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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**I.D. # 9151
RESOLUTION E-4309
February 4, 2010**

REDACTED

R E S O L U T I O N

Resolution E-4309. Pacific Gas and Electric Company (PG&E) requests approval of a renewable power purchase agreement with Mt. Poso Cogeneration Company, LLC.

PROPOSED OUTCOME: This Resolution approves cost recovery for a PG&E renewable energy power purchase agreement (PPA) with Mt. Poso Cogeneration Company, LLC for biomass power. The PPA is approved with modification.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter 3529-E filed on September 21, 2009.

SUMMARY

PG&E's renewable PPA, as modified, complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved.

PG&E filed Advice Letter (AL) 3529-E on September 21, 2009, requesting California Public Utilities Commission (Commission) review and approval of a PPA with Mt. Poso Cogeneration Company, LLC (Mt. Poso) for renewable energy from a biomass facility. Mt. Poso proposes to convert the existing coal powered Mt. Poso Cogen facility to a biomass powered facility.

The PPA is modified so that the fuel price adjustment provision in the PPA must be amended to address the independent evaluator's reservations. That is, the provisions should reflect a reasonable relationship between prices and costs.

The proposed PPA, as modified, is consistent with PG&E's 2007 RPS Procurement Plan. RPS-eligible deliveries from the PPA are reasonably priced

and fully recoverable in rates over the life of the contract, subject to Commission review of PG&E's administration of the contract.

The following table summarizes specific features of the facility and PPA:

Generating Facility	Resource Type	Contract Term (Years)	Capacity (MW)	Expected Deliveries (GWh/yr)	Commercial Operation Date	Project Location
Mt. Poso	Biomass	15	44	328	January 1, 2012	Bakersfield, CA

BACKGROUND

Overview of RPS Program

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107 and SB 1036.¹ The RPS program is codified in Public Utilities Code Sections 399.11-399.20.² The RPS program administered by the Commission requires each utility to increase its total procurement of eligible renewable energy resources by at least one percent of retail sales per year so that 20 percent of the utility's retail sales are procured from eligible renewable energy resources no later than December 31, 2010.³

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

¹ SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007)

² All further references to sections refer to Public Utilities (Pub. Util.) Code unless otherwise specified.

³ See § 399.15(b)(1).

NOTICE

Notice of AL 3529-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

PG&E's Advice Letter AL 3529-E was timely protested October 13, 2009 by the Division of Ratepayer Advocates (DRA) and Association of Irrigated Residents (AIR).

PG&E responded to the protests of DRA and AIR on October 19, 2009.

DISCUSSION

PG&E requests Commission approval of a new renewable energy contract

On September 21, 2009, PG&E filed AL 3529-E requesting Commission approval of a renewable procurement contract with Mt. Poso Cogeneration Company, LLC for generation from its proposed biomass facility. Generation from the 44 MW Mt. Poso biomass facility is expected to contribute an average of 328 gigawatt-hours (GWh) annually towards PG&E's Annual Procurement Target (APT) beginning in January 2012.

The Mt. Poso project was bid into PG&E's 2007 RPS solicitation; PG&E shortlisted the project and the parties subsequently negotiated the 15-year PPA that is considered herein. The facility will be located approximately 15 miles north of Bakersfield, California in the Mt. Poso Oil field at the current site of the Mt. Poso cogeneration facility.⁴ The existing facility is a 49.5 MW facility that provides power and steam primarily from coal, petroleum coke, and tire-derived fuel and has been operating since 1989. The power generated from the facility was sold to PG&E under a qualifying facility agreement and the steam was used for oil extraction in the adjacent Mt. Poso Oilfield. The developer is proposing to convert the existing coal powered facility to biomass.

⁴ Mt. Poso website, accessed December 14, 2009.

<http://mtposo.com/TheConversion/tabid/59/Default.aspx>

PG&E requests that the Commission issue a resolution containing the following findings:

1. Approves the PPA in its entirety, including payments to be made by PG&E pursuant to the PPA, subject to the Commission's review of PG&E's administration of the PPA.
2. Finds that any procurement pursuant to the PPA is procurement from an eligible renewable energy resource for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.) ("RPS"), Decision ("D.") 03-06-071 and D.06-10-050, or other applicable law.
3. Finds that all procurement and administrative costs, as provided by Public Utilities Code section 399.14(g), associated with the PPA shall be recovered in rates.
4. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:
 - a. The PPA is consistent with PG&E's approved 2007 RPS procurement plan.
 - b. The terms of the PPA, including the price of delivered energy, are reasonable.
5. Adopts the following finding of fact and conclusion of law in support of cost recovery for the PPA:
 - a. The utility's cost of procurement under the PPA shall be recovered through PG&E's Energy Resource Recovery Account.
 - b. Any stranded costs that may arise from the PPA are subject to the provisions of D.04-12-048 that authorize recovery of stranded renewables procurement costs over the life of the contract. The implementation of the D.04-12-048 stranded cost recovery mechanism is addressed in D.08-09-012.
6. Adopts the following findings with respect to resource compliance with the Emissions Performance Standard ("EPS") adopted in R.06-04-009:
 - a. The PPA is not a covered procurement subject to the EPS because it is a generating facility using biomass.

- b. PG&E has provided the notice of procurement required by D.06-01-038 in its Advice Letter filing.

Energy Division examined the proposed PPA on multiple grounds:

- Consistency with PG&E's 2007 RPS Procurement Plan
- Consistency with least-cost best-fit methodology identified in PG&E's Plan
- Procurement Review Group participation
- Consistency with RPS standard terms and conditions
- Comparison to the results of PG&E's 2008 solicitation⁵
- Cost reasonableness evaluation
- Cost containment
- Project viability
- Compliance with the Interim Emissions Performance Standard
- Independent Evaluator review

Consistency with PG&E's 2007 RPS Procurement Plan

California's RPS statute requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.⁶ PG&E's 2007 RPS procurement plan (Plan) was approved by D.07-02-011 on February 15, 2007.⁷ Pursuant to statute, PG&E's Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the

⁵ In AL 3529-E, PG&E provided a comparison of the final PPA price to their 2008 solicitation. As this was the most recent solicitation results at the time of AL filing, it was reasonable for PG&E to provide the comparison to its most current procurement options. Similarly, it is reasonable for the Commission to base its analysis of the reasonableness of the PPA price on PG&E's 2008 solicitation results.

⁶ See §399.14

⁷ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/78817.pdf

Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.⁸

The stated goal of PG&E's 2007 Plan was to procure approximately 1-2 percent of retail sales volume or between 750 and 1,500 GWh per year of renewable energy. The PPA is consistent with PG&E's stated procurement goal. If approved, the 44 MW of renewable generation is expected to contribute towards PG&E's RPS requirement.

The PPA, as modified, is consistent with PG&E's 2007 RPS Procurement Plan, including PG&E's RPS resource needs, approved by D.07-02-011.

Consistency with PG&E's least-cost best-fit (LCBF)

The LCBF decision directs the utilities to use certain criteria in their bid ranking.⁹ The decision offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations. PG&E's bid evaluation includes a quantitative and qualitative analysis, which focuses on four primary areas: 1) determination of a bid's market value; 2) calculation of transmission adders and integration costs; 3) evaluation of portfolio fit; and 4) consideration of non-price factors. The LCBF evaluation is generally used to establish a shortlist of proposals from PG&E's solicitation with whom PG&E will engage in contract negotiations. PG&E's 2007 RPS solicitation protocol included an explanation of its LCBF methodology. The independent evaluator (IE) oversaw the bid evaluation process and concluded in its report that the LCBF evaluation methodology was generally employed consistently and the process was conducted fairly.¹⁰ The IE has verified that the PPA is consistent with PG&E's objectives set forth in its 2007 RPS Plan.

PPA selection is consistent with PG&E's least-cost best-fit methodology.

⁸ See §399.14(a)(3)

⁹ D.04-07-029

¹⁰ Appendix I of PG&E AL 3529-E: "Fifth Advice Letter Report of the Independent Evaluator of the Bid Evaluation and Shortlist Process" (September 2009), Merrimack Energy Group Inc., p. 2

Procurement Review Group (PRG) participation

PG&E's PRG consists of: the California Department of Water Resources, the Union of Concerned Scientists, the Division of Ratepayer Advocates, the Coalition of California Utility Employees, The Utility Reform Network, Jan Reid as a PG&E ratepayer, and the Commission's Energy Division.

PG&E informed its PRG of the Mt. Poso negotiations on ten different occasions between on June 21, 2007 and August 14, 2009. Although Energy Division is a member of the PRG, it reserved judgment on the contract until the AL was filed. Energy Division reviewed the transaction independently of the PRG, and allowed for a full protest period before concluding its analysis.

With regard to this PPA, PG&E has complied with the Commission's rules for involving the PRG. The PRG feedback, as described in the confidential information provided with the AL, did not provide a basis for disapproval of the PPA.

Consistency with RPS standard terms and conditions (STCs)

The proposed PPA is based on PG&E's 2007 RPS pro forma contract and complies with D.08-04-009, as modified by D.08-08-028. As a result, the PPA contains the required non-modifiable STCs.

The PPA includes the Commission adopted RPS standard terms and conditions, including those deemed "non modifiable".

Comparison to the results of PG&E's 2007 Solicitation

PG&E determined that based on the market valuation of the Mt. Poso bid the project was attractive relative to the other proposals received in response to PG&E's 2007 solicitation. The market valuation of the PPA included several factors, including price, portfolio fit, and project viability.

The Mt. Poso bid compared favorably to the results of PG&E's 2007 solicitation.

Cost reasonableness evaluation

The Commission evaluates the reasonableness of each proposed RPS PPA price by comparing the proposed PPA price to a variety of factors including RPS solicitation results and other proposed RPS projects. Using this analysis, the Mt.

Poso PPA, as modified, is reasonably priced. Confidential Appendix B includes a detailed discussion of the contractual pricing terms, including PG&E's estimates of the total contract costs under the PPA.

The total all-in costs of the PPA, as modified, are reasonable based on their relation to bids received in response to PG&E's 2008 solicitation.

Provided the generation is from an eligible renewable energy resource, or the Seller is otherwise compliant with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in the terms of the PPA, payments made by PG&E under the PPA, as modified, are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.

Cost containment

The market price referent (MPR) is used by the Commission as a benchmark to assess the above-market costs of RPS contracts. There is a statutory limit on above-MPR costs which serves as a cost containment mechanism for the RPS program.¹¹ Based on a 2012 expected commercial online date for the Mt. Poso project, the 15-year PPA exceeds the 2008 MPR.¹² The PPA meets the eligibility criteria for Above-MPR Funds¹³ (AMFs) established in Pub. Util. Code §399.15(d)(2).¹⁴ While the PPA is eligible for AMFs, PG&E has exhausted its

¹¹ See §399.15

¹² See Resolution E-4214.

¹³ The \$/MWh portion of the contract price that exceeds the MPR, multiplied by the expected generation throughout the contract term, represents the total AMFs for a given PPA.

¹⁴ SB 1036 established the following eligibility criteria for AMFs: (1) contract was selected through a competitive solicitation, (2) contract covers a duration of no less than 10 year, (3) contracted project is a new facility that will commence commercial operations after January 1, 2005, (4) contract is not for renewable energy credits, and (5) the above-market costs of a contract do not include any indirect expenses including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades.

AMFs provided by statute. Therefore, PG&E will voluntarily incur the above-MPR costs of the PPA.¹⁵

Project viability assessment and development status

PG&E asserts the Mt. Poso project is viable and will be developed according to the terms and conditions in the PPA. PG&E's project viability assessment included the following criteria for renewable project development.

Project milestones

The PPA identifies agreed upon project milestones, including the construction start date and commercial operation date. PG&E asserts that the Mt. Poso project development plan allows for all milestones to be achieved.

Developer experience and creditworthiness

Mt. Poso Cogeneration Company is jointly owned by Northern Star Generation LLC, National Petroleum Associates, and Red Hawk Energy. The current Mt. Poso Cogen facility has been successfully operating since 1989. Millennium Energy, LLC manages the facility and has over 30 years of development experience.¹⁶

Technology and fuel supply

The Mt. Poso biomass facility will deploy a commercially proven circulating fluidized bed (CFB) combustion boiler. Mt. Poso has secured sufficient biomass fuel supply to satisfy the fuel needs for the first five years of facility operation. Biomass fuel will be from a variety of sources, including urban wood waste from the City of Bakersfield and Kern County (tree trimmings, woody construction waste, pallets, and clean demolition wood) and agricultural waste (orchard removals, orchard prunings, shells, and pits).¹⁷ Additionally, the facility will not

¹⁵ On May 28, 2009, the Director of the Energy Division notified PG&E that it had exhausted its AMF account.

¹⁶ Mt. Poso website, accessed December 14, 2009:
<http://mtposo.com/TheConversion/tabid/59/Default.aspx>

¹⁷ Mt. Poso website, accessed December 14, 2009:
<http://mtposo.com/TheConversion/tabid/59/Default.aspx>

utilize any potable water for power plant facility operations; all water that is used in the facility is excess water from the adjacent oil recovery operations.¹⁸

Site control and permitting status

Mt. Poso has full site control. The proposed biomass facility will be sited at the same location as the existing Mt. Poso cogeneration facility. Permitting for the project is underway and several key permits have already been obtained including pre-certification from the California Energy Commission and a land use and a building permit from Kern County. PG&E expects the full permit process to be completed in a timely manner.

Interconnection and transmission

The Mt. Poso biomass facility will continue to use its current interconnection agreement and no transmission upgrades are needed.

Compliance with the Interim Greenhouse Gas Emissions Performance Standard (EPS)

California Pub. Util. Code § 8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers.

D.07-01-039 adopted an interim EPS that establishes an emission rate quota for obligated facilities to levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. The EPS applies to all energy contracts for baseload generation that are at least five years in duration.¹⁹ While the Mt. Poso biomass facility will provide baseload generation, renewable energy contracts are deemed compliant with the EPS except in cases where intermittent renewable energy is firmed and shaped with generation from non-renewable resources.

¹⁸ Ibid.

¹⁹ “Baseload generation” is electricity generation at a power plant “designed and intended to provide electricity at an annualized plant capacity factor of at least 60%.” Pub. Util. Code § 8340 (a).

The PPA, as modified, is compliant with the EPS because it concerns an RPS-eligible facility that generates energy using biomass.

Independent evaluator (IE) review of the PPA

The Commission requires the use of an IE to ensure that solicitation processes are undertaken in a fair, consistent, unbiased, and objective manner so that projects put on shortlists and resulting in contracts are chosen based on reasonable and consistent choices. Specifically, the IE's role is to review bid evaluation, monitor negotiations, and review the resulting PPA. PG&E retained Merrimack Energy Group, Inc. (Merrimack) as IE for PG&E's 2007 RPS solicitation. Also, as required, PG&E submitted an IE Report prepared by Merrimack with AL 3529-E. An excerpt from the IE's contract-specific evaluation of the Mt. Poso PPA is attached as confidential Appendix D to this Resolution.

According to the IE Report, Merrimack performed its duties reviewing the solicitation, monitored PPA negotiations, and has reviewed the proposed PPA. The IE's project specific report also included a discussion of its opinion regarding certain provisions of the PPA as it has been submitted to the Commission and considered herein.

In the Independent Evaluator Report, Merrimack concluded that PG&E's "...shortlisting decisions were reasonable based on the requirements and evaluation criteria set forth in the Solicitation Protocol."²⁰ Merrimack also found numerous positive attributes in the Mt. Poso PPA and project, such as viability of facility, capability and experience of the project owner and operator, contribution to biomass goals, and reduction in greenhouse gas emissions. However, the IE expressed concerns regarding certain provisions of the PPA, and the extent to which PG&E involved him in the negotiation process.²¹ The IE appropriately highlights these issues, as they relate to whether proper process is followed in negotiations, and possible cost and risk exposure for PG&E ratepayers.

Since the PPA will facilitate converting an existing coal facility to an RPS-eligible

²⁰ IE Report at 29.

²¹ See Confidential Appendices A and B for discussions regarding the IE's particular reservations.

power plant, the Commission finds it reasonable to expect that this agreement would contain unique terms and conditions. However, the IE is correct that certain provisions of the PPA are problematic and result in unnecessary increased risk to PG&E and their ratepayers when compared to a customary RPS contract. On balance, some of the risks related to this particular PPA are mitigated by other PPA terms and the proposed project's lower than typical failure risk.²² The IE's reservations regarding other terms, however, and the IE's lack of inclusion in the negotiation of these terms, provide significant concern for the Commission regarding the reasonableness of those terms. Thus, the Commission approves the PPA with modifications. PG&E shall seek to modify the fuel price adjustment provision such that there is a direct cost-based relationship between the seller's fuel costs and contract price. PG&E shall fully include the IE in negotiations on this term.

The Commission's standard contract term "CPUC Approval" requires "a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties." Consequently, within 30 days of the effective date of this Resolution, PG&E shall file a Tier 1 Advice Letter with the Energy Division containing: (1) a modified PPA signed by both parties that reflects a price adjustment based on a direct cost-based relationship between the seller's fuel costs and contract price; (2) accompanying work papers; and (3) a written statement from the IE reflecting on the modification process required herein, and the results of that process.

DRA protests AL 3529-E

On October 13, 2009, DRA filed a confidential protest to AL 3529-E with the Commission. DRA made two recommendations in its protest to AL 3529-E based on the confidential IE report prepared by Merrimack and submitted with AL 3529-E. First, DRA recommends that the Commission reject AL 3529-E and order PG&E to renegotiate the Mt. Poso PPA to include a more reasonable pricing formula. Second, DRA recommends that the Commission clarify the extent to which an IE should be included in RPS negotiations.

²² See "Project Viability and Development Status," Confidential Appendices B and C.

We grant DRA's request in part, and deny it in part. Because DRA's protest was filed confidentially we are limited in our ability to respond to DRA's protest in the public portion of this Resolution. As set forth above, we share some of DRA's concerns with the pricing formula. As a result, while we will not reject the Advice Letter outright, as requested by DRA, we do order PG&E to renegotiate the price adjustment provision so that the PPA reflects a direct cost-based relationship between the seller's costs and contract price, and to file a Tier 1 Advice Letter reflecting those modifications.

Further, DRA appropriately raised concerns regarding whether the IE was properly included in contract negotiations. Confidential portions of the IE Report reflect a concern that the IE was not included in contract negotiations to the extent it should have been. Based on the IE Report, DRA requests clarification on the extent to which the IE should be included in contract negotiations. PG&E responds that "there simply were no material negotiations on the PPA during the period in which the IE states he was not involved."²³

Notwithstanding PG&E's assertion, we grant DRA's request and take the opportunity to clarify here that the Commission expects the utilities to include an IE in the entire procurement process – from development of least-cost best-fit methodology to review of the final PPA. Specifically, the IE is to have the opportunity to be included on a real time basis in all substantive discussions or other communications regarding development of an RPS contract, including contract status and terms. Additionally, the IOU should seriously consider all of the IE's opinions and suggestions and provide the IE the opportunity to express those opinions and suggestions to the other party to the negotiations.

It is not clear from PG&E's Reply that the IE was included in all substantive discussions between PG&E and Mt. Poso, or was provided written communications between the parties in a timely manner. Rather, it appears that PG&E may be distinguishing between "negotiations" and other "discussions" such that the IE was not included in some substantive discussions between the parties, but that PG&E does not believe these discussions to be "negotiations."

²³ PG&E Response to DRA Protest, October 19, 2009, at 3.

To be clear, all substantive discussions about an RPS contract and its status have an impact on negotiations. It is not within the utility's discretion to determine what is part of the negotiations to which an IE should be party, and what are "other" types of discussion from which an IE may be excluded. To preserve the ultimate goal of the IE, which is "to ensure a fair and competitive solicitation process,"²⁴ an IE should have the opportunity to be included on a real time basis in all substantive discussions or other communications between the parties regarding development of an RPS contract.

Association of Irrigated Residents (AIR) protests AL 3529-E

AIR protested AL 3529-E on the grounds that 1) the facility will make local air quality worse; 2) there is likely insufficient biomass fuel stock for the facility; and 3) the need for an analysis on the most effective uses of biomass from a greenhouse gas perspective. Section 7.4.2 of General Order 96-B governs the grounds for protest to an advice letter. AIR's arguments do not raise issues appropriate to an advice letter protest. Therefore, AIR's protest is denied. Additionally, air quality matters for the Mt. Poso facility are regulated by the San Joaquin Valley Air Pollution District (SJVAPCD) and the U.S. Environmental Protection Agency. The facility has filed and/or received permits from both agencies. As noted in the facility's Authority to Construct permit from the SJVAPCD, the conversion of the facility from coal to biomass is considered a significant modification and will require best available control technology (BACT) to limit the amount of air pollution from the facility.²⁵

RPS Eligibility and CPUC Approval

Pursuant to Pub. Util. Code § 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

²⁴ D.08-11-008.

²⁵ <http://www.valleyair.org/notices/Docs/2009/11-05-09/Preliminary%20Public%20Notice%20Project%20S-1091829.pdf>

the CEC as an “Eligible Renewable Energy Resource,” that the project’s output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.²⁶

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 Section 399.11 et seq.*), Decision 03-06-071, or other applicable law.”²⁷

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission determine prior to final CEC certification of a project, that “any procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.”

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS eligible resource to count towards an RPS compliance obligation. Nor shall such a finding absolve any contracting party of its obligation to obtain CEC certification and/or to pursue remedies for breach of contract to ensure that only RPS-eligible generation is delivered and paid for under a Commission-approved contract. Such contract enforcement activities shall be reviewed pursuant to the Commission’s authority to review the administration of such contracts.

Confidential information

The Commission, in implementing Pub. Util. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market

²⁶ See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

²⁷ See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

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, except contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived 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, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS AND CONCLUSIONS

1. The PPA, as modified, is consistent with PG&E's 2007 RPS Procurement Plan, including PG&E's resource needs approved by D.07-02-011.
2. Bid selection is consistent with PG&E's least-cost best-fit methodology.
3. With regards to this PPA, PG&E has complied with the Commissions rules for involving the Procurement Review Group (PRG). The PRG feedback, as described in the confidential information provided with the advice letter, did not provide a basis for disapproval of the PPA.
4. The PPA, as modified, includes the Commission-adopted RPS standard terms and conditions including those deemed "non-modifiable".
5. The Mt. Poso bid compared favorably to the results of PG&E's 2007 solicitation.

6. The total all-in costs of the PPA, as modified, are reasonable based on their relation to bids received in response to PG&E's 2008 solicitation.
7. Provided the generation is from an eligible renewable energy resource, or Seller is otherwise compliant with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in the terms of the PPA, payments made by PG&E under the PPA, as modified, are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.
8. The PPA is compliant with the EPS because it concerns an RPS-eligible facility that generates energy using biomass.
9. While an IE was included in the negotiation process, as required by D. 06-05-039, the IE expressed concerns regarding certain provisions of the PPA, and the extent to which PG&E involved him in the negotiation process
10. The IE's reservations regarding certain PPA terms and the IE's lack of inclusion in the negotiation of these terms, provide significant concern for the Commission regarding the reasonableness of those terms.
11. Based on the IE concern, the Commission should approve the PPA with modifications.
12. PG&E should be required to seek to modify the fuel price adjustment provision such that there is a direct cost-based relationship between the seller's fuel costs and the contract price.
13. PG&E should be required to fully include the IE in negotiations on this term.
14. PG&E should be required to file a Tier 1 Advice Letter with the Energy Division containing: (1) a modified PPA signed by both parties that reflects a direct cost-based relationship between the seller's fuel costs and the contract price; (2) accompanying work papers; and (3) a written statement from the IE reflecting on the modification process required herein, and the results of that process.
15. The DRA protest is granted in part and denied in part.
16. An Independent Evaluator should have the opportunity to be included on a real time basis in all substantive discussions or other communications between the parties regarding development of an RPS contract.
17. The AIR protest is denied.

18. Procurement pursuant to the PPA, as modified, is procurement from eligible renewable energy resources for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.
19. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under the PPA to count towards an RPS compliance obligation. Nor shall that finding absolve PG&E of its obligation to enforce compliance with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009, and included in the PPA.
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 3529-E should be approved effective today with modification.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's Advice Letter 3529-E, requesting Commission review and approval of a power purchase agreement with Mt. Poso Cogeneration Company, LLC, is approved with modification.
2. Within 30 days of the effective date of this Resolution, Pacific Gas and Electric Company shall file a Tier 1 Advice Letter with the Energy Division containing: (1) a modified power purchase agreement signed by both parties that reflects a direct cost-based relationship between the seller's fuel costs and contract price; (2) accompanying work papers; and (3) a written statement from the independent evaluator reflecting on the modification process required herein, and the results of that process.

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 February 4, 2010 the following Commissioners voting favorably thereon:

Paul Clanon
Executive Director

Confidential Appendix A

Disposition of Confidential Protest from the Division of Ratepayer Advocates

[Redacted]

Confidential Appendix B

Mt. Poso Contract Summary

[Redacted]

Confidential Appendix C

Project Viability

[Redacted]

Confidential Appendix D

Excerpt from the Independent Evaluator Project Specific-Report²⁸

[Redacted]

²⁸ Pages 11 – 15 of “Confidential Appendix A – Offer Description and Economic Evaluation Results” of “Fifth Advice Letter Report of the Independent Evaluator on the Bid Evaluation and Shortlist Selection Process” (September 2009), Merrimack Energy Group, submitted with PG&E AL 3529-E on September 21, 2009

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



January 5, 2010

ID # 9151
Draft Resolution E-4309
February 4, 2010 Commission Meeting

TO: PARTIES TO DRAFT RESOLUTION E-4309
Service Lists: R.08-08-009, R.06-02-012, R.08-02-007

Enclosed is draft Resolution E-4309 of the Energy Division addressing PG&E's advice letter 3529-E. It will be on the agenda at the February 4, 2010 Commission meeting. The Commission may then vote on this Resolution or it may postpone a vote until later.

When the Commission votes on a draft Resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different Resolution. Only when the Commission acts does the Resolution become binding on the parties.

Parties may submit comments on the draft Resolution no later than Tuesday, January 26, 2010.

An original and two copies of the comments, with a certificate of service, should be submitted to:

Honesto Gatchalian
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
fax: 415-703-2200
email: jnj@cpuc.ca.gov

Maria Salinas
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
fax: 415-703-2200
email: mas@cpuc.ca.gov

An electronic copy of the comments should be submitted to:

Cheryl Lee

Energy Division
cnl@cpuc.ca.gov

Those submitting comments and reply comments must serve a copy of their comments on 1) the entire service list attached to the draft Resolution, 2) all Commissioners, and 3) the Director of the Energy Division, the Chief Administrative Law Judge and the General Counsel, on the same date that the comments are submitted to the Energy Division.

Comments may be submitted electronically.

Comments shall be limited to five pages in length plus a subject index listing the recommended changes to the draft Resolution and an appendix setting forth the proposed findings and ordering paragraphs. Comments shall focus on factual, legal or technical errors in the proposed draft Resolution. Comments that merely reargue positions taken in the advice letter or protests will be accorded no weight and are not to be submitted.

Reply comments shall be served on parties and Energy Division no later than Monday, February 2, 2010 and may also be submitted electronically.

Late submitted comments or reply comments will not be considered.

Paul Douglas
Project and Program Supervisor
Energy Division

Enclosure:
Certificate of Service

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of Draft Resolution E-4309 on all parties in these filings or their attorneys as shown on the attached list.

Dated January 5, 2010 at San Francisco, California.

Cheryl Lee

NOTICE

Parties should notify the Energy Division, Public Utilities Commission, 505 Van Ness Avenue, Room 4002 San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the Resolution number on the service list on which your name appears.

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