

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-5135

April 15, 2021

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

Resolution E-5135. Approves with Modification Pacific Gas and Electric Company's Bioenergy Renewable Auction Mechanism (BioRAM) contract with Woodland Biomass Power, LLC.

PROPOSED OUTCOME:

- This Resolution approves with modification a BioRAM contract between Pacific Gas and Electric Company and Woodland Biomass Power, LLC. The contract resulted from bilateral negotiations, authorized by Resolution E-4977, and is for the procurement of renewable energy and associated RECs from the Woodland biomass generation facility. The contract is approved with modification.

SAFETY CONSIDERATIONS:

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

ESTIMATED COST:

- Costs not to exceed \$100,000,000 over the term of the contract.

By Advice Letter 5983-E, filed on October 27, 2020.

SUMMARY

Pacific Gas and Electric Company's (PG&E) Bioenergy Renewable Auction Mechanism (BioRAM) contract with Woodland Biomass Power, LLC (Woodland) complies with the Renewables Portfolio Standard (RPS) procurement guidelines. The contract is approved with modification.

Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 5983-E on October 27, 2020, requesting California Public Utilities Commission (CPUC) review and approval of a Bioenergy Renewable Auction Mechanism (BioRAM)¹ contract with Woodland Biomass Power, LLC (Woodland). The contract is a short-term contract for renewable energy and associated renewable energy credits (RECs) originating from the Woodland biomass facility.

This Resolution approves the contract between PG&E and Woodland with modification. PG&E's execution of the contract is consistent with Resolution E-4977² 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 Woodland is subject to a contract price per se reasonableness benchmark set out in Resolution E-4977. The contract exceeds the price benchmark and to ensure cost reasonableness the contract is subject to a total cost recovery cap based on the per se reasonableness benchmark. Contract costs borne by PG&E pursuant to the BioRAM contract with Woodland up to the cost cap shall be recovered through PG&E's Tree Mortality Non-Bypassable Charge Balancing Account (TMNBCBA).

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

¹ 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.

² In Resolution E-4977, the CPUC implemented Senate Bill 901, 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: Summary of the BioRAM Contract						
Counterparty	Technology	Facility Location	Capacity (MW)	Est. Annual Deliveries (GWh)	Expected Initial Delivery Date	Term
Woodland	Biomass	Woodland, CA	25	168	Post-CPUC Approval	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 100.³ The RPS program is codified in Public Utilities Code Sections 399.11-399.33.⁴ 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, 2030⁵, with a goal for 100 percent of the State's electricity supply to come from renewable and carbon-free resources by 2045.⁶

Additional background information about the CPUC's RPS program, including links to relevant laws and CPUC decisions, is available at <https://www.cpuc.ca.gov/RPS/> and https://www.cpuc.ca.gov/RPS_Decisions_Proceedings/.

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

³ 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).

⁴ All further statutory references are to the Public Utilities Code unless otherwise specified.

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

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

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, SB 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-4770⁷ and Resolution E-4805.⁸ 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.⁹

In 2018, SB 901 (stats. 2018, ch. 626) further amended the BioRAM program to add program flexibility and extend certain biomass contracts by five years. In

⁷ 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.

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

⁸ 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.

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M168/K823/168823153.PDF>

⁹ See Decision D.18-12-003 at Ordering Paragraph 3.

January 2019, the CPUC issued Resolution E-4977¹⁰ 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.

Resolution E-4977 ordered the IOUs to seek to extend eligible BioRAM and other biomass contracts by five years and to execute new BioRAM contracts with eligible biomass facilities. The Resolution also set a per se reasonableness price benchmark for all new or extended BioRAM contracts executed pursuant to SB 901.¹¹ Resolution E-4977 provides a method for an IOU to request approval of a proposed BioRAM contract with an above per se reasonableness benchmark price.

NOTICE

Notice of Advice Letter (AL) 5983-E was published in the CPUC's Daily Calendar on October 30, 2020. PG&E states that copies of AL 5983-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 5983-E was timely protested by the Public Advocates Office (Cal Advocates) on November 16, 2020. PG&E filed a reply to the protest on November 23, 2020. Cal Advocates requested that the CPUC reject AL 5983-E, asserting 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 reply, PG&E argues that the reasonableness of the contract price has been demonstrated in AL 5983-E and the contract should be approved. We discuss Cal Advocates' protest and PG&E's reply in the "Discussion" section of this Resolution.

¹⁰ 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.

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

¹¹ Resolution E-4977 at Ordering Paragraph 4.

DISCUSSION

Pacific Gas and Electric Company (PG&E) requests approval of a Bioenergy Renewable Auction Mechanism (BioRAM) contract with Woodland Biomass Power, LLC (Woodland).

On October 27, 2020, PG&E filed AL 5983-E requesting approval of a new BioRAM contract with Woodland. In AL 5983-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 contracts¹² or offer new BioRAM contracts to eligible facilities. PG&E proposes to recover the costs of the new Woodland contract through PG&E's Tree Mortality Non-Bypassable Charge Balancing Account (TMNBCBA).

Pursuant to the contract, PG&E will annually procure an estimated 168,000 megawatt-hours (MWh) of RPS-eligible energy and associated renewable energy credits (RECs) from Woodland. The Woodland biomass facility previously had a non-BioRAM RPS contract with PG&E that expired in February 2020. The Woodland contract is for 25 MW of RPS capacity, and the facility is 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 October 21, 2020, between PG&E and Woodland;
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

¹² 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 Woodland 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; and
- 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.¹³ The RPS statute also requires that the CPUC review the results of a renewable energy resource solicitation

¹³ Pub. Util. Code § 399.13(a)(6).

submitted for approval by a utility.¹⁴ The CPUC reviews the results to verify that the utility conducted its solicitation according to its CPUC-approved RPS Plan.¹⁵

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,¹⁶ 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.¹⁷

The Woodland 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 Woodland 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.

¹⁴ Pub. Util. Code § 399.13(d).

¹⁵ PG&E's 2019 RPS Procurement Plan was approved by D.19-12-042.

¹⁶ See D.19-12-042 at Section 8.2 for a summary of PG&E's assessment of RPS portfolio supplies and demand.

¹⁷ D.19-12-042 at Ordering Paragraph 18.

The Woodland 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.

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

Resolution E-4977¹⁸ implemented several provisions of SB 901, such as Pub. Util. Code § 8388, by ordering the IOUs to offer contract negotiations to execute new contracts and extend existing BioRAM contracts by five years with facilities that were part of the IOUs' biomass portfolios. All bioenergy facilities with new or amended BioRAM contracts executed pursuant to Resolution E-4977 had to agree to the feedstock requirements of BioRAM 2 regarding High Hazard Zone (HHZ) fuel procurement.¹⁹ 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."²⁰

Woodland had a long-term RPS PPA with PG&E that expired in February 2020 and was part of PG&E's eligible biomass portfolio at the time of issuance of Resolution E-4977. Because Woodland had an existing RPS contract, the facility was eligible for negotiations with PG&E for a new BioRAM contract.

The per se reasonableness benchmark in Resolution E-4977 is set at \$119/MWh for contracts executed with facilities pursuant to Pub. Util. Code § 8388 that are not currently part of the BioRAM program.²¹ 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.²²

¹⁸ 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.

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

¹⁹ Resolution E-4977 at Finding 5 and 6.

²⁰ Resolution E-4977 at 12-13 and Finding 10.

²¹ See Ordering Paragraph 4 of Resolution E-4977 for the per se reasonableness benchmark.

²² See Resolution E-4977 at Finding 16 and Ordering Paragraph 4.

The Woodland proposed contract price is higher than the benchmark and was submitted as a Tier 3 Advice Letter.

Cal Advocates' protest to AL 5983-E asserts that PG&E has not provided any explanation or evidence as to why the Woodland contract price is reasonable or necessary and that such a demonstration is required for compliance with Resolution E-4977.²³ Cal Advocates further argues that the PG&E's explanation for the higher price is based on forecasts and assumptions that are not guaranteed by contractual obligations. Lastly, Cal Advocates states that PG&E did not meet the procedural requirements of Resolution E-4977 by failing to file the Woodland Advice Letter within 60 days of the Resolution's issuance.²⁴ Cal Advocates argues that therefore, PG&E's Advice Letter is not compliant with Resolution E-4977.²⁵

In its response to Cal Advocates, PG&E disagrees with Cal Advocates' claim that the contract is not compliant with Resolution E-4977 because the Resolution 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.²⁶

In explanation of why a price above the benchmark is reasonable, PG&E asserts that its discussion in AL 5983-E of the open book review that PG&E conducted of Woodland's financial performance and operations shows that PG&E made efforts to determine the reasonableness of the proposed contract price above the benchmark. Thus, PG&E argues that it has provided an explanation for the higher contract price in AL 5983-E.

PG&E also disagrees with Cal Advocates' assertion that PG&E did not comply with the timelines set out in E-4977. PG&E states that AL 5603-E²⁷ informed the Commission that Woodland declined to enter into a new BioRAM contract with PG&E, in compliance with Ordering Paragraphs 2 and 3 of E-4977. PG&E states that Woodland then contacted PG&E to express interest in a new BioRAM

²³ Cal Advocates Protest, pp. 2-4.

²⁴ Ordering Paragraph 2 of Resolution E-4977.

²⁵ Cal Advocates Protest, pp. 5-6.

²⁶ PG&E Protest Reply, pp. 4-6.

²⁷ AL 5603-E was submitted to the CPUC in July 2019.

contract six months later. PG&E asserts that Cal Advocates' argument that PG&E did not comply with the deadlines is inaccurate because the Commission has the authority to review contracts submitted by Advice Letter pursuant to GO 96-B, Industry Rule 5.3.²⁸ PG&E urges the Commission to reject Cal Advocates' protest.

We agree with Cal Advocates' that the forecasts and assumptions provided by PG&E do not necessarily support the reasonableness of the higher price. PG&E asserts that the contract price was negotiated with the "best information available."²⁹ However, even in the case that the assumptions prove to be accurate over the term of the contract, they are not binding through contractual obligations. Therefore, Woodland could realize operational efficiencies and the contract price would be unjustified because PG&E's reasonableness explanation is tied to certain assumptions. The Independent Evaluator also notes that the contract price could vary significantly depending on how the project is operated.³⁰

We disagree with Cal Advocates' assertion that PG&E did not meet the requirements of Ordering Paragraph 3 in Resolution E-4977. As PG&E cites in its reply to Cal Advocates, PG&E filed AL 5603-E which attested that PG&E and Woodland did not wish to execute a new BioRAM contract in 2019.³¹ Further, Resolution E-4977 did not establish a timeline for which an eligible facility could change course at a later date and request negotiations for a new BioRAM contract. The timeline was placed on the IOU to offer negotiations to eligible facilities and PG&E was found to be in compliance with that timeline.³²

In addition, PG&E refutes Cal Advocates' claim by citing to GO 96-B which according to PG&E "provides authority for PG&E to submit the contract via Advice Letter."³³ We agree with PG&E that it is procedurally appropriate to seek CPUC approval for this contract through a Tier 3 Advice Letter. Thus, we

²⁸ PG&E Protest Reply, pp. 5.

²⁹ PG&E Protest Reply, pp. 3.

³⁰ See Appendix D to AL 5983-E (Independent Evaluator Report), pp. 3.

³¹ PG&E AL 5603-E, pp. 5.

³² Energy Division Disposition Letter for PG&E AL 5603-E dated August 26, 2019.

³³ PG&E Protest Reply, pp. 5.

dismiss Cal Advocates' assertion that AL 5983-E should be rejected on procedural grounds.

In compliance with Resolution E-4977, AL 5983-E was properly filed as a Tier 3 Advice Letter because the proposed Woodland contract has a price higher than the per se reasonableness benchmark set out in E-4977. We find that while PG&E provided an explanation and supporting evidence for Woodland's higher price, PG&E has not provided sufficient evidence to demonstrate that the higher contract price is reasonable, as PG&E's forecasts are not bound by contractual obligations.

The Woodland contract was executed to meet requirements of SB 901 and furthers statewide policy goals related to wildfire mitigation and vegetation management. Resolution E-4977 requires a reasonableness justification for any contract price above \$119/MWh but provides that a price of \$119/MWh or below is assumed to be reasonable.³⁴ Because the Woodland contract will contribute to SB 901 requirements, implemented in Resolution E-4977, the CPUC will impose a total cost cap for cost recovery based on the price reasonableness benchmark discussed in the section below. We deny Cal Advocates' request to reject AL 5983-E.

Cost Reasonableness and Valuation

In AL 5983-E, PG&E asserts that the Woodland contract was executed to comply with the provisions of SB 901 as implemented in Resolution E-4977.

In reviewing requests for contract approval, the CPUC compares proposed contract prices to the most recent solicitation data and recently executed contracts. PG&E has not held a solicitation in the last year and has only executed one other BioRAM contract with Wheelabrator Shasta Energy.³⁵ The price and value of the Woodland contract does not compare favorably to the Wheelabrator contract. Because Resolution E-4977 implemented a per se reasonableness benchmark, which is set as "\$119 per megawatt-hour (MWh) if the current

³⁴ Resolution E-4977, pp.13

³⁵ See Resolution E-5123 for more detail on the recently approved Wheelabrator Shasta Contract.

contract is not a BioRAM contract,”³⁶ the CPUC also compared the proposed Woodland contract price against the reasonableness benchmark of \$119/MWh.

As noted above, the proposed contract price is higher than the per se reasonableness benchmark of \$119/MWh. PG&E negotiated the Woodland contract bilaterally and conducted an open book review of Woodland’s financial estimates and cost projections. However, the documentation provided by PG&E does not provide sufficient evidence for why the Woodland contract price is reasonable. As discussed in the previous section, PG&E’s reasonableness explanation is based on forecasts and assumptions that are not bound through contractual obligations. Based on this information and the confidential analysis provided by PG&E in AL 5983-E, we determine that the contract should be subject to a total cost recovery cap based on the assumptions provided by PG&E.

This Resolution approves the Woodland contract and imposes a total cost cap for cost recovery that adheres to the per se reasonableness benchmark of \$119/MWh to ensure a reasonable cost and value to ratepayers. The total cost cap shall be calculated by multiplying the amount of expected megawatt-hours generated per year pursuant to the contract by the benchmark price of \$119/MWh by the number of years of the contract. Woodland will generate 168,000 MWh/year under the BioRAM contract, making the total annual costs an estimated \$20 MM, and total contract cost cap an estimated \$100 MM.

With the application of a total cost cap, the Woodland 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.

Confidential Appendix A includes further discussion of total cost recovery cap.

Consistency with the Tree Mortality Non-Bypassable Charge

Woodland 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

³⁶ See Ordering Paragraph 4 of Resolution E-4977.

(TMNBC) and ordered PG&E to sell its tree-mortality related biomass procurement.³⁷

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.³⁸ In AL 5983-E, PG&E proposes to recover the costs of the Woodland contract through the TMNBC.³⁹ Because the contract was executed pursuant to the BioRAM program, the Woodland contract is consistent with D.18-12-003 and contract costs under the Woodland contract up to the total contract cost cap are authorized to 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 delivered generation pursuant to this BioRAM contract will originate from the Woodland biomass facility. The Woodland biomass facility is already constructed and has been certified by the California Energy Commission (CEC) as RPS-eligible. Though the facility is not currently under contract, it recently had a long-term RPS procurement contract with PG&E that expired in 2020. The new BioRAM contract with Woodland does not change the RPS-eligibility or development status of this existing facility.

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

Independent Evaluator Review

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

³⁷ The non-bypassable charge (NBC) calculation set out by D.18-12-003 Ordering Paragraph 1 is: $NBC = (Fixed\ Costs + Variable\ Costs) - ((Energy\ Revenue) + Ancillary\ Service\ Revenue) + (Resource\ Adequacy\ Sales\ Revenue) + REC\ Sales\ Revenue$.

³⁸ PG&E AL 5478-E filed February 19, 2019 and disposed of via a standard disposition letter.

³⁹ PG&E AL 5983-E, pp. 5.

the executed BioRAM contract. AL 5983-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 Woodland were conducted fairly with respect to competitors.⁴⁰ Arroyo states that the Woodland contract fulfills the requirements of Resolution E-4977 but the contract price exceeds the price reasonableness benchmark.⁴¹ Arroyo also states that based on the forecasts provided by Woodland, the range of possible cost to ratepayers over the delivery term could vary significantly, ranging from reasonable costs to unreasonably high costs.⁴² Arroyo does not provide a recommendation for either CPUC approval or rejection of the Woodland BioRAM contract.

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

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.⁴³ In AL 5983-E, PG&E states that the contract was presented to the PRG via e-mail on October 8, 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 Woodland contract.

⁴⁰ See Appendix D to AL 5983-E (Independent Evaluator Report), pp. 17.

⁴¹ See Appendix D to AL 5983-E (Independent Evaluator Report), pp. 28.

⁴² See Appendix D to AL 5983-E (Independent Evaluator Report), pp. 27-28.

⁴³ 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.

RPS Eligibility and CPUC Approval

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.⁴⁴

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.”⁴⁵

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 Woodland facility as an “eligible renewable energy resource.” The contract language that the Woodland 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-

⁴⁴ See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

⁴⁵ See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

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. 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 Woodland 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.⁴⁶ 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.⁴⁷

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

⁴⁶ "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).

⁴⁷ D.07-01-039, Conclusion of Law 35d.

Disadvantaged Communities Considerations

The State has disadvantaged communities advancement goals and the CPUC adopted an Environmental and Social Justice Action Plan to help improve air quality and 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 75-100th 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 Woodland biomass facility is in census tract 6113011206, which received a CalEnviroScreen Version 3.0⁴⁸ score of 60-65 percent. Thus, based on CalEnviroScreen, the Woodland biomass facility is not located in a disadvantaged community.⁴⁹

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 Woodland requires the facility to produce 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

⁴⁸ 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/>

⁴⁹ CalEPA's OEHHA has released a draft CalEnviroScreen Version 4.0 with updated data for public comment. <https://oehha.ca.gov/calenviroscreen/report/draft-calenviroscreen-40>

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 Health Administration (OSHA) website, the Woodland biomass facility has not had any OSHA safety violations in the last five years.⁵⁰ 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 Woodland 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

⁵⁰ See OSHA Safety Inspection Data here: <https://www.osha.gov/pls/imis/establishment.html>

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 comments on March 2, 2021.

Comments on the draft of this resolution were filed on March 22, 2021 by PG&E and Cal Advocates. Both parties object to the draft resolution's findings and orders.

We carefully considered comments that focused on legal or technical errors.

PG&E recommends the draft resolution be modified to approve the Woodland contract as-is, including the proposed contract price without imposing a cost recovery cap. PG&E argues that the total cost recovery cap is arbitrary and inconsistent with statute. PG&E states that it will exercise the "CPUC Approval" term⁵¹ in the contract to terminate the Woodland contract unless the draft resolution be revised to remove the cost recovery cap.

Cal Advocates provides general support for the cost recovery cap, but states that the cost recovery cap should be applied on a monthly and annual basis. Cal Advocates argues that the draft resolution does not comply with BioRAM requirements regarding the opt-out price⁵² for non-HHZ fuel. Cal Advocates states that by imposing a cost recovery cap set at the benchmark of \$119/MWh, the draft resolution allows for a higher non-HHZ fuel price.

As stated above, the total cost cap imposed in this resolution is reasonable because it requires PG&E to adhere to the assumptions provided in Advice Letter 5983-E regarding Woodland's ability to procure HHZ fuel. The total cost cap also limits ratepayer exposure and is consistent with the per se price reasonableness benchmark set in Resolution E-4977. We disagree with Cal

⁵¹ The term defines CPUC Approval as a decision acceptable to one or both parties to the contract.

⁵² The alternative BioRAM price for months where non-HHZ fuel is procured is \$89.23/MWh, per Resolution E-4805 at pp. 6.

Advocates' comment that the total cost recovery cap distorts the non-HHZ fuel price. In any month that Woodland opts-out of its HHZ fuel requirements, the contract price will be set at the BioRAM opt-out price of \$89.23/MWh.⁵³ We decline to modify the total cost cap set in the draft resolution.

PG&E also states that if the CPUC believes the contract should have a cost recovery cap, it should instead reject the contract and allow PG&E to re-file a renegotiated contract with Woodland via a Tier 1 Advice Letter if all the terms are the same except the price. Cal Advocates recommends that if the draft resolution is approved, any amendments made to the Woodland contract should be reviewed through the Tier 3 Advice Letter process. We agree that in the event PG&E amends the Woodland contract consistent with the total cost cap modification it should file an Advice Letter for CPUC approval. However, we disagree with the proposed Tier 1 Advice Letter process from PG&E and with the proposed Tier 3 Advice Letter process proposed by Cal Advocates. We find that a Tier 2 Advice Letter allows for a sufficiently streamlined process given the findings in this resolution and order PG&E to file a Tier 2 Advice Letter with any amendments to the Woodland contract that was submitted with AL 5983-E.

Finally, Cal Advocates recommends the draft resolution be revised to include findings on compliance with Resolution E-4977. In response to this comment, we have added Findings 8 and 11 to better include issues of fact on which evidence was presented.

FINDINGS

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

⁵³ Resolution E-4805, *Commission 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 Commission's other legal authority*, at pp. 6.

3. Because Woodland had an existing RPS contract, the facility was eligible for negotiations with PG&E for a new BioRAM contract.
4. The Woodland contract price is above the per se reasonableness benchmark of \$119/MWh set out in Resolution E-4977.
5. In compliance with Resolution E-4977, AL 5983-E was properly filed as a Tier 3 Advice Letter.
6. PG&E has provided a price justification that does not contain sufficient evidence to demonstrate that the higher contract price is reasonable.
7. Cal Advocates' request to reject AL 5983-E is denied because PG&E followed the process requirements of Resolution E-4977.
8. The Woodland contract was executed to meet requirements of SB 901, as implemented in Resolution E-4977, and furthers statewide policy goals related to wildfire mitigation and vegetation management.
9. The Woodland contract should be subject to a total cost recovery cap that adheres to the per se reasonableness benchmark of \$119/MWh set out in Resolution E-4977 to ensure cost reasonableness for ratepayers.
10. The total cost cap shall be calculated by multiplying the amount of expected megawatt-hours generated per year pursuant to the contract by the benchmark price of \$119/MWh by the number of years of the contract.
11. With the total cost cap, the Woodland 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.
12. The Woodland contract is consistent with D.18-12-003.
13. Contract costs under the Woodland contract up to the total cost cap 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.
14. It is reasonable that the generating facility under this contract will continue to be viable and will continue to operate such that Woodland can meet the terms of the new BioRAM contract.
15. Consistent with D.06-05-039 and D.09-06-050, an Independent Evaluator oversaw PG&E's bilateral negotiations with Woodland.
16. 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 Woodland contract.

17. 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.
18. The Woodland 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.
19. The Woodland contract is compliant with the EPS because it is a biomass facility covered by Conclusion of Law 35(d) in D.07-01-039.
20. 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.
21. AL 5983-E should be approved with modification effective today.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's Advice Letter 5983-E, requesting CPUC review and approval of a Bioenergy Renewable Auction Mechanism (BioRAM) contract with Woodland Biomass Power, LLC., is approved with modification.
- 2) Pacific Gas and Electric Company's BioRAM contract with Woodland Biomass Power, LLC is subject to a total cost recovery cap, which shall be calculated by multiplying the amount of megawatt-hours generated per year pursuant to the contract by the benchmark price of \$119/MWh by the number of years of the contract.
- 3) Any amendments to Pacific Gas and Electric Company's BioRAM contract with Woodland Biomass Power, LLC must be submitted for CPUC approval via a Tier 2 Advice Letter.

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 April 15, 2021; the following Commissioners voting favorably thereon:

/s/ Rachel Peterson
RACHEL PETERSON
Executive Director

MARYBEL BATJER
President
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE HOUCK
Commissioners

Confidential Appendix A

Evaluation Summary of the BioRAM Agreement with
Woodland Biomass Power, LLC.

[REDACTED]