

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

AGENDA ID: 19192  
RESOLUTION E-5123  
March 18, 2021

**R E D A C T E D**  
**R E S O L U T I O N**

Resolution E-5123. Approving Pacific Gas and Electric Company's Bioenergy Renewable Auction Mechanism (BioRAM) contract with Wheelabrator Shasta Energy Company, Inc.

PROPOSED OUTCOME:

- This Resolution approves a BioRAM contract between Pacific Gas and Electric Company and Wheelabrator Shasta Energy Company, Inc. The contract resulted from bilateral negotiations, authorized by Resolution E-4977, and is for the procurement of renewable energy and associated RECs from the Wheelabrator Shasta biomass generation facility. The contract is approved without modification.

SAFETY CONSIDERATIONS:

- The power purchase agreement requires the sellers of the generation to comply with all applicable safety requirements relating to the project, including environmental laws.

ESTIMATED COST:

- Actual costs of the contract are confidential at this time.

By Advice Letter 5954-E, filed on September 18, 2020.

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## **SUMMARY**

**Pacific Gas and Electric Company's (PG&E) Bioenergy Renewable Auction Mechanism (BioRAM) contract with Wheelabrator Shasta Energy Company, Inc. (Wheelabrator) complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved without modification.**

Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 5954-E on September 18, 2020, requesting California Public Utilities Commission (CPUC) review and approval of a Bioenergy Renewable Auction Mechanism (BioRAM)<sup>1</sup> contract with Wheelabrator Shasta Energy Company (Wheelabrator). The contract is a short-term contract for renewable energy and associated renewable energy credits (RECs) originating from the Wheelabrator biomass facility, with which PG&E has an existing BioRAM contract.

This resolution approves the contract between PG&E and Wheelabrator without modification. PG&E's execution of the contract is consistent with Resolution E-4977<sup>2</sup> and PG&E's 2019 RPS Procurement Plan, approved in Decision D.19-12-042. PG&E's execution of the contract is also consistent with the BioRAM non-bypassable charge (NBC), approved in D.18-12-003.

The contract between PG&E and Wheelabrator is reasonably priced. Contract costs borne by PG&E pursuant to the BioRAM contract with Wheelabrator shall be recovered through PG&E's Tree Mortality Non-Bypassable Charge Balancing Account (TMNBCBA).

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<sup>1</sup> In Resolution E-4770, the CPUC ordered the three large IOUs to procure biomass from high-hazard zones (HHZ) to address Governor Jerry Brown's 2015 Emergency Proclamation on Tree Mortality through Renewable Auction Mechanism (RAM) standard contracts. These contracts are referred to as BioRAM contracts.

<sup>2</sup> In Resolution E-4977, the CPUC implemented Senate Bill 901, including and ordering the three large IOUs to offer contract negotiations to all qualified biomass facilities in their portfolios for a term of up to five years if the facilities agree to the feedstock requirement of BioRAM 2 (see Resolution E-4805 for more on BioRAM 2). The Resolution also ordered the IOUs to amend their existing BioRAM contracts to expand the eligible feedstock that can be classified as HHZ fuel, offer sellers a monthly opt-out and reporting option for annual fuel use requirements, and remove missed fuel requirements as an event of default. See Resolution E-4977:

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M264/K677/264677864.PDF>

Table 1 below provides a summary of the contract between PG&E and Wheelabrator.

<b>Table 1: Summary of the BioRAM Contract</b>						
<b>Counterparty</b>	<b>Technology</b>	<b>Facility Location</b>	<b>Capacity (MW)</b>	<b>Est. Annual Deliveries (GWh)</b>	<b>Expected Initial Delivery Date</b>	<b>Term</b>
Wheelabrator	Biomass	Anderson, CA	34	238	December 2, 2022	5 years

## **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, SB 2 (1X), SB 350 and SB 100.<sup>3</sup> The RPS program is codified in Public Utilities Code Sections 399.11-399.33.<sup>4</sup> The RPS program administered by the CPUC requires each retail seller to procure eligible renewable energy resources equal to 60 percent of retail sales by December 31, 2030<sup>5</sup>, with a goal for 100 percent of the State's electricity supply to come from renewable and carbon-free resources by 2045.<sup>6</sup>

Additional background information about the CPUC's RPS program, including links to relevant laws and CPUC decisions, is available at

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

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<sup>3</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); SB 350 (de León, Chapter 547, Statutes of 2015); SB 100 (de León, Chapter 312, Statutes of 2018), effective on January 1, 2019.

<sup>4</sup> All further statutory references are to the Public Utilities Code unless otherwise specified.

<sup>5</sup> D.19-06-023 established a methodology to calculate procurement requirement quantities for the compliance periods covered in SB 100.

<sup>6</sup> SB 100 (De León, Chapter 312, Statutes of 2018) effective on January 1, 2019.

## **Overview of Biomass Procurement, the Tree Mortality Non-Bypassable Charge and SB 901**

On October 30, 2015 Governor Brown issued a Proclamation of a State of Emergency to address the tree mortality crisis in California. The Proclamation classified the dead and dying trees located in designated high-hazard zones (HHZ) as being a high priority for removal. In response to the Proclamation, the CPUC issued Resolution E-4770, requiring that the three large investor-owned utilities enter into contracts to purchase their share of at least 50 megawatts (MW) of generating capacity collectively from biomass generation facilities that use minimum prescribed levels of HHZ material as feedstock.

In 2016 Senate Bill 859 (stats. 2016, ch. 368) was enacted. SB 859 included a new requirement for electrical corporations to procure their respective shares of 125 MW from existing biomass facilities using prescribed amounts of dead and dying trees located in HHZs as feedstock. In addition, SB 859 added Pub. Util. Code § 399.20.3(f) to require that the procurement costs to satisfy this requirement be recovered from all customers on a non-bypassable basis.

In Decision D.18-12-003, the CPUC established a non-bypassable charge for costs associated with tree mortality biomass energy procurement. The Tree Mortality Non-Bypassable Charge (TMNBC) applies to all procurement conducted pursuant to Resolution E-4770<sup>7</sup> and Resolution E-4805.<sup>8</sup> The decision ordered all IOUs to make the renewable energy and associated RECs from their tree-mortality related procurement available for sale. The revenues collected from REC sales associated with bioenergy procurement are to be deducted from the IOUs' TMNBC.<sup>9</sup>

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<sup>7</sup> Resolution E-4770, CPUC Motion Authorizing Procurement from Forest Fuelstock Bioenergy Facilities supplied from High Hazard Zones for wildfires and falling trees pursuant to the Governor's Emergency Proclamation, March 18, 2016.

<sup>8</sup> Resolution E-4805, CPUC Motion Authorizing Procurement from Bioenergy Facilities supplied from Forest Fuel High Hazard Zones pursuant to Senate Bill 859, the Governor's Tree Mortality Emergency Proclamation, and the CPUC's other legal authority, October 21, 2016.

<sup>9</sup> See Decision D.18-12-003 at Ordering Paragraph 3.

In 2018, Senate Bill 901 (stats. 2018, ch. 626) further amended the BioRAM program to add program flexibility and extend certain biomass contracts by five years. In January 2019, the CPUC issued Resolution E-4977<sup>10</sup> implementing SB 901 by ordering the IOUs to amend their existing BioRAM contracts to expand the eligible fuel stock that can be classified as HHZ fuel, offer facilities a monthly opt-out and reporting option for annual fuel use requirements, and remove missed fuel requirements as an event of default. The Resolution also ordered the IOUs to seek to extend eligible BioRAM and other biomass contracts by five years.

## **NOTICE**

Notice of Advice Letter (AL) 5954-E was published in the CPUC's Daily Calendar on September 23, 2020. PG&E states that copies of AL 5954-E were mailed and distributed to the R.18-07-003 service list in accordance with Section IV of General Order 96-B.

## **PROTESTS**

PG&E Advice Letter 5954-E was timely protested by the Public Advocates Office (Cal Advocates) on October 8, 2020. In response to the protest of Cal Advocates, PG&E and Wheelabrator filed replies on October 15, 2020. Cal Advocates requested that the CPUC reject AL 5954-E. Cal Advocates asserts that PG&E failed to demonstrate why the contract price is reasonable and therefore PG&E is not in compliance with the requirements of Resolution E-4977. In their replies, PG&E and Wheelabrator argue that the reasonableness of the contract price has been demonstrated in AL 5954-E and the contract should be approved.

We discuss Cal Advocates' protest and PG&E and Wheelabrator's replies in the "Discussion" section below.

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<sup>10</sup> Resolution E-4977, Commission Motion Amending the Bioenergy Renewable Auction Mechanism (BioRAM) Program and Authorizing the Extension of Certain Contracts pursuant to Senate Bill 901, January 31, 2019.

## **DISCUSSION**

### **Pacific Gas and Electric Company (PG&E) requests approval of a Bioenergy Renewable Auction Mechanism (BioRAM) contract with Wheelabrator Shasta Energy (Wheelabrator).**

On September 18, 2020, PG&E filed AL 5954-E requesting approval of a BioRAM contract with Wheelabrator. In AL 5954-E, PG&E asserts that the contract satisfies the requirements of Resolution E-4977, which orders the Investor-Owned Utilities to seek to extend existing BioRAM contracts<sup>11</sup> or offer new BioRAM contracts to eligible facilities. PG&E proposes to recover the costs of the new Wheelabrator contract through PG&E's Tree Mortality Non-Bypassable Charge Balancing Account (TMNBCBA).

Pursuant to the contract, PG&E will annually procure 238,000 megawatt-hours (MWh) of RPS-eligible energy and associated renewable energy credits (RECs) from Wheelabrator. The Wheelabrator biomass facility is currently operating and providing energy deliveries to PG&E pursuant to an existing CPUC-approved Bioenergy Renewable Auction Mechanism (BioRAM) contract that expires in 2022. The facility is 34 MW, located in California, and interconnected into the California Independent System Operator (CAISO) balancing authority.

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

1. Approves the BioRAM contract, dated May 24, 2020, between PG&E and Wheelabrator;
2. Finds that procurement from this contract will be categorized as the portfolio content category specified in Public Utilities Code Section 399.16(b)(1)(A);
3. Finds that the BioRAM contract meets the Emissions Performance Standard;
4. Finds that all procurement and administrative costs associated with the BioRAM contract be recovered in rates;
5. Finds that the BioRAM contract complies with Resolution E-4977; and

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<sup>11</sup> BioRAM contracts were executed by the IOUs and various biomass facilities pursuant to Resolution E-4770 and E-4805.

6. Authorizes all costs under the BioRAM contract to be recovered through PG&E's Tree Mortality Non-Bypassable Charge Balancing Account.

**Energy Division evaluated the contract with Wheelabrator based on the following criteria:**

- Consistency with PG&E's 2019 RPS Procurement Plan and RPS Portfolio Need;
- Consistency with Bilateral Contracting Rules;
- Consistency with E-4977 / SB 901 and Consideration of Cal Advocates' Protest;
- Cost Reasonableness and Valuation;
- Consistency with the Tree Mortality Non-Bypassable Charge;
- Project Viability Assessment and Development Status;
- Independent Evaluator Review;
- Cost Allocation Methodology (CAM) Procurement Review Group Participation;
- RPS Eligibility and CPUC Approval;
- RPS Standard Terms and Conditions;
- Emissions Performance Standards;
- Safety Considerations;
- Confidential Information.

**Consistency with PG&E's 2019 RPS Procurement Plan and RPS Portfolio Need**

Pursuant to statute, PG&E's 2019 RPS Procurement Plan (RPS Plan) includes an assessment of RPS supply and demand to determine the optimal mix of renewable generation resources; description of existing RPS portfolio; description of potential RPS compliance delays; status update of projects within its RPS portfolio; an assessment of the project failure and delay risk within its RPS portfolio; and bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.<sup>12</sup> California's RPS statute also requires that the CPUC review the results of a renewable energy resource solicitation submitted for approval by a utility.<sup>13</sup> The CPUC reviews the results to

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<sup>12</sup> Pub. Util. Code § 399.13(a)(6).

<sup>13</sup> Pub. Util. Code § 399.13(d).

verify that the utility conducted its solicitation according to its CPUC-approved RPS Plan.<sup>14</sup>

In PG&E's 2019 RPS Plan, PG&E explained that it is well positioned to meet or exceed the RPS requirements without a need to procure additional resources through 2029. From 2021 to 2029, PG&E anticipates that it will meet its RPS requirements through procurement that has already been contracted. Based on that assessment,<sup>15</sup> PG&E stated that it would not hold a 2019 RPS solicitation to procure new renewable resources.

PG&E's 2019 RPS Plan stated that to optimize its RPS portfolio it would pursue issuing competitive solicitations for the sale of RPS-eligible energy and RECs, including sales from its BioRAM contracts, and engage in bilateral negotiations if the offers were competitive and provide benefits to PG&E customers. In D.19-12-042, the CPUC authorized PG&E to hold sales solicitations and procure mandated amounts of renewable energy, including for the BioRAM program.<sup>16</sup>

The Wheelabrator contract is consistent with PG&E's 2019 RPS Procurement Plan, as approved by D.19-12-042.

### **Consistency with Bilateral Contracting Rules**

The contract with Wheelabrator is the result of bilateral negotiations. The CPUC has guidelines pursuant to which utilities may enter into RPS contracts. In D.03-06-071, the CPUC authorized entry into bilateral RPS contracts and contracts as a result of authorized solicitations. In D.06-10-019 and D.09-06-050, the CPUC further established rules pursuant to which the IOUs could enter into RPS contracts.

The Wheelabrator contract is the result of a bilateral negotiation and is consistent with the contracting guidelines established in D.06-10-019, D.09-06-050, and D.19-12-042.

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<sup>14</sup> PG&E's 2019 RPS Procurement Plan was approved by D.19-12-042.

<sup>15</sup> See D.19-12-042 at Section 8.2 for a summary of PG&E's assessment of RPS portfolio supplies and demand.

<sup>16</sup> See D.19-12-042 at Ordering Paragraph 18.



### **Consistency with E-4977 / SB 901 and Consideration of Cal Advocates' Protest**

Resolution E-4977<sup>17</sup> implemented provisions of SB 901, such as Pub. Util. Code § 8388, in part by ordering the IOUs to offer contract negotiations with facilities having existing BioRAM contracts and make all reasonable efforts to execute new or amended contracts that extend the contracts by five years if the bioenergy facilities agree to the feedstock requirements of BioRAM 2. Resolution E-4977 further established a per se reasonableness price benchmark for new or amended BioRAM contracts “in order to prevent protracted contract negotiations where sellers or buyers may have an incentive to hold out for a higher or lower price” but provided that a higher or lower price than the benchmark may be reasonable.<sup>18</sup>

The per se reasonableness benchmark in Resolution E-4977 is set at current contract prices for existing BioRAM contracts and their extensions, and a benchmark of \$119/MWh for contracts executed with facilities pursuant to Pub. Util. Code § 8388 that are not currently part of the BioRAM program.<sup>19</sup> Ordering Paragraph 4 of Resolution E-4977 directs the IOUs to submit a Tier 3 Advice Letter for any BioRAM contract executed at a higher price than the per se reasonableness benchmark.<sup>20</sup>

As noted above, PG&E currently has an existing BioRAM contract with Wheelabrator and AL 5954-E was filed as a Tier 3 Advice Letter. Cal Advocates' protest to AL 5954-E does not dispute the eligibility of the Wheelabrator facility but asserts that PG&E has not provided any explanation or evidence as to why the Wheelabrator contract price is reasonable or necessary and that such a demonstration is required for compliance with Resolution E-4977.<sup>21</sup> Cal

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<sup>17</sup> Resolution E-4977, Commission Motion Amending the Bioenergy Renewable Auction Mechanism (BioRAM) Program and Authorizing the Extension of Certain Contracts pursuant to Senate Bill 901, January 31, 2019.

<sup>18</sup> Resolution E-4977 at 12-13 and finding 10.

<sup>19</sup> See Ordering Paragraph 4 of Resolution E-4977 for the per se reasonableness benchmark.

<sup>20</sup> See Resolution E-4977 at finding 16.

<sup>21</sup> Cal Advocates Protest at 2-3.

Advocates' argues that therefore, PG&E's Advice Letter is not compliant with Resolution E-4977.

In its response to Cal Advocates, PG&E disagrees with Cal Advocates' claim that the contract is not compliant with Resolution E-4977 because Resolution E-4977 states that a BioRAM contract may be executed above the per se reasonableness benchmark if submitted to the Commission as a Tier 3 Advice Letter and that the contract may include inflation adjustments or other price escalations.<sup>22</sup> In explanation of why a price above the benchmark is reasonable under the facts of this contract, PG&E asserts that its discussion in AL 5954-E of the open book review that PG&E conducted of Wheelabrator's financial performance shows that PG&E made efforts to determine the reasonableness of the proposed contract price above the benchmark and in consideration of the facts of this contract and Wheelabrator's operations.<sup>23</sup> Thus, PG&E states that it has provided an explanation for the higher price in AL 5954-E. PG&E urges the Commission to reject Cal Advocates' protest.

Wheelabrator also responded to Cal Advocates' protest, stating that their contract with PG&E merits Commission approval because the new price is less than current price levels and was negotiated in good faith.<sup>24</sup> Wheelabrator agrees with PG&E's assertion in AL 5954-E that its discussion of the open book review and subsequent negotiations demonstrates that the price is reasonable. Finally, Wheelabrator argues that the contract price represents a reasonable compromise of Wheelabrator's starting position during contract negotiations.<sup>25</sup>

Cal Advocates' protest is rejected because we find that the parties have determined that the contract price is reasonable and necessary and find no conflict with Resolution E-4977. In accordance with the ordering paragraphs of Resolution E-4977, PG&E properly filed a Tier 3 Advice Letter for executing a biomass contract with a price higher than the per se reasonableness benchmark.

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<sup>22</sup> PG&E Reply to Protest at 2.

<sup>23</sup> PG&E Reply to Protest at 3.

<sup>24</sup> Wheelabrator Reply to Protest at 2-3.

<sup>25</sup> Wheelabrator Reply to Protest at 4.

We agree with PG&E and Wheelabrator that the contract price is reasonable, as further discussed in the following section and in Confidential Appendix A.

Thus, we agree with PG&E and Wheelabrator that the Wheelabrator contract is compliant with Resolution E-4977 and we reject the Cal Advocates protest.

### **Cost Reasonableness and Valuation**

In AL 5954-E, PG&E asserted that the contract was executed to comply with the provisions of SB 901 as implemented in Commission Resolution E-4977.

In reviewing requests for contract approval, the Commission compares contract prices to the most recent solicitation and recently executed contracts. In this case, because PG&E has not held a solicitation or executed any contracts in the last year and Resolution E-4977 set a per se reasonableness benchmark, which is set as “the price of the current contract between that buyer and seller if the current contract is a BioRAM contract,” the Commission compared the proposed contract price against PG&E’s existing contract with Wheelabrator. The proposed contract price is higher than the per se reasonableness benchmark and PG&E’s existing five-year contract with Wheelabrator. In addition, the proposed contract price was compared to the contract costs PG&E would have paid if the contract were originally signed for a 10-year term.

Although, the proposed contract price is higher than the per se reasonableness benchmark, as discussed in the previous section, PG&E negotiated the Wheelabrator contract bilaterally and conducted an open book review of Wheelabrator’s financial history and cost projections. Based on this information and the confidential analysis provided by PG&E in AL 5954-E, we determine that the contract price is reasonable. Confidential Appendix A includes a discussion of the contractual pricing terms and the analysis of the reasonableness of the contract price.

The total expected contract costs are reasonable and comply with the requirements set out in Resolution E-4977.

### **Consistency with the Tree Mortality Non-Bypassable Charge**

Wheelabrator was contracted by PG&E to meet the tree mortality biomass procurement requirements set forth in CPUC Resolutions E-4770, E-4805, and E-4977. Decision D.18-12-003 adopted the tree mortality non-bypassable charge (TMNBC) and ordered PG&E to sell its tree-mortality related biomass procurement.<sup>26</sup>

Additionally, pursuant to D.18-12-003, PG&E established a Tree Mortality Non-Bypassable Charge Balancing Account (TMNBCBA) to collect from all ratepayers the net costs of tree mortality related biomass procurement.<sup>27</sup> In AL 5954-E, PG&E proposes to recover the costs of the Wheelabrator contract through the TMNBC.<sup>28</sup> Thus, the Wheelabrator contract is consistent with D.18-12-003.

Contract costs under the Wheelabrator contract shall be allocated to all ratepayers through PG&E's Tree Mortality Non-Bypassable Charge Balancing Account (TMNBCBA) over the life of the contract, subject to CPUC review of PG&E's administration of the contract.

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

The generation to be delivered pursuant to the BioRAM contract will originate from the Wheelabrator biomass facility. The Wheelabrator biomass facility has been certified by the California Energy Commission (CEC) as RPS-eligible and is currently generating renewable energy under an existing BioRAM contract with PG&E. The new BioRAM contract with Wheelabrator does not change the RPS-eligibility or development status of this existing project.

It is reasonable that the generating facility under this contract will continue to be viable and will continue to operate such that Wheelabrator can meet the terms of the new BioRAM contract.

### **Independent Evaluator Review**

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<sup>26</sup> The non-bypassable charge (NBC) calculation set out by D.18-12-003 Ordering Paragraph 1 is:  $NBC = (Fixed\ Costs + Variable\ Costs) - ((Energy\ Revenue) + Ancillary\ Service\ Revenue) + (Resource\ Adequacy\ Sales\ Revenue) + REC\ Sales\ Revenue$ .

<sup>27</sup> PG&E AL 5478-E filed February 19, 2019 and disposed of via a standard disposition letter.

<sup>28</sup> PG&E AL 5954-E at 5.

PG&E retained Arroyo Seco Consulting (Arroyo) as the independent evaluator (IE) to oversee PG&E's bilateral negotiations and to evaluate the overall merits of the executed BioRAM contract. AL 5954-E included a public and confidential IE report on the negotiation process and market valuation.

In the IE report, Arroyo states that PG&E's negotiations with Wheelabrator were conducted fairly with respect to competitors. Arroyo states that the Wheelabrator contract fulfills the requirements of Resolution E-4977 but that the open book review conducted to evaluate price reasonableness was inconclusive. Arroyo does not provide a recommendation for either CPUC approval or rejection of the Wheelabrator BioRAM contract.

Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw PG&E's bilateral negotiations with Wheelabrator.

### **Cost Allocation Methodology (CAM) Procurement Review Group Participation**

The Cost Allocation Methodology (CAM) Procurement Review Group (PRG) was initially established in D.02-08-071 as an advisory group to review and assess the details of the IOUs' overall procurement strategy, solicitations, specific proposed procurement contracts, and other procurement processes prior to submitting filings to the CPUC.<sup>29</sup> In AL 5954-E, PG&E states that the contract was presented to the PRG via e-mail on May 4, 2020. Aside from the e-mail notification, PG&E did not present the contract at a meeting with the CAM PRG members.

Pursuant to D.02-08-071, PG&E's Procurement Review Group was notified of PG&E's planned execution of the Wheelabrator contract.

### **RPS Eligibility and CPUC Approval**

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<sup>29</sup> PG&E's PRG includes representatives from the CPUC's Energy Division and Public Advocates Office, The Utility Reform Network, Coalition of California Utility Employees, Sierra Club, California Department of Water Resources, and Union of Concerned Scientists.

Pursuant to 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 contract, the Commission has required standard and non-modifiable “eligibility” language in all RPS contracts. 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 RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.<sup>30</sup>

The Commission requires a standard and non-modifiable clause in all RPS contracts 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 Sections 399.11 et seq.), D.11-12-020 and D.11-12-052, or other applicable law.”<sup>31</sup>

Notwithstanding this language, given that the Commission has no jurisdiction to determine whether a project is an “eligible renewable energy resource” for RPS purposes, this finding and the effectiveness of the non-modifiable “eligibility” language is contingent on the CEC’s certification of the Wheelabrator project as an “eligible renewable energy resource.” The contract language that the Wheelabrator project is procurement from an “eligible renewable energy resource” must be a true statement at the time of the first delivery of energy, not at the signing of the PPA or at the issuance of this Resolution.

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 absent CEC certification. Nor shall such finding absolve the seller of its obligation to obtain

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<sup>30</sup> See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

<sup>31</sup> See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

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.

### **Consistency with RPS Standard Terms and Conditions (STCs)**

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, five 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, the Commission further refined some of the STCs in D.10-03-021, as modified by D.11-01-025, and D.13-11-024.

The Wheelabrator contract is based on PG&E's Renewable Auction Mechanism standard contract and includes the Commission adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, D.10-03-021, as modified by D.11-01-025 and D.13-11-024.

### **Compliance with the Greenhouse Gas Emissions Performance Standard (EPS)**

Sections 8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) baseload power contracts procured on behalf of California ratepayers.<sup>32</sup> D.07-01-039 adopted an interim EPS that establishes an emission rate for obligated facilities at levels no greater than the greenhouse gas emissions of a combined-cycle gas turbine power plant. Renewable generating facilities using biomass that would otherwise be disposed of utilizing open burning and forest accumulation are deemed compliant with the EPS.<sup>33</sup>

The Wheelabrator contract is compliant with the EPS because it is a biomass facility covered by Conclusion of Law 35(d) in D.07-01-039.

### **Disadvantaged Communities Considerations**

The State has disadvantaged communities advancement goals and adopted an Environmental and Social Justice Action Plan to help improve air quality and

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<sup>32</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%." Section 8340 (a).

<sup>33</sup> D.07-01-039, Conclusion of Law 35d.

economic conditions in disadvantaged communities. The CalEPA's CalEnviroScreen tool identifies California communities by census tract that are disproportionately burdened by, and vulnerable to, multiple sources of pollution. Disadvantaged communities are defined as those areas in the 75-100<sup>th</sup> percentile, or the top 25% of the highest scoring census tracts in CalEnviroScreen 3.0. Thus, the CPUC analyzes project locations relative to such communities.

According to the CalEnviroScreen, the Wheelabrator biomass facility is in census tract 6089012000, which received a CalEnviroScreen Version 3.0<sup>34</sup> score of 35-40 percent. Thus, based on CalEnviroScreen, the Wheelabrator biomass facility is not located in a disadvantaged community.

### **Safety Considerations**

Public Utilities Code § 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.

The BioRAM contract with Wheelabrator requires the facility to produce biomass energy with removed forest materials. The Renewable Auction Mechanism (RAM) standard contract used contains Commission-approved safety provisions, which require the seller to operate the generating facility in accordance with Prudent Electrical Practices, as defined in the contract, and all applicable requirements of law, including those related to planning, construction, ownership, and/or operation of the projects. These provisions specifically require that all sellers take a list of reasonable steps to ensure that the generation facility is operated, maintained, and decommissioned in a safe manner.

The power purchase agreement requires the sellers of the generation to comply with all applicable safety requirements relating to the project, including environmental laws. Based on a public search of the Occupational Safety and

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<sup>34</sup> The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) created CalEnviroScreen through a public process in order to help the state identify disadvantaged communities, and the tool "uses environmental, health, and socioeconomic information to produce scores for every census tract in the state." (<https://oehha.ca.gov/calenviroscreen/>)



Health Administration (OSHA) website, the Wheelabrator biomass facility has not had any safety violations in the last five years.<sup>35</sup> As this contract does not require a change in facility operations aside from required fuel use provisions, there are no incremental safety implications associated with approval of the contract beyond the status quo. Based on the information provided, the Wheelabrator contract does not appear to result in any adverse safety impacts on the facility or operations of PG&E.

### **Confidential Information**

The CPUC, through the implementation of Public Utilities Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the CPUC 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 contracts. Such information, such as price, is confidential for three years from the date the contract states that energy deliveries begin or one year after contract termination, 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 CPUC. 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

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<sup>35</sup> See OSHA Safety Inspection Data here: <https://www.osha.gov/pls/imis/establishment.html>

comments, and will be placed on the CPUC's agenda no earlier than 30 days from February 18, 2021.

## **FINDINGS**

1. The Wheelabrator contract is consistent with PG&E's 2019 RPS Procurement Plan, as approved by D.19-12-042.
2. The Wheelabrator contract is the result of a bilateral negotiation with PG&E and is consistent with the contracting guidelines established in D.06-10-019, D.09-06-050, D.19-12-042.
3. The Wheelabrator contract is compliant with Resolution E-4977 and the total expected contract costs are reasonable and comply with the requirements set out in Resolution E-4977.
4. The Public Advocates Office (Cal Advocates) protested the approval of AL 5954-E and its protest is rejected.
5. The Wheelabrator contract is consistent with D.18-12-003.
6. Contract costs under the Wheelabrator contract shall be allocated to all ratepayers and recovered through PG&E's Tree Mortality Non-Bypassable Charge Balancing Account (TMNBCBA) over the life of the contract, subject to CPUC review of PG&E's administration of the contract.
7. It is reasonable that the generating facility under this contract will continue to be viable and will continue to operate such that Wheelabrator can meet the terms of the new BioRAM contract.
8. Consistent with D.06-05-039 and D.09-06-050, an Independent Evaluator oversaw PG&E's bilateral negotiations with Wheelabrator.
9. Pursuant to D.02-08-071, PG&E's Cost Allocation Mechanism Procurement Review Group was notified of PG&E's planned execution of the Wheelabrator contract.
10. 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 Sections 399.11 et seq.*), D.11-12-020 and D.11-12-052, or other applicable law. 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 absent CEC certification. 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.

11. The Wheelabrator contract is based on PG&E's Renewable Auction Mechanism standard contract and includes the Commission adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, D.10-03-021, as modified by D.11-01-025 and D.13-11-024.
12. The Wheelabrator contract is compliant with the EPS because it is a biomass facility covered by Conclusion of Law 35(d) in D.07-01-039.
13. 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.
14. AL 5954-E should be approved effective today without modification.

**THEREFORE IT IS ORDERED THAT:**

1. Pacific Gas and Electric Company's Advice Letter 5954-E, requesting CPUC review and approval of a Bioenergy Renewable Auction Mechanism (BioRAM) contract with Wheelabrator Shasta Energy Company, Inc., is approved without modification.

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 March 18, 2021; the following Commissioners voting favorably thereon:

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RACHEL PETERSON  
Executive Director

## **Confidential Appendix A**

Evaluation Summary of the BioRAM Agreement with  
Wheelabrator Shasta Energy Company, Inc.

**[REDACTED]**