PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Agenda ID# 23311

ENERGY DIVISION **RESOLUTION E-5375**

March 13, 2025

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

Resolution E-5375. Pacific Gas and Electric Company request to approve of sale of 2025-Delivery Renewable Energy Credits to NRG Business Marketing, LLC via bilateral transaction is denied.

PROPOSED OUTCOME:
- Rejects the bilateral transaction in its entirety.

SAFETY CONSIDERATIONS:
- There are no safety considerations associated with this resolution.

ESTIMATED COST:
- There are no costs associated with this resolution.

By Advice Letter 7416-E, filed on October 30, 2024.

SUMMARY

This Resolution rejects the Pacific Gas and Electric's ("PG&E's") sale of 100,000 Megawatt-hour ("MWh") Portfolio Content Category 1 ("PCC 1") Renewable Energy Credits ("RECs") to NRG Business Marketing, LLC ("NRG"). The power purchase/sale agreement ("PPSA") with NRG for which PG&E seeks approval in Advice Letter ("AL") 7416-E is summarized in Table 1 below:

Counterparty	Facility	Delivery Year	Product	Volume (MWh)
NRG Business Marketing, LLC.	Any of 121 Facilities[1]	2025	PCC 1 Bundled RECs	100,000

Table 1: PG&E AL 7416-E Bilateral Transaction Overview

BACKGROUND

Overview of the Renewable Portfolio Standard ("RPS") Program Requirements

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.[2] The RPS program is codified in Public Utilities Code Sections 399.11-399.33.[3]

The RPS program administered by the CPUC requires each retail seller of electricity to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources equals 60 percent of retail sales by December 31, 2030.[4] Retail sellers submit for approval annual RPS Procurement Plans outlaying their RPS portfolio management intents for the calendar year. PG&E's 2023 RPS Procurement Plan ("RPS Plan") sought authorization to sell bundled PCC 1 RECs for less than five years forward from the execution date, including via bilateral transaction. Decision ("D.") 23-12-008 approved PG&E's 2023 RPS Procurement Plan, including the aforementioned authorization.

Additional background information about the CPUC's RPS Program, is available at http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm.

[1] *See: AL 7416-E at Appendix H.*

[2] *SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session); SB 350 (de León, Chapter 547, Statutes of 2015); SB 100 (de Leon, Chapter 312, Statutes of 2018).*

[3] *All further statutory references are to the Public Utilities Code unless otherwise specified.*

[4] *D.11-12-020 established a methodology to calculate procurement requirement quantities for the three different compliance periods covered in SB 2 (1X) (2011-2013, 2014-2016, and 2017-2020). D.16-12-040 established additional procurement requirement quantities for the three compliance periods established by SB 350: 2021-2024, 2025-2027, 2028-2030.*

NOTICE

PG&E states that a copy of AL 7416-E was distributed to parties on the service list for Rulemaking ("R.")18-07-003 and R.24-01-017 in accordance with Section IV of General Order 96-B.

PROTESTS

PG&E AL 7416-E was timely protested by the Public Advocates Office at the California Public Utilities Commission ("Cal Advocates") on November 19, 2024. Cal Advocates asserts that PG&E did not comply with its CPUC-approved confidential framework for conducting RPS sales, disadvantaging competitors and PG&E's ratepayers. Moreover, Cal Advocates argues that PG&E gave NRG disparate treatment, additionally disadvantaging market competitors. Finally, Cal Advocates points out that Independent Evaluators ("IEs") have withheld support of at least one transaction in each of PG&E's last three ALs seeking approval for RPS energy sales transactions[5], marking a pattern of deviation from PG&E's approved sales frameworks.

It is for these reasons that Cal Advocates recommends the Commission reject PG&E AL 7416-E "and send a clear message to PG&E that the Commission-approved protocols for conducting bundled RPS sales must be adhered to in order to ensure fair and competitive sales that benefit ratepayers."

PG&E timely replied to Cal Advocates' protest on November 26, 2024. PG&E asserts that their sales transaction with NRG complies with their Commission-approved sales framework and that PG&E did not provide disparate treatment to NRG. PG&E further asserts that their actions were commercially responsible, not in conflict with its approved RPS Procurement Plan, that the transaction supports affordability objectives for its ratepayers, and that AL 7416-E should be approved by the Commission.

DISCUSSION

PG&E requests in AL 7416-E that the Commission issue a disposition that:

1. Approves the PPSA in its entirety, including payments to be received by PG&E, subject to Commission review of PG&E's administration of the PPSA;

[5] *IE Report of PG&E AL 7398-E at 29; IE Report of PG&E AL 7408-E at 31;, IE Report of PG&E AL 7416-E at 31.*

2. Finds the PPSA consistent with the Sales Framework approved as part of PG&E's 2023 RPS Plan and is consistent with Ordering Paragraphs 4 and 5 of D.23-12-008, and that the sale of bundled renewable electricity and green attributes under the PPSA is reasonable and in the public interest;

3. Finds that all costs of the PPSA are fully recoverable in rates over the life of the PPSA, subject to CPUC review of PG&E's administration of the PPSA; and

4. Finds that the payments received by PG&E pursuant to the PPSA shall be credited against costs recorded the Portfolio Allocation Balancing Account ("PABA").

Energy Division evaluated PPSA based on the following criteria:

- Consistency with D.23-12-008, including:
    a. Authorization to conduct RPS sales via bilateral negotiation;
    b. PG&E's 2023 Renewables Portfolio Standard Needs;
    c. Procurement Methodology and Evaluation Reasonableness; and
- Independent Evaluator Review

Consistency with D.23-12-008

Consistency with Authorization to Conduct RPS Sales via Bilateral Negotiations

In Ordering Paragraphs ("OPs") 4 and 5 of D.23-12-008, the Commission granted PG&E authorization to conduct bundled RPS sales for deliveries of up to five years forward from the execution date, including via bilateral negotiations during the 2023 RPS cycle. The bilaterally negotiated PPSA for which PG&E AL 7416-E seeks approval was executed during the 2023 RPS cycle, for bundled RPS energy with deliveries within one year. Therefore, the transaction is consistent with PG&E's authorization to conduct RPS sales.

Consistency with PG&E's Renewables Portfolio Standard Needs

Pursuant to statute, PG&E's 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.[6] In AL 7416-E, PG&E asserts that with this transaction, it aims to benefit customers by bringing in revenue to reduce costs while not jeopardizing their ability to meet RPS requirements.
In PG&E's 2023 RPS Plan and the Renewable Net Short calculations provided in Confidential Appendix G of AL 7416-E, PG&E showed sufficient RPS-eligible energy generation and banked RECs to meet their RPS requirements in the near- and mid-term. While PG&E recognizes risks involving "significant market, operational, or regulatory changes"[7] could impact their expected RPS need year, they also describe some of the steps they are taking to mitigate those risks. PG&E describes their portfolio as "comprised of a variety of technologies, project sizes, and contract types," providing a "solid foundation for meeting current and future compliance needs"[8]. Moreover, PG&E "expects to continue procurement of additional volumes of incremental RPS-eligible contracts […] through mandated procurement programs" such as Integrated Resources Planning and BioMAT[9].

The transaction for which PG&E seeks approval is for the sale of RECs that are in excess of its current compliance obligations and additional incremental procurement represents an additional buffer to possible compliance delays. Also, the transaction is consistent with PG&E's ongoing RPS portfolio management in light of load departures resulting from the growth of Community Choice Aggregators ("CCAs") and the conclusion of the Voluntary Allocation and Market Offer process. Therefore, PPSA and resulting sale of RECs to NRG is consistent with PG&E's RPS needs as identified in its 2023 RPS Plan.

Consistency with Procurement and Evaluation Methodology

In AL 7416-E, PG&E asserts that the bilateral sale to NRG was conducted via the standards requested and approved in its 2023 RPS Plan Sales Framework[10], including price as the sole quantitative criterion, allowance for bilateral transactions, cost reasonableness, and other standards.

In the IE Report included in AL 7416-E, Arroyo Seco Consulting provides an evaluation of PG&E's bilateral transaction, including the fairness of PG&E's evaluation methodology and process, contract-specific negotiations, and merit for Commission

[6] *Pub. Util. Code § 399.13(a)(5).*
[7] *PG&E 2023 Final RPS Procurement Plan, at 61.*
[8] *PG&E 2023 Final RPS Plan, at 18.*
[9] *Id. at 29.*
[10] *Id. at Appendix H.*

approval. In the IE report, Arroyo Seco opines that the bilateral transaction fails to conform fully to its Commission-approved 2023 RPS Plan[11]. Specifically, the IE opines that the transaction fails to conform to the provided framework for assessing short-term sales of RPS volumes[12] and infers from publicly available data that the price of the NRG agreement may not be reasonable when judged in comparison to contemporaneous market observations[13]. Further, the IE opines that the PPSA with NRG may unfairly disadvantage ratepayers[14] (discussed in more detail in AL 7416-E, Confidential Appendix C). In their protest, Cal Advocates agrees with the IE that PG&E did not follow its Commission-approved protocols for conducting RPS sales and asserts the NRG PPSA is unfavorable to ratepayers[15].

Staff have reviewed PG&E's bilateral transaction evaluation methodology, Cal Advocates' protest, PG&E's reply, and the IE Report and agree with Cal Advocates and Arroyo Seco's findings that PG&E diverged from its approved RPS Sales Framework in its procurement and evaluation methodology as approved by D.23-12-008 (See Confidential Appendix B for more details). In its 2024- and 2025-vintage RPS energy sales transactions, PG&E demonstrated a pattern of unique and unusual deviations from its approved sales protocols, as observed in the Cal Advocates protest and admonished in Energy Division's Disposition Letter for AL 7398-E[16]. Energy Division strongly urges PG&E to learn from these experiences and in future transactions abide by approved transaction protocols to ensure fair and competitive processes for the benefit of ratepayers. Energy Division therefore grants Cal Advocates' protest and rejects PG&E AL 7416-E and the associated PPSA to NRG.

Independent Evaluator Review

PG&E retained Arroyo Seco Consulting as the IE for its bilateral transaction efforts, consistent with D.04-12-048 and D.06-05-039. In compliance with these decisions, Arroyo Seco reviewed and evaluated the bilateral negotiations, reviewed quantitative

[11] *AL 7416-E Independent Evaluator Report, at 3, 12, 14.*
[12] *PG&E AL 7416-E Independent Evaluator Report, at 18.*
[13] *Id. at 19-20.*
[14] *Id. at 21.*
[15] *Cal Advocates Protest to Pacific Gas and Electric Company's Tier 1 Advice Letter 7416-E, at 3, 4*
[16] *In the Disposition Letter for AL 7398-E, Energy Division writes:*

> *Despite granting approval, Energy Division has concerns about the process inconsistencies PG&E demonstrated in their 2024 Bundled RPS Energy Solicitation. The integrity of the solicitation process is essential for maximum benefit to ratepayers, and poorly executed solicitations can detract from ratepayer value and trust. Energy Division urges PG&E to ensure that future solicitations better meet accuracy, fairness, and transparency standards.*

evaluation criterion, reviewed drafts of the confirmation agreement and e-mail correspondence between parties, and researched comparable transactions of PCC 1 renewable energy for publicly available market pricing data to serve as benchmarks for price reasonableness.

The IE examined PG&E's evaluation methodology as defined by PG&E's 2023 RPS Plan, including its sole quantitative criterion and several qualitative criteria. After considering the strengths and weaknesses of PG&E's methodology, the IE opined that PG&E's evaluation methodology for the sale of bundled RPS energy in short-term transactions was designed fairly.

The IE also examined the fairness of PG&E's evaluation process as implemented for the NRG bilateral transaction, including PG&E's evaluation of the proposal against its specified criteria, the identification of nonconformance in an offer, and an analysis of the evaluation results. After examining PG&E's evaluation methodology in practice, the IE disagreed with PG&E's decision to select NRG's proposal for execution because its interpretation of the Commission-approved framework for assessing short-term sales of excess RPS volumes differs from PG&E's. Specifically, the IE disagreed with PG&E's administration of the evaluation and selection process and observed that PG&E evaluated the offer without involving any third party (including the IE) to conduct any portion of its analysis. Additionally, the IE opined that the evaluation of the NRG proposal was inconsistent with PG&E's confidential framework for assessing short-term sales of excess RPS volumes. The IE argues that PG&E did not make a "reasonable and justifiable" decision in their selection of the NRG proposal[17].

Confidential Information

The Commission, through the implementation of Pub. Util. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032 and D.21-11-029, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066, as modified, adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as price, may be kept confidential until 30 days after the commercial operation date/energy delivery start date or eighteen months from the date of Commission approval, whichever comes first or one year after contract termination, except contracts between IOUs and their affiliates, which are public.

[17] *PG&E AL 7416-E Independent Evaluator Report, at 14.*

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. Any comments are due within 20 days of the date of its mailing and publication on the Commission’s website and in accordance with any instructions accompanying the notice. 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 Commission's agenda no earlier than 30 days from today.

FINDINGS

1. By AL 7416-E, filed on October 30, 2024, PG&E submitted for approval a bilaterally negotiated agreement to sell Renewable Energy Credits to NRG Business Marketing LLC.

2. The bilaterally negotiated PPSA described in PG&E AL 7416-E is consistent with the authorizations to conduct RPS sales and bilateral transactions and granted in D.23-12-008.

3. The PPSA and resulting sale of RECs to NRG are consistent with PG&E’s resource requirements as identified in its 2023 RPS Plan.

4. PG&E diverged from its approved RPS Sales Framework in its procurement and evaluation methodology.

5. Public Advocates Office at the California Public Utilities Commission protest is granted and PG&E AL 7416-E should be rejected.

6. Consistent with D.06-05-039 and D.09-06-050, an independent evaluator reviewed and evaluated PG&E's negotiations with NRG.

7. The confidential appendices, marked "[REDACTED]" in the public copy of this Resolution, as well as the confidential portions of Advice Letter 7416-E should remain confidential at this time.

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

1. Pacific Gas and Electric Company's Advice Letter 7416-E, requesting Commission review and approval of one contract for the sale of 100,000 Renewable Energy Credits to NRG Business Marketing, LLC, is rejected.

This Resolution is effective today.

Commissioner Signature blocks to be
added upon adoption of the resolution

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 13, 2025; the following Commissioners voting favorably thereon:

Dated ______________________________, at [LOCATION], California.

Confidential Appendix A

[REDACTED]

Confidential Appendix B

[REDACTED]