits modified QF/CHP Settlement PPAs if approved via a Tier 3 advice letter. The proposed modifications to the PPAs do not modify the underlying structure of the PPAs. By submitting this advice letter, PG&E used the appropriate procedural mechanism as specified in the QF/CHP Settlement and submitted QF/CHP Settlement compliant PPAs.

Reasonableness of the Riders

Pursuant to PURPA, CPUC has approved a series of standard offer contracts, such as the As-Available CHP PPA and the ≤ 20 MW PURPA contract, available to QFs. PG&E is required to execute such standard offer contracts with QFs, but due to its status in Chapter 11 Bankruptcy, PG&E is unable to execute these standard offer contracts as it would immediately be in breach of specific terms that guarantee parties are not in bankruptcy. In order to address this, PG&E has submitted a series of riders to the standard offer contracts to accommodate its Chapter 11 Bankruptcy status.

First, both forms of standard offer contracts apply representations and warranties to the counterparties as of the contract's Effective Date. However, due to PG&E's Chapter 11 status, it cannot represent and warrant that "there is not pending, or to its knowledge, threatened against it or, ...any legal proceeding that could materially adversely affect its ability to perform under this Agreement," as stated in Section 9.01(a)(iv) of the standard offer contract. Section I of the Rider removes this Representation and Warranty with respect to PG&E. Energy Division Staff reviewed this modification and finds this reasonable as it allows PG&E to execute standard offer contracts without increasing risks for ratepayers.

Second, both forms of standard offer contracts construe an Event of Default as: 1) either party becomes bankrupt, or 2) either party consolidates, merges, or transfers assets to another entity and the contract obligations are not assumed. It is necessary to amend these provisions because PG&E would be in default immediately upon contract execution due to its status in Chapter 11 bankruptcy. Section II of the Rider amends the two Event of Default provisions so that they do not apply to PG&E until its exit from Chapter 11 has occurred. Energy Division Staff reviewed this modification and finds this reasonable as it allows PG&E to execute standard offer contracts without increasing risks for ratepayers.

Third, in order to ensure a common understanding of amendment two above, it is necessary to define when PG&E's bankruptcy status terminates, and thus when the original Event of Default provisions in Section 6.01 apply to PG&E. Following, Section II of the Rider also defines "Chapter 11 Cases," so that there is a shared understanding between counterparties of when PG&E is no longer in Chapter 11 bankruptcy. Energy Division Staff reviewed this modification and finds this reasonable as it facilitates the two above modifications needed for PG&E to execute standard offer contracts without increasing risks for ratepayers.

Fourth, both forms of standard offer contracts do not require CPUC approval for PG&E to execute. As such, both are normally "effective" at the execution date. However, due to the riders and amendment the CPUC must now approve these contracts. To address the possibility that the CPUC could reject or amend the contracts, the Rider adds a provision that either party may elect to terminate the contract if (1) CPUC approval is not granted or (2) the CPUC modifies the Rider in a manner that is unacceptable to either party. Energy Division Staff reviewed this modification and finds this reasonable as it allows PG&E to execute standard offer contracts without increasing risks for ratepayers.

Need for Procurement

Under the QF/CHP Settlement, PG&E is required to offer these contracts to QFs, and QFs may elect to execute these contracts at their discretion. In this resolution, the CPUC does not assess whether PG&E has a need to procure, because PG&E is obliged to execute these contracts.

Cost Reasonableness

In D.10-12-035, the CPUC approved the QF/CHP Settlement, which includes several standard offer contracts for Qualifying Facilities. All these pro forma standard offer contracts include pricing structures approved by the CPUC. As these riders do not modify the prices previously approved by the CPUC, we find the costs reasonable.

Cost Recovery

According to Section 13.2.1 of the QF/CHP Settlement Term Sheet, PG&E shall recover the cost of payments made pursuant to PPAs executed under the QF/CHP Settlement in its Energy Resource Recovery Account. D.10-12-035 orders that costs related to QF procurement via Legacy PPAs are recovered through the Competition Transition Charge for the life of their contracts, and net costs are recovered from Direct Access and Community Choice Aggregation customers on a non-bypassable basis through the Cost Allocation Mechanism (CAM) per 13.1.4 of the QF/CHP Settlement term sheet. PG&E recovers non-QF/CHP Settlement contracts through the Power Charge Indifference Amount (PCIA) mechanism pursuant to D.08-09-012 and via the Portfolio Allocation Balancing Accounts (PABA) pursuant to D.18-10-019.

The South Belridge Cogeneration facility is eligible to have its net capacity costs recovered through the CAM because it is a CHP resource executing a QF/CHP Settlement PPA.

The Tannehill facility is eligible to have its net capacity costs recovered through the CAM because it is a CHP resource executing a QF/CHP Settlement PPA.

The Haypress Creek-Lower Haypress, Middle facility is eligible to have its costs recovered through the PCIA mechanism via the PABA as an existing non-CHP QF executing a contract. Mandated procurement programs such as PURPA and the QF/CHP Settlement require the IOUs to procure regardless of their need to service load and both bundled and departed customers benefit from the state or federal policies underpinning the mandated procurement. In 2018, the CPUC recommended in D.18-10-019 that requests for cost recovery through the PCIA

on a non-vintaged basis occur in proceedings approving such procurement. Allocating these QF costs on a non-vintaged PCIA basis will equitably share costs to all benefitting customers, and as such cost allocation is consistent with the QF/CHP Settlement, which found as a matter of law that all departed customers should share in the costs, we find this request reasonable.

Public Safety

PG&E provided safety plans and reports from an independent, California licensed engineer certifying that each of the facilities have a feasible safety plan. Energy Division staff reviewed the safety plan for each facility and the engineer's certifications and finds that they are reasonable.

Consistency with Emissions Performance Standard

In D.07-01-039, the CPUC adopted a greenhouse gas Emissions Performance Standard (EPS) which is applicable to an electricity contract for baseload generation, as defined, having a delivery term of five years or more. According to D.07-01-039, the EPS applies to generation facilities expected to have a capacity factor in excess of sixty percent. CHP facilities with a capacity factor above sixty percent and a term of greater than five years comply with the EPS if the emissions from the portion of the thermal output that is used to generate electricity under the PPA is less than 1,100 pounds of carbon dioxide per MWh.

The South Belridge Cogeneration facility and the Tannehill facility are both subject to the EPS because both facilities have an annualized plant capacity factor of at least sixty percent. Upon review of confidential information submitted with the Advice Letter, staff find each facility to emit less CO₂ than 1,100 pounds of carbon dioxide per MWh attributable to the portion of the thermal output that is used to generate electricity under the PPA. Both facilities are thus in compliance with the EPS.

The Haypress facility is a hydropower facility with an annualized plant capacity factor that is lower than sixty percent. It is therefore not subject to the EPS.

CAM Group Participation

D.02-08-071 requires the establishment of a Procurement Review Group to assess proposed contracts, and D.07-12-052 requires the investor-owned utilities to include members representing community choice aggregator and direct access customers to its Procurement Review Group should it seek to recover costs from bundled and unbundled customers using the CAM. PG&E did not consult with its CAM group before executing the preapproved PURPA PPAs because the utility must offer this contract to QF generators that meet the eligibility requirements.

Disadvantaged Community Designation

Senate Bill 350 (de León, Chapter 547, Stats. 2015) requires consideration of disadvantaged communities in many energy program and policy areas, so we find it appropriate to identify whether these facilities are located within a disadvantaged community.

The South Belridge Cogeneration Facility, including the CHP generating unit, lies within Census Tract 6029003304, which is not a CalEnviroScreen Version 3.0 designated Disadvantaged Community.

The Tannehill facility, including the CHP generating unit, lies within Census Tract 6029003303, which is not a CalEnviroScreen Version 3.0 designated Disadvantaged Community.

The Haypress Creek-Lower Haypress, Middle facility, lies within Census Tract 6091010000, which is not a CalEnviroScreen Version 3.0 designated Disadvantaged Community.

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. Please note that comments are due 20 days from the mailing date of this resolution. Section 311(g)(2) provides that this 30-day review period and 20-day comment period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day review and 20-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the CPUC's agenda no earlier than 30 days from today.

FINDINGS

1. CPUC Decision 10-12-035 directed Pacific Gas and Electric (PG&E) to offer Standard Offer Contracts to Qualifying Facilities.
2. PG&E on January 29, 2019, filed for Chapter 11 Bankruptcy, and cannot execute the pro-forma Agreements as written due to its bankruptcy.
3. On July 24, 2019, PG&E filed Advice Letter 5592-E, and filed supplemental Advice Letter 5592-E-A on January 17, 2020, seeking approval of one As-Available Combined Heat and Power (CHP) Power Purchase Agreement (PPA) and two standard contracts for Qualifying Facilities with a Power Rating that is Less than or Equal to 20 MW and associated cost recovery.
4. By submitting this advice letter, PG&E used the appropriate procedural mechanism as specified in the QF/CHP Settlement to seek approval of a modified standard offer contract.
5. The riders are reasonable in light of PG&E's bankruptcy.
6. The costs associated with the PPAs are reasonable.
7. All costs incurred from execution date of the modified PURPA PPAs and As-Available CHP PPA are reasonable and recoverable through rates.
8. All costs incurred from execution date of the modified As-Available CHP PPA with AERA Energy, LLC, are recoverable through the Cost Allocation Mechanism.
9. All costs incurred from execution date of the modified PURPA PPA with Berry Petroleum, LLC are recoverable through the Cost Allocation Mechanism.
10. All costs incurred from execution date of the modified PURPA PPA with EIF Haypress, LLC are recoverable through the PCIA via the PABA on a non-vintaged basis.
11. Both Tannehill facility and South Belridge Cogeneration Facility comply with the Emissions Performance Standard.
12. The Haypress facility is not subject to the Emissions Performance Standard.

13. The Facilities are not located in a disadvantaged community designated by CalEnviroScreen.

THEREFORE IT IS ORDERED THAT:

1. The request of Pacific Gas and Electric to approve the modified As-Available CHP power purchase agreement executed with AERA Energy, LLC, and the modified PURPA PPAs with EIF Haypress, LLC; and Berry Petroleum, LLC is approved.
2. The request of Pacific Gas and Electric to recover through rates all costs from execution date of the modified PURPA PPAs and As-Available CHP PPA is approved.
3. The request of Pacific Gas and Electric to recover through the Cost Allocation Mechanism all costs incurred from execution date of the modified As-Available CHP PPA with AERA Energy, LLC is approved.
4. The request of Pacific Gas and Electric to recover through the Cost Allocation Mechanism all costs incurred from execution date of the modified PURPA PPA with Berry Petroleum, LLC is approved.
5. The request of Pacific Gas and Electric to recover through the Portfolio Allocation Balancing Account on a non-vintaged basis all costs incurred from execution date of the modified PURPA PPA with EIF Haypress, LLC is approved.

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 May 28, 2020; the following Commissioners voting favorably thereon:

ALICE STEBBINS
Executive Director