

Decision 09-09-032 September 24, 2009

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Expedited Approval of the Power Purchase Agreement with South Feather Water and Power Authority, and for Authority to Recover the Costs of the Agreement in Rates. (U39E)

Application 09-05-015  
(Filed May 18, 2009)

**DECISION APPROVING POWER PURCHASE AGREEMENT**

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## **DECISION APPROVING POWER PURCHASE AGREEMENT**

### **1. Summary**

By this decision, the Commission approves the power purchase agreement between Pacific Gas and Electric Company and South Feather Water and Power Authority. The 10-year power purchase agreement involves four existing hydroelectric facilities. Two of the facilities are Renewables Portfolio Standard eligible facilities and two are not. The power purchase agreement replaces an existing 50-year agreement that ends in 2010.

This decision also authorizes Pacific Gas and Electric Company to recover the indirect costs incurred to remotely operate and dispatch these facilities through its Energy Resource Recovery Account until a decision is adopted in its next general rate case in which recovery of such costs will be addressed.

This proceeding is closed.

### **2. Background**

Pacific Gas and Electric Company (PG&E) requests approval of a power purchase agreement (PPA) with South Feather Water and Power Authority (South Feather). The PPA provides for PG&E to purchase power from four existing hydroelectric powerhouses for a 10-year period commencing in July 2010. Two of the powerhouses are certified by the California Energy Commission (CEC) as Renewables Portfolio Standard (RPS) resources producing RPS-eligible electricity. The remaining two powerhouses are too large for RPS qualification.<sup>1</sup>

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<sup>1</sup> RPS-eligible resources do not include hydroelectric facilities of greater than 30 megawatts (MW).

PG&E seeks authorization to recover the resulting costs through its Energy Resource Recovery Account (ERRA). PG&E also seeks to recover indirect costs incurred to remotely operate and dispatch these resources through its ERRA until a decision is adopted in its 2011 general rate case (GRC) in which PG&E will seek recovery of such costs.

The four powerhouses are currently in operation. PG&E has a 50-year agreement with South Feather for deliveries from the four powerhouses that expires in June 2010. The powerhouses have been successfully generating power throughout the 50-year period.

The Sly Creek Powerhouse and the Kelly Ridge Powerhouse, are RPS-eligible and have a total capacity of 23 MW. The Forbestown Powerhouse and the Woodleaf Powerhouse, are not RPS-eligible and have a total capacity of 94 MW. The Forbestown, Woodleaf and Sly Creek Powerhouses are fully dispatchable and can be operated to meet daily peak load during much of the year. The Kelly Ridge Powerhouse is operated for most of the year as a base load facility.

Generally, RPS contracts may be filed by advice letter and long-term non-RPS contracts are submitted for approval by application. Since this PPA includes both, an application is appropriate.

The PPA is the result of bilateral negotiations between PG&E and South Feather. PG&E represents that the PPA was negotiated as a single PPA to allow optimization of the operation of the powerhouses that would not likely occur if the output of some of the power houses was sold to different buyers.

### **3. Consistency with Commission Decisions**

The Commission has adopted a number of requirements for PPAs to be RPS-eligible as well as for those that are not RPS-eligible. They are addressed below.

#### **3.1. Fit with Identified Renewable Resource Needs**

Each year, PG&E, Southern California Edison Company, and San Diego Gas and Electric Company submit renewable resource procurement plans for the Commission's review and approval. PG&E's 2008 renewable resource procurement plan (2008 Plan) was approved by Decision (D.) 08-02-008. The plan's goal was to procure between 800 and 1,600 gigawatt-hours per year of RPS-eligible energy. The PPA does not provide new, incremental RPS-eligible power. However, by replacing the expiring agreement with the PPA, PG&E will continue to receive RPS-eligible power and three dispatchable resources capable of generating peak period energy and providing ancillary services such as spinning and non-spinning reserves. Thus, the PPA helps meet the 2008 Plan's goal for renewables procurement, and ensures that current RPS-eligible power from the powerhouses will contribute to PG&E's 2010 RPS target and RPS goals beyond 2010.<sup>2</sup>

#### **3.2. Consistency with Long-Term Procurement Plan (LTPP)**

PG&E's LTPP is its plan for procuring energy resources for a 10-year period. In D.07-12-052 approving PG&E's 2006 LTPP for 2007 through 2016, the

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<sup>2</sup> RPS goals are addressed in Section 3.9.

Commission said development of renewable resources is of great importance.<sup>3</sup> The Commission also required PG&E to procure dispatchable resources that can be used to adjust for the morning and evening ramps created by the intermittent types of renewable resources. The PPA is consistent with these requirements because the powerhouses are dispatchable renewable resources that can be used for ramping.<sup>4</sup>

### **3.3. Consistency with Commission Proceedings and Standards for Non-RPS Procurement**

In D.07-12-052, the Commission identified the need by 2015 for new, operationally flexible, dispatchable and viable generation facilities. All of the powerhouses, non-RPS-eligible and RPS-eligible, are existing dispatchable resources that meet these criteria. In addition, the PPA prices are reasonable compared to applicable benchmarks.

### **3.4. Consistency with Commission Guidelines for Bilateral Contracting**

In D.03-06-071 and D.06-10-019, the Commission established the following requirements for approval of bilateral contracts for RPS-eligible resources until evaluation criteria have been developed:

- The contract is longer than one month in duration;
- The contract does not receive above market funds; and
- The contract is deemed reasonable by the Commission.

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<sup>3</sup> PG&E's 2006 LTPP is the last adopted LTPP.

<sup>4</sup> The term "ramping" refers to the gradual increase or decrease of generation as load increases or decreases.

In D.09-06-050, the Commission determined that bilateral contracts should be evaluated using the same methods and criteria as are used to review contracts that result from a competitive bidding.

The PPA is longer than one month in duration and is not eligible for above market funds as discussed in Section 3.15 of this decision. Overall, the PPA is reasonable as discussed elsewhere in this decision. Therefore, the PPA satisfies the Commission's requirements for bilateral contracts.

### **3.5. Consistency of Contract Evaluation Process with Least-Cost Best-Fit (LCBF) Decision**

The LCBF decision, D.04-07-029, directs the utilities to use specified criteria in ranking solicited bids for the provision of RPS-eligible renewable resources. Since the PPA resulted from bilateral negotiations rather than a bidding process, PG&E did not strictly apply the LCBF decision requirements. However, it did consider market valuation and portfolio fit which are addressed in the LCBF decision requirements. These are addressed below.

#### **3.5.1. Market Valuation**

Based on a review of the confidential information provided with the application, the PPA is competitive with other available alternatives.

#### **3.5.2. Portfolio Fit**

The powerhouses are already integrated into PG&E's energy portfolio and most of the energy deliveries are dispatchable. Therefore, the PPA fits well with PG&E's portfolio.

### **3.6. Consistency with Transmission Cost Ranking Decisions**

Pursuant to D.04-06-013 and D.05-07-040, the potential customer cost to accept energy deliveries (the cost of connecting to PG&E's grid) must be

considered in determining the RPS-eligible project's value. Since the powerhouses already exist and are interconnected with PG&E, no transmission upgrades are needed and no additional costs to accept deliveries were included in the evaluation of net benefits.

### **3.7. Qualitative Factors**

D.04-07-029 and D.08-02-008 require that qualitative factors be considered when evaluating a PPA for RPS-eligible resources. PG&E considered qualitative factors in evaluating the PPA, including environmental stewardship, local reliability and resource diversity benefits. As discussed in this decision, the powerhouses provide dispatchable power from an existing renewable resource that does not produce greenhouse gases and contributes to the resource diversity in PG&E's renewables portfolio.

### **3.8. Procurement Review Group (PRG) Participation and Feedback**

In D.02-08-071, the Commission required each utility to establish a PRG whose members would review each utility's procurement strategy and processes. The PRG would also review proposed contracts before they are submitted to the Commission for approval. PG&E informed its PRG of the PPA. PRG feedback, as described in the confidential information provided with the application, did not provide a basis for disapproval of the PPA.

### **3.9. RPS Goals**

The California Legislature established an RPS goal of 20% of electric generation by renewable resources by the end of 2010. The Governor, by an Executive Order issued in November 2008, set a new target of 33% by 2020. Generation from the RPS-eligible powerhouses contributes to meeting these RPS goals. In addition, taking power from the non-RPS-eligible powerhouses is



consistent with the state's general goal of limiting incremental greenhouse gas emissions.

### **3.10. Standard Terms and Conditions**

The Commission's standard terms and conditions to be incorporated in contracts for electricity purchases from RPS-eligible resources are set forth in D.04-06-014, D.07-02-011 as modified by D.07-05-057, and D.07-11-025. These terms and conditions were compiled and published in D.08-04-009. The non-modifiable term related to Green Attributes was finalized in D.08-08-028. The PPA conforms to the non-modifiable terms set forth in Attachment A of D.07-11-025, and Appendix A of D.08-04-009, as modified by D.08-08-028. PG&E has modified terms identified as modifiable in D.07-11-025 and D.08-04-009 based upon mutual agreement with South Feather.

### **3.11. Minimum Quantity**

In D.07-05-028, the Commission determined that in order to count deliveries from contracts of less than 10 years duration with RPS-eligible facilities that commenced operation prior to January 1, 2005 towards RPS goals, utilities must contract for at least 0.25% of their prior year's retail sales through long-term contracts or short-term contracts with new facilities. The RPS-eligible portion of the PPA is a long-term contract with an existing facility that counts toward PG&E's 2009 procurement obligation under D.07-05-028.

### **3.12. Emissions Performance Standard (EPS)**

In D.07-01-039, the Commission adopted an EPS that applies to contracts with a term of five years or more for base load generation with an annualized capacity factor of at least 60%. The PPA is not covered by the EPS because it is a hydroelectric facility with an expected capacity factor under 60%.

### **3.13. Above Market Funds**

Public Utilities Code Section 399.15(d) provides for above market funds to be available for RPS-eligible resources meeting specified conditions. Since the PPA is for an existing facility and is the result of bilateral negotiations, power from the RPS-eligible powerhouses is not eligible for above market funds.<sup>5</sup>

### **3.14. Market Price Referent (MPR)**

The MPR represents the presumptive cost of electricity from a non-renewable energy source. RPS-eligible contracts are considered reasonable per se if the cost is below the MPR, and can be recovered in rates.<sup>6</sup> The PPA price for the RPS-eligible powerhouses is below the MPR. In addition, the effective price for power from the non-RPS-eligible powerhouses is not expected to exceed the 2008 MPR.<sup>7</sup>

## **4. Licenses and Permits**

The South Feather powerhouses constitute existing facilities operating under a Federal Energy Regulatory Commission (FERC) license that is expected to be renewed in 2010. All other necessary licenses and permits are currently valid.

## **5. Conclusion Regarding PPA**

Overall, the PPA satisfies all applicable requirements for the RPS-eligible powerhouses. The non-RPS-eligible powerhouses contribute to meeting the state's general goal of limiting incremental greenhouse gas emissions. In

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<sup>5</sup> Power from non-RPS-eligible resources is not eligible for above market funds.

<sup>6</sup> See D.04-06-015.

<sup>7</sup> The 2008 MPR was adopted in Resolution E-4214 on December 18, 2008.

addition, the PPA's contract prices for power are reasonable. The PPA should be approved.

## **6. Recovery of Indirect Costs**

PG&E remotely operates and dispatches the four South Feather powerhouses. Under the existing contract with South Feather, PG&E bills the resulting costs to South Feather. South Feather then bills PG&E for the costs. The billed costs are recovered through the ERRA as costs under the existing contract. Because these costs are recovered under ERRA, the current GRC revenue requirement excludes these costs.

Under the PPA, these costs will no longer be billed to South Feather. PG&E intends to seek recovery of these costs through its GRC revenue requirement in its next GRC. As a result, PG&E requests authorization to continue to recover these indirect costs through the ERRA until the Commission issues a final decision in its test year 2011 GRC. Since these costs are incurred and no double counting will occur, the request is reasonable and granted.

## **7. Categorization and Need for Hearings**

In Resolution ALJ 176-3235 dated June 4, 2009, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

## **8. Confidential Treatment**

PG&E provided confidential information, including the PPA and other information relevant to evaluation of the PPA, as appendices to its application.

PG&E filed concurrently with the application a motion for a protective order and confidential treatment of the appendices to the application pursuant to Public Utilities Code Section 583, D.06-06-066 and D.08-04-023.

Since no protests to this application were filed, there are no parties other than PG&E. Therefore, the request for a protective order is moot and denied without prejudice.

The confidential information was submitted in the manner directed by D.08-04-023, and the August 22, 2006 Administrative Law Judge's Ruling Clarifying Interim Procedures for Complying with D.06-06-066, in Rulemaking 05-06-040, to demonstrate the confidentiality of the material and invoke protection of confidential utility information provided under either the terms of the matrix shown in Appendix 1 of D.06-06-066 and Appendix C of D.08-04-023, or General Order 66-C. The confidential information satisfies the above requirements and will be kept under seal.

The periods of time the documents are requested to remain under seal are as follows.

- Appendix A and B--to remain under seal until after all final contracts for the 2008 bid solicitation have been submitted to the Commission for approval.
- Appendix D, F, G, H and I—to remain under seal for three years after the PPA states deliveries are to begin (until July 1, 2013).<sup>8</sup>

The request is reasonable and is granted.

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<sup>8</sup> Appendices C and E were intentionally omitted.

## **9. Comments on the Proposed Decision**

The proposed decision of ALJ Jeffrey P. O'Donnell in this matter was mailed to the parties in accordance with § 311 of the Public Utilities Code and comments are allowed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

## **10. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Jeffrey P. O'Donnell is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. The PPA provides for PG&E to purchase power from four hydroelectric powerhouses for a 10-year period commencing in July 2010.
2. Two of the four powerhouses are RPS-eligible resources producing RPS-eligible electricity.
3. The four powerhouses are currently in operation.
4. PG&E has a 50-year agreement with South Feather for deliveries from the four powerhouses that expires in June 2010.
5. The powerhouses have been successfully generating power throughout the 50-year period.
6. The Sly Creek Powerhouse and the Kelly Ridge Powerhouse, are RPS-eligible and have a total capacity of 23 MW.
7. The Forbestown Powerhouse and the Woodleaf Powerhouse, are not RPS-eligible and have a total Capacity of 94 MW.
8. The Forbestown, Woodleaf and Sly Creek Powerhouses are fully dispatchable and can be operated to meet daily peak load during much of the year.

9. The Kelly Ridge Powerhouse is operated for most of the year as a base load facility.

10. The PPA is the result of bilateral negotiations between PG&E and South Feather.

11. The PPA was negotiated as a single PPA to allow optimization of the operation of the powerhouses that would not likely occur if the output of some of the power houses was sold to different buyers.

12. The PPA does not provide new, incremental RPS-eligible power.

13. By replacing the expiring agreement with the PPA, PG&E will continue to receive RPS-eligible power and three dispatchable resources capable of generating peak period energy and providing ancillary services.

14. The PPA helps meet the 2008 Plan's goal for renewables procurement, and ensures that RPS-eligible power from the powerhouses will contribute to PG&E's 2010 RPS target and RPS goals beyond 2010.

15. The PPA is consistent with the 2006 LTPP requirements because the powerhouses are dispatchable renewable resources that can be used for ramping.

16. All four of the powerhouses are existing dispatchable resources that meet the need, identified in D.07-12-052, for operationally flexible, dispatchable and viable generation facilities.

17. The PPA prices are reasonable compared to applicable benchmarks.

18. Since the PPA is longer than one month in duration, is not eligible for above market funds, and is reasonable, it satisfies the Commission's requirements for bilateral contracts established in D.03-06-071, D.06-10-019 and D.09-06-050.

19. Since the PPA resulted from bilateral negotiations rather than a bidding process, PG&E did not strictly apply the LCBF decision (D.04-07-029) requirements, but did consider market valuation and portfolio fit.

20. The PPA is competitive with other available alternatives.

21. Since the powerhouses are already integrated into PG&E's energy portfolio and most of the energy deliveries are dispatchable, the PPA fits well with PG&E's portfolio.

22. Since the powerhouses already exist and are interconnected with PG&E, no transmission upgrades are needed and no additional costs to accept energy deliveries were included in the evaluation of net benefits.

23. The powerhouses provide dispatchable power from an existing renewable resource that does not produce greenhouse gases and contributes to the resource diversity in PG&E's renewables portfolio.

24. The PRG feedback did not provide a basis for disapproval of the PPA.

25. Power from the RPS-eligible powerhouses contributes to meeting the RPS goals.

26. Taking power from the non-RPS-eligible powerhouses is consistent with the state's general goal of limiting incremental greenhouse gas emissions.

27. The PPA conforms to the non-modifiable terms set forth in Attachment A of D.07-11-025, and Appendix A of D.08-04-009, as modified by D.08-08-028.

28. PG&E has modified terms identified as modifiable in D.07-11-025 and D.08-04-009 based upon mutual agreement with South Feather.

29. The RPS-eligible portion of the PPA is a long term contract with an existing facility that counts toward PG&E's 2009 procurement obligation under D.07-05-028.

30. The PPA is not covered by the EPS because it is a hydroelectric facility with an expected capacity factor under 60%.

31. Since the PPA is for existing facilities and is the result of bilateral negotiations, power from the RPS-eligible powerhouses is not eligible for above market funds.

32. The PPA price for the RPS-eligible powerhouses is below the 2008 MPR.

33. The effective price for power from the non-RPS-eligible powerhouses is not expected to exceed the 2008 MPR.

34. The South Feather powerhouses constitute existing facilities operating under a FERC license that is expected to be renewed in 2010. All other necessary licenses and permits are currently valid.

35. The PPA satisfies all applicable requirements for RPS-eligible facilities.

36. The non-RPS-eligible powerhouses contribute to meeting the state's general goal of limiting incremental greenhouse gas emissions.

37. The PPA's contract prices are reasonable.

38. PG&E remotely operates and dispatches the four South Feather powerhouses.

39. Under the existing contract with South Feather, PG&E bills the indirect costs for operating and dispatching the four powerhouses to South Feather. South Feather then bills PG&E for the costs.

40. The billed indirect costs for operating and dispatching the four powerhouses are recovered through the ERRA as costs under the existing contract, and the current GRC revenue requirement excludes these costs.

41. Under the PPA, the indirect costs for operating and dispatching the four powerhouses will no longer be billed to South Feather.



42. PG&E intends to seek recovery of indirect costs for operating and dispatching the four powerhouses through its GRC revenue requirement in its next GRC.

43. In support of this application, PG&E provided appendices that contain confidential information.

44. The confidential information provided with this application was submitted in the manner directed by D.08-04-023, and the August 22, 2006 Administrative Law Judge's Ruling Clarifying Interim Procedures for Complying with D.06-06-066, in Rulemaking 05-06-040, to demonstrate the confidentiality of the material and invoke protection of confidential utility information provided under either the terms of the matrix shown in Appendix 1 of D.06-06-066 and Appendix C of D.08-04-023, or General Order 66-C.

45. A notice of the filing of the application appeared in the Daily Calendar on June 26, 2009.

46. There were no protests to this application.

47. A hearing is not required.

### **Conclusions of Law**

1. In D.07-12-052 approving PG&E's 2006 LTPP for 2007 through 2016, the Commission said development of renewable resources is of great importance, and required PG&E to procure dispatchable resources that can be used to adjust for the morning and evening ramps created by the intermittent types of renewable resources.

2. In D.07-12-052, the Commission identified the need by 2015 for new, operationally flexible, dispatchable and viable generation facilities.

3. In D.03-06-071, D.06-10-019 and D.09-06-050, the Commission established requirements for approval of bilateral contracts for RPS-eligible resources until

evaluation criteria have been developed. The requirements are: the contract is longer than one month in duration; the contract does not receive above market funds; and the contract is deemed reasonable by the Commission.

4. The LCBF decision, D.04-07-029, directs the utilities to use specified criteria in ranking solicited bids for the provision of RPS-eligible renewable resources.

5. Pursuant to D.04-06-013 and D.05-07-040, the potential customer cost to accept energy deliveries (the cost of connecting to PG&E's grid) must be considered in determining the RPS-eligible project's value.

6. D.04-07-029 and D.08-02-008 require that qualitative factors be considered when evaluating a PPA for RPS-eligible resources.

7. In D.02-08-071, the Commission required each utility to establish a PRG whose members would review each utility's procurement strategy and processes. The PRG would also review proposed contracts before they are submitted to the Commission for approval.

8. The California Legislature established an RPS goal of 20% of electric generation by renewable resources by the end of 2010, and the Governor, by an Executive Order issued in November 2008, set a new target of 33% by 2020.

9. The Commission's standard terms and conditions to be incorporated in contracts for electricity purchases from RPS-eligible resources are set forth in D.04-06-014, D.07-02-011 as modified by D.07-05-057, and D.07-11-025.

These terms and conditions were compiled and published in D.08-04-009. The non-modifiable term related to Green Attributes was finalized in D.08-08-028.

10. In D.07-05-028, the Commission determined that in order to count deliveries from contracts of less than 10 years duration with RPS-eligible facilities that commenced operation prior to January 1, 2005 towards RPS goals,

entities must contract for at least 0.25% of their prior year's retail sales through long-term contracts or short-term contracts with new facilities.

11. In D.07-01-039, the Commission adopted an EPS that applies to contracts with a term of five years or more for baseload generation with an annualized capacity factor of at least 60%.

12. Public Utilities Code Section 399.15(d) provides for above market funds to be available for RPS-eligible resources meeting specified conditions.

13. The PPA should be approved.

14. PG&E's request to continue to recover the indirect costs for operating and dispatching the four powerhouses through the ERRRA until the Commission issues a final decision in its test year 2011 GRC is reasonable and should be granted.

15. Since no protests to this application were filed and there are no parties other than PG&E, the request for a protective order is moot and should be denied without prejudice.

16. The confidential information filed as appendices to the application should be kept under seal as requested.

## **O R D E R**

### **IT IS ORDERED** that:

1. Pacific Gas and Electric Company's request for approval of a power purchase agreement with South Feather Water and Power Authority to purchase power from four hydroelectric powerhouses for a 10-year period commencing in July 2010 is granted.

2. Pacific Gas and Electric Company is authorized to recover the indirect costs it incurs to remotely operate and dispatch the four South Feather Water

and Power Authority hydroelectric powerhouses until the Commission issues a final decision in Pacific Gas and Electric Company's test year 2011 general rate case application.

3. Pacific Gas and Electric Company's motion, filed concurrently with the application, for a protective order and to file the appendices to the application under seal is denied without prejudice as it pertains to the protective order.

4. Pacific Gas and Electric Company's motion, filed concurrently with the application, for a protective order and to file the appendices to the application under seal is granted as it pertains to the request to file under seal as follows. Appendix A and B shall remain under seal until after all final contracts for the 2008 bid solicitation have been submitted to the Commission for approval. Appendices D, F, G, H and I shall remain under seal for three years after the PPA states deliveries specified in the power purchase agreement are scheduled to begin (until July 1, 2013). During the time periods specified above, the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge, or the Administrative Law Judge then designated as Law and Motion Judge.

5. If Pacific Gas and Electric Company believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

6. Application 09-05-015 is closed.

This order is effective today.

Dated September 24, 2009, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners