DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #10130
RESOLUTION E-4389
March 10, 2011

REDACTED

R E S O L U T I O N

Resolution E-4389. Pacific Gas and Electric Company requests approval of amendments to its Interim Standard Offer 4 contract with ENXCO Windfarm V, Inc.

PROPOSED OUTCOME: This Resolution approves the amended Interim Standard Offer 4 contract between ENXCO Windfarm V, Inc. and Pacific Gas and Electric Company without modification. The amendments result in estimated customer savings of $2,779,791. Pacific Gas and Electric Company shareholders are entitled to a 10 percent incentive payment of $277,979.

ESTIMATED COST: No incremental costs. The contract amendments result in lower average contract payments.

By Advice Letter 3705-E filed on July 21, 2010.

SUMMARY

The amended Interim Standard Offer 4 contract between Pacific Gas and Electric Company and ENXCO Windfarm V, Inc. is approved without modification

On July 21, 2010, Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 3705-E requesting California Public Utilities Commission (Commission) review and approval of amendments to its Interim Standard Offer 4 contract (ISO4 contract) with ENXCO Windfarm V, Inc. (ENXCO). PG&E's Qualifying Facility ISO4 contract with ENXCO concerns a 10 megawatt wind facility located in Solano County, CA. The ENXCO ISO4 contract was originally executed in 1984 and expires in 2017.

The ENXCO wind facility was repowered in 2006 resulting in annual deliveries in excess of the amount stated in the original ISO4 contract. PG&E and ENXCO amended the contract so that ENXCO can seek Production Tax Credits available to repowered facilities operating under ISO4 contracts, pursuant to Internal Revenue Code section 45(d)(7)(B). Pursuant to the amended contract, PG&E will pay lower costs for energy and capacity for generation attributed to the facility's repowering since the facility was repowered in 2006 and throughout the remaining term of the contract. PG&E ratepayers also benefit from a sharing of the Production Tax Credit value.

PG&E filed AL 3705-E according to the Restructuring Advice Letter filing procedure adopted in Decision (D.) 98-12-066, which provides for a shareholder incentive payment based on 10 percent of the estimated benefits to PG&E's ratepayers as a result of the QF contract amendments. The amendments result in estimated customer savings of $2,779,791. PG&E shareholders are entitled to a 10 percent incentive payment of $277,979. The amended contract between PG&E and ENXCO is approved without modification.

BACKGROUND

Commission Approved Incentive Mechanism to Encourage Qualifying Facility Contract Restructuring

In Decision (D.) 95-12-063, as modified by D.96-01-009 and D.98-12-066 the Commission sought to encourage Qualifying Facility (QF) contract restructuring so that total ratepayer costs might be reduced. Under the Restructuring Advice Letter Filing process, utility shareholders are allowed to receive an incentive payment of 10 percent of the estimated net ratepayer benefits resulting from a QF contract renegotiation.

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 and SB 1036.[1] The RPS program is

[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).

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 Advice Letter 3705-E was made by publication in the Commission's Daily Calendar. Pacific Gas and Electric Company states that copies of the Advice Letter were mailed and distributed in accordance with Section IV of General Order 96-B.

PROTESTS

Advice Letter 3705-E was not protested.

DISCUSSION

Pacific Gas and Electric Company requests approval of amendments to its Interim Standard Offer 4 contract with ENXCO Windfarm V, Inc., pursuant to the Restructuring Advice Letter filing procedure adopted in Decision 98-12-066.

On July 21, 2010, Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 3705-E seeking approval of amendments to its Interim Standard Offer 4 contract (ISO4 contract) with ENXCO Windfarm V, Inc. (ENXCO). The ENXCO Qualifying Facility (QF) ISO4 contract was executed in 1984 and concerns a 10 megawatt (MW) wind facility located in Solano County, CA. PG&E's ENXCO

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

[3] *See* Pub. Util. Code § 399.15(b)(1).

ISO4 contract was originally executed in 1984 and expires in 2017. The ENXCO ISO4 contract has been amended three times prior to this fourth amendment, most recently in 2006, pursuant to Decision (D.) 06-07-032. D.06-07-032 adopted a settlement between PG&E and the Independent Energy Producers Association that established a five-year fixed-price for renewable QFs (PG&E/IEP Settlement).[4]

The ENXCO wind facility was repowered[5] in 2006, thus increasing the facility's annual generation from approximately 13 gigawatt-hours (GWh) to 30 GWh. According to PG&E's advice letter, in order to qualify Production Tax Credits (PTC), pursuant to Internal Revenue Code section 45(d)(7)(B), ENXCO must demonstrate that it is paid no more than "avoided cost" for additional generation over the facility's historic generation level prior to repowering. It is for this reason that PG&E and ENXCO have agreed to lower the contract price terms and conditions for the additional generation retroactively to the date the facility was repowered. Specifically, the amendments considered herein provide a lower price for the additional annual generation above 13 GW, estimated to be 17 GWh/year, for the period between June 2006 through 2017. In addition, PG&E and ENXCO negotiated a payment based on the estimated value of the PTCs. PG&E will continue to pay the energy and capacity price as stated in the current ENXCO ISO4 contract for all generation up to the historic average of 13 GWh.

Through August 2011, when the PG&E/IEP Settlement expires, PG&E ratepayer savings are derived from the difference between the IEP Settlement-based energy price and the ISO4 contract capacity price and short-run avoided cost (SRAC) for energy and the as-delivered capacity price, pursuant to D.07-09-040. For the period between September 2011 through 2017, PG&E ratepayers obtain savings from the difference in the ENXCO ISO4 contract's capacity price ($176/kw-yr) and PG&E's estimate of the as-available capacity price for this resources,

[4] D.06-07-032 adopted a five-year fixed energy price equal to $64.50/megawatt-hour, with a 1 percent annual escalation rate.

[5] Repowering refers to an existing wind facility that has replaced wind turbines that are aging and often inefficient compared to current wind turbine technology. Repowering generally results in a similarly capacity sized project with fewer turbines and increased generation per megawatt of installed capacity.

consistent with the methodology adopted in D.07-09-040. Consistent with the Commission decisions to incentivize restructuring legacy QF contracts, PG&E's shareholders are entitled to 10 percent of this ratepayer value.

PG&E requests that the Commission issue a resolution that finds:

1. PG&E sought a Qualifying Facility Restructuring Reasonableness Letter ("QFRRL") of support or no opposition from the Division of Ratepayer Advocates ("DRA") pursuant to D.98-12-066.
2. DRA issued a letter finding the Amendment to be reasonable and no comments were received on the letter.
3. Pursuant to D.02-08-071, PG&E presented the Amendment to its Procurement Review Group ("PRG") and the PRG provided no reason for the Commission to refrain from approving the Amendment.
4. PG&E has demonstrated that the proposed restructuring is reasonable.
5. The Amended Agreement is consistent with PG&E's 2006 Long Term Procurement Plan, which was approved by D.07-012-052.
6. Procurement under the Amended Agreement is exempt from the Emissions Performance Standard ("EPS") rules adopted by D.07-01-039 because it concerns an in-state RPS-eligible facility with a capacity factor less than 60 percent.
7. The Amendment is reasonable and prudent.
8. Payments made by PG&E under the Amended Agreement are fully recoverable in rates during the term of the Amendment through PG&E's Energy Resource Recovery Account ("ERRA") excluding the above-market portion, if any exist, in the Ongoing Competition Transition Charge ("Ongoing CTC"), subject only to ongoing CPUC review of PG&E's prudent administration of the Amendment, existing ISO4 PPA, and prior amendments.
9. Procurement pursuant to the Amended 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.
10. The material declared to be confidential should remain confidential under the terms of D.06-06-066 and D.08-04-023.

11. The Advice Letter should be approved without modifications.

Energy Division evaluated PG&E AL 3705-E and the amended ISO4 ENXCO contract using the following criteria:

- Compliance with the Commission Restructuring Advice Letter filing process
- Ratepayer benefits from the ENXCO ISO4 contract price restructuring
- Division of Ratepayer Advocates approval
- Procurement Review Group participation
- Assessment of the QF's projected economic and operational viability under the existing contract

Compliance with Commission Adopted RALF requirements

The Commission encourages restructuring of ISO4 contracts when ratepayer savings may be attained and provides utility shareholders an incentive reward equal to 10 percent of projected net ratepayer benefits.[6] The Commission's Restructuring Advice Letter filing (RALF) process requires that PG&E submit comprehensive information regarding: the QF's energy production history, PG&E's analysis for calculating ratepayer benefits, and a letter of approval from the Division of Ratepayer Advocates (DRA).[7] PG&E's AL 3705-E included all required information for the Commission to make an informed decision.

<u>PG&E's AL 3705-E meets the requirements for restructuring its ENXCO ISO4 contract pursuant to the RALF guidelines.</u>

Assessment of the facility's projected economic and operational viability

PG&E believes the project is viable under the existing and amended contract terms and conditions based on the history of the ENXCO wind facility and an estimate of the faciliy's operating costs. The facility has been in operation since 1984 and, since the 2006 repowering has increased annual energy generation

[6] *See* D.95-12-063, as modified by D.96-01-009.

[7] *See* D.95-12-066 and Resolution E-3898, Appendix 1.

from an average 13 GWh to 30 GWh. The lower contract payments, pursuant to these amendments should be sufficient to cover the facility's operating costs.

The history of consistent energy production and an estimate of the facility's operating costs demonstrates that the ENXCO wind facility is economically and operationally viable.

Division of Ratepayer Advocates does not object to the terms in PG&E's restructured advice letter filing

Consistent with the RALF procedures, PG&E provided DRA with a request for a Qualifying Facility Restructuring Reasonableness Letter on May 28, 2010, including all confidential attachments provided in AL 3705-E. DRA performed its own analysis and submitted a letter to PG&E on July 2, 2010. In its letter, DRA states that they believe the terms of the amended ENXCO ISO4 contract are reasonable and in the ratepayers' best interest. (See Confidential Appendix B)

Consistent with the RALF procedures, DRA provided notice to PG&E that DRA does not oppose the amended ENXCO ISO4 contract nor disagrees with PG&E's estimate of the ratepayer benefits.

Procurement Review Group Participation

The 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 Commission.[8] PG&E asserts that the proposed restructuring of the ENXCO ISO4 contract was discussed at its January 14, 2010 PRG meeting.

Pursuant to D.02-08-071, PG&E's discussed the amendments to the ENXCO ISO4 contract with its Procurement Review Group.

[8] The PRG for PG&E included representatives of the Union of Concerned Scientists, the California Utility Employees, the Utility Reform Network, the California Public Utility Commission's Energy Division and Division of Ratepayer Advocates, and PG&E ratepayer Jan Reid.

Ratepayer benefits from the ENXCO ISO4 contract price restructuring

Since the facility was repowered in 2006, the contract amendments result in ratepayer savings for additional generation over the facility's historic generation level of 13 GWh prior to repowering. Specifically, for energy, customer savings are realized from the difference between the IEP Settlement-based contract price and SRAC. For capacity, customer savings are realized from the difference between the current capacity price of $176/kw-yr and the $/kw-yr as-available capacity price as determined by the Commission, pursuant to D.07-09-040, through August, 2011 when the PG&E/IEP Settlement price expires. Plus, PG&E and ENXCO negotiated a payment based on the estimated value of the PTCs. After the PG&E/IEP Settlement price expires and through the end of the contract, ratepayers will benefit from difference between the higher ISO4 capacity price and the as-available capacity price pursuant to D.07-09-040, which will be paid for deliveries greater than 13 GWh.[9]

Energy Division reviewed PG&E's work papers submitted in AL 3705-E and additional information provided in data requests and finds that PG&E's methodology is reasonable. Accordingly, AL 3705-E is approved without modification. Confidential Appendix A includes PG&E's analysis of the expected ratepayer the expected benefits.

<u>PG&E estimates customer savings of $2,779,791 from the ENXCO ISO4 contract restructuring amendment.</u>

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.

[9] PG&E's SRAC and as-available capacity prices for QFs are available here: http://www.pge.com/b2b/energysupply/qualifyingfacilities/prices/

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 original Interim Standard Offer 4 contract between Pacific Gas and Electric Company and ENXCO Windfarm V, Inc. was executed in 1984 and expires in 2017.
2. Pacific Gas and Electric Company filed Advice Letter 3705-E on July 21, 2010 for approval of a Fourth Amendment to the original Interim Standard Offer 4 contract whereby ENXCO Windfarm V, Inc. would decrease the average price of future energy deliveries in order to qualify for the Federal Production Tax Credit.
3. Pacific Gas and Electric Company complied with requirements pursuant to the Restructuring Advice Letter filing procedure adopted in Decision 98-12-066.
4. Pacific Gas and Electric Company's modeling of the net savings from the amended contract is reasonable for purposes of calculating the net ratepayer benefits.
5. The ENXCO Windfarm V, Inc. Qualified Facility is economically and operationally viable under the amended contract terms and conditions.
6. Division of Ratepayer Advocates provided notice to Pacific Gas and Electric Company that DRA does not oppose the amended ENXCO contract nor

disagree with Pacific Gas and Electric Company's estimate of the resulting ratepayer benefits.

7. Pursuant to Decision 02-08-071, Pacific Gas and Electric Company discussed the amendments to the ENXCO contract with its Procurement Review Group.
8. PG&E estimates net ratepayer benefits of $2,779,791 from the ENXCO Interim Standard Offer 4 contract restructuring amendment.
9. Pacific Gas and Electric Company should be allowed to recover 10 percent of the net ratepayer benefits, pursuant to Decision 95-12-063, as modified by Decision 96-01-009.
10. Advice Letter 3705-E should be approved effective today without modifications.

THEREFORE IT IS ORDERED THAT:

1. The Fourth Amendment to Pacific Gas and Electric Company's Interim Standard Offer 4 power purchase agreement with ENXCO Windfarm V, Inc. filed in Advice Letter 3705-E is approved without modification.
2. Pacific Gas and Electric Company's shareholders are authorized to receive an incentive payment of $277,979.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on March 10, 2011; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Summary of Restructured ENXCO ISO4 Contract and Estimated Ratepayer Benefit

[REDACTED]

Confidential Appendix B

Division of Ratepayer Advocates' Qualifying Facility Restructuring Reasonableness Letter

[REDACTED]