PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **ID #9458**
RESOLUTION E-4336
June 3, 2010

REDACTED

R E S O L U T I O N

Resolution E-4336. Pacific Gas and Electric Company (PG&E) requests approval of a renewable power purchase agreement with DTE Stockton, LLC.

PROPOSED OUTCOME: This Resolution approves cost recovery for a PG&E renewable energy power purchase agreement (PPA) with DTE Stockton, LLC for biomass power. The PPA is approved without modifications.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter 3577-E filed on December 16, 2009 and supplemental Advice Letter 3577-E-A filed on April 30, 2010.

SUMMARY

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

PG&E filed Advice Letter (AL) 3577-E on December 16, 2009, requesting California Public Utilities Commission (Commission) review and approval of a power purchase agreement (PPA) with DTE Stockton, LLC (DTE) for renewable energy from a biomass facility. DTE proposes to purchase and convert an existing coal powered facility currently owned and operated by NextEra to a biomass powered facility.

The proposed PPA, resulting from bilateral negotiations, is consistent with PG&E's 2008 RPS Procurement Plan. Deliveries under 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	Type	Term Years	MW Capacity	GWh Energy	Online Date	Location
DTE Stockton	Biomass	25	45	315	6/30/2013	Stockton, 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.

NOTICE

Notice of AL 3577-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.

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[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).

PROTESTS

PG&E's Advice Letter AL 3577-E was not protested and the protest period for supplemental advice letter 3577-E-A was waived, pursuant to General Order 96-B, Section 7.5.1.

DISCUSSION

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

On December 16, 2009, PG&E filed AL 3577-E requesting Commission approval of a renewable procurement contract with DTE Stockton, LLC (DTE) for generation from its proposed biomass facility. Generation from the 45 MW DTE Stockton biomass facility is expected to contribute an average of 315 gigawatt-hours (GWh) annually towards PG&E's Annual Procurement Target (APT) beginning in June 2013.

The contract is the result of bilateral negotiations between PG&E and DTE. DTE seeks to purchase and retrofit an existing coal-fired facility currently owned by NextEra Energy Resources, LLC (NextEra). Upon CPUC Approval of the proposed PPA, PG&E and NextEra will terminate the existing Qualifying Facility Standard Offer 4 contract[4] and NextEra will sell the facility to DTE. DTE will then renovate and retrofit the facility and related fuel yard and return the project to commercial operation in 2013 as an RPS-eligible biomass facility.

The project is expected to deliver 315 GWh of energy per year at an 80 percent capacity factor. It is located at the Port of Stockton, CA, within California Independent System Operator's (CAISO) Balancing Authority Area and is currently interconnected at the Stockton Station "A" substation via PG&E's Weber #1 60 kV line. After retrofitting, the Project will be the same size and therefore no network upgrades are anticipated.

[4] SO4 PPAs typically contain minimum damage provisions such that if a plant shuts down prior to the full term of its QF Contract, a portion of the capacity payment must be repaid to the utility. In this case however, that firm capacity repayment provision was modified as part of a previous amendment and no damages for shutting down are owed. (The prior amendment was first amendment to the long-term energy and capacity power purchase agreement between Cogeneration National Corporation and PG&E, dated August 29, 1986.)

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

1. Approves the PPA in its entirety, including all 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 all procurement pursuant to the PPA constitutes 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 associated with the PPA, are reasonable, and shall be recovered in rates as provided by Public Utilities Code section 399.14(g).
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 2008 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 costs 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 covered procurement subject to the EPS because it is a generation facility using biomass.
    b. PG&E has provided the notice of procurement required by

D.06-01-038 in its Advice Letter filing.

7. Finds that the termination of the existing QF Power Purchase Agreement for Long-Term Energy and Capacity dated May 7, 1984, as amended and the waiver of any claim for a termination payment under that agreement is reasonable.

Energy Division examined the proposed PPA on multiple grounds:

- Consistency with PG&E's 2008 RPS Procurement Plan
- Consistency with least-cost, best-fit methodology identified in PG&E's RPS Procurement Plan
- Procurement Review Group participation
- Consistency with RPS standard terms and conditions
- Comparison to the results of PG&E's 2008 solicitation[5]
- Cost reasonableness evaluation
- Cost containment
- Project viability
- Compliance with the Interim Emissions Performance Standard
- Independent Evaluator review

Consistency with PG&E's 2008 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 2008 RPS procurement plan (Plan) was approved by D.08-02-008 on February 14, 2008. Pursuant to statute, PG&E's Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation

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[5] In AL 3577-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] Pub. Util. Code, § 399.14

resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.[7]

PG&E states that the generation from the PPAs will meet the resource needs identified in its Plan. In its Plan, PG&E's goal was to procure approximately 800 to 1,600 GWh per year.

<u>The PPA is consistent with PG&E's 2008 RPS Procurement Plan, including PG&E's RPS resource needs, approved by D.08-02-008.</u>

Consistency with PG&E's Least-Cost, Best-Fit (LCBF) requirements

The LCBF decision directs the utilities to use certain criteria in their bid ranking.[8] 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 2008 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.

The IE has verified that the PPA is consistent with PG&E's objectives set forth in its 2008 RPS Plan. The IE supports PG&E's decision to execute the agreement discussed herein and concurs with PG&E that the PPA merits CPUC Approval.[9]

<u>PPA selection is consistent with PG&E's 2008 RPS solicitation least-cost, best-fit cost protocols.</u>

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[7] Pub. Util. Code, § 399.14(a)(3)

[8] D.04-07-029

[9] Advice Letter Report of the Independent Evaluator on the Bid Evaluation and Selection Process. *See* AL 3577-E, Appendix I.

Procurement Review Group (PRG) participation

The PRG for PG&E includes representatives of the California Department of Water Resources (DWR), the Commission's Energy Division and Division of Ratepayer Advocates, Union of Concerned Scientists (UCS), the Utility Reform Network (TURN), the California Utility Employees (CUE), and Jan Reid, as a PG&E ratepayer. PG&E initially informed its PRG of DTE's offer on May 15, 2009 and provided subsequent updates prior to filing AL 3577-E.

<u>Pursuant to D.02-08-071, PG&E's Procurement Review Group (PRG) participated in the review of the PPA.</u>

Consistency with RPS standard terms and conditions (STCs)

On March 11, 2010, the Commission approved D.10-03-021 which established new and revised standard terms and conditions for RPS contracts, which were not included in the proposed PPA in AL 3577-E. On April 30, 2010, PG&E filed supplemental AL 3577-E-A to modify the DTE PPA so that it conforms to the Commission's RPS standard terms and conditions pursuant to D.10-03-021. As a result, the PPA contains the required non-modifiable standard terms and conditions.

<u>The PPA includes the Commission adopted RPS "non-modifiable" standard terms and conditions</u>

Comparison to the results of PG&E's 2008 Solicitation

PG&E determined that based on the market valuation of the DTE Stockton project, the project was attractive relative to the other proposals received in response to PG&E's 2008 solicitation. The market valuation of the PPA included several factors, including price, portfolio fit, and project viability.

<u>The DTE contract compared favorably to the results of PG&E's 2008 solicitation.</u>

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 DTE PPA is reasonably priced as currently proposed. However, Section 10.1 of the PPA and page D-19 of PG&E's confidential Appendix D suggest that the price of the PPA could change as a result of a change in law. Confidential Appendix A includes a detailed discussion of the contractual pricing terms, including PG&E's

estimates of the total contract costs under the PPA, and events under which the costs would change.

The total all-in costs of the PPA are reasonable based on their relation to bids received in response to PG&E's 2008 solicitation. We do not anticipate material changes in the PPA costs as a result of Section 10.1. However, to the extent the PPA costs increase pursuant to PPA Section 10.1, PG&E shall seek Commission approval through the applicable advice letter process of any PPA amendment implementing such changes.

Payments made by PG&E under the PPA 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

Pursuant to statute, the Commission calculates a market price referent (MPR) to assess above-market costs of individual RPS contracts and the RPS program.[10] Based on a 2013 commercial online date, the proposed PPA exceeds the 2008 MPR[11] for a 25 year contract, and therefore is considered to have above-market costs associated with it.[12]

Contracts that meet certain criteria are eligible for above-MPR funds (AMFs).[13] The proposed DTE PPA was negotiated bilaterally and is with a facility that commenced commercial operations before January 1, 2005. Therefore, this PPA does not meet the eligibility criteria for AMFs. Additionally, PG&E has

[10] *See* § 399.15(c)

[11] *See* Resolution E-4214.

[12] The $/MWh portion of the contract price that exceeds the MPR, multiplied by the expected generation throughout the contract term, represents the total "above-market costs" for a given PPA.

[13] SB 1036 codified in § 399.15(d)(2) the following criteria: the contract was selected through a competitive solicitation, the contract covers a duration of no less than 10 years, the contracted project is a new facility that will commence commercial operations after January 1, 2005, the contract is not for renewable energy credits, and 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.

exhausted its AMFs provided by statute.[14] Therefore, PG&E will voluntarily incur the above-MPR costs of the PPA.

PG&E is voluntarily entering into this RPS power purchase agreement as permitted by statute.

Project viability assessment and development status

PG&E asserts the DTE 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.

Developer Experience

DTE Energy Services has developed approximately 50 power and industrial projects across North America. DTE Energy Services' portfolio includes electric power generation facilities, as well as a wide array of energy projects for industrial, commercial and institutional customers.

DTE Energy Services has been operating biomass plants since 2004. Currently, DTE owns and operates two biomass power plants, Woodland Biomass Power (Woodland, CA) and Mobile Energy Services (Mobile, AL). In addition to these plants, DTE Energy Services is currently constructing a similar coal-to-biomass conversion in Cassville, Wisconsin, which should become operational in mid-2010.

Site Control

Because the project is a retrofit of an existing facility, it has no site control issues.

Resource and/or Availability of Fuel

DTE Energy Services is the owner of the Woodland Biomass facility, which is approximately 65 miles away from the project considered herein. Fuel availability studies indicate adequate fuel supply.

Transmission

The delivery point is within the CAISO interconnection area. PG&E states that the project is currently operational, although temporarily shut down, and that

[14] On May 28, 2009, the Director of the Energy Division notified PG&E that it had exhausted its AMF account, meaning PG&E is no longer required to sign contracts for power priced above the MPR, but may voluntarily choose to do so.

the retrofitted project will not require network upgrades to perform under the PPA.

Technology Type and Level of Technology Maturity

The project will utilize a standard biomass power plant and proven technologies.

Permitting

The following table summarizes key, non-confidential permits, agreements and licenses of which PG&E is currently aware that may be necessary for the construction and operation of the generation facility. Due to Central valley air quality concerns, there is substantial risk associated with air permitting of biomass facilities by the San Joaquin Valley Air District.

Permit and Lease Table					
Name of Permit / Lease	**Public / Private**	**Agency**	**Description of Permit / Lease**	**Current Status**	**Approval Timeframe**
Air Permit	Public	San Joaquin Valley Air Pollution Control District			6-9 months
CEQA	Public	Port of Stockton			6-8 months
Additional land leases at Port	Private	Port of Stockton	Additional land leases for fuel handling	Currently negotiating lease options	
Extension of current land lease	Private	Port of Stockton	Extension of existing land lease where plant is situated	Currently negotiating terms of lease	

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 powerplant. The EPS applies to all energy contracts for baseload generation that are at least five years in duration.[15]

Generating facilities using certain renewable resources are deemed compliant with the EPS. Because the DTE facility will be fueled by biomass that would otherwise be disposed of by open burning, forest accumulation, landfill, spreading or composting, the PPA meets the conditions for EPS compliance established in D.07-01-039.[16]

<u>The PPA complies with the EPS because it meets the conditions established in D.07-01-039.</u>

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 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.[17]

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[15] "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. Utils. Code § 8340 (a).

[16] *See* D.07-01-039, COL 35.

[17] *See, e.g.* D. 08-04-009 at Appendix A, STC 6, Eligibility.

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."[18]

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 the seller of its obligation to obtain CEC certification or the utility to pursue remedies for breach of contract. Contract enforcement activities shall be reviewed pursuant to the Commission's authority to review the utilities' administration of 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 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.

[18] *See, e.g.* D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

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 power purchase agreement (PPA) is consistent with Pacific Gas & Electric Company (PG&E)'s 2008 Renewables Portfolio Standard (RPS) Procurement Plan.
2. Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the PPA.
3. On April 30, 2010, PG&E filed a supplemental advice letter to bring the PPA into conformance with the Commission adopted RPS "non-modifiable" standard terms and conditions.
4. The bilateral contract compared favorably to the results of PG&E's 2008 solicitation.
5. The total all-in costs of the PPA are reasonable based on their relation to bids received in response to PG&E's 2008 solicitation.
6. Section 10.1 of the PPA and page D-19 of PG&E advice letter 3577-E, confidential Appendix D, suggest that PPA costs could change as a result of a change in law.
7. To the extent the PPA costs increase pursuant to PPA Section 10.1, PG&E should be required to seek Commission approval through the applicable advice letter process of any PPA amendment implementing such changes.
8. Payments made by PG&E under the approved PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.

9. The PPA complies with the Emissions Performance Standard (EPS) because it meets the conditions established in D.07-01-039.
10. Procurement pursuant to the PPA 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.
11. 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 this PPA.
12. The Commission finds that the termination of the existing Qualifying Facility (QF) Power Purchase Agreement for Long-Term Energy and Capacity dated May 7, 1984, as amended and the waiver of any claim for a termination payment under that agreement is reasonable.
13. The confidential appendices, marked "[REDACTED]" in the public copy of this Resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
14. AL 3577-E and supplemental AL 3577-E-A should be approved effective today without modifications.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's Advice Letter 3577-E and supplemental Advice Letter 3577-E-A, requesting Commission approval of a power purchase agreement with DTE Stockton, LLC, is approved without modifications.
2. To the extent costs under the power purchase agreement approved in this resolution increase pursuant to Section 10.1 of the power purchase agreement, Pacific Gas and Electric Company shall seek Commission approval through the applicable advice letter process of any amendment implementing such changes.
3. 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 June 3, 2010; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

DTE Contract Summary

[REDACTED]

Confidential Appendix B

Project Viability and Biomass Fuel Availability and Cost Assessment

[REDACTED]

Confidential Appendix C

Excerpt from the Independent Evaluator Project Specific-Report[19]

[REDACTED]

[19] Pages 10-14 of the confidential bilateral contract evaluation from Arroyo Seco Consulting submitted with PG&E AL 3577-E on December 16, 2009