

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**RESOLUTION E-4278
October 15, 2009**

REDACTED

RESOLUTION

Resolution E-4278. Pacific Gas and Electric Company (PG&E)

PROPOSED OUTCOME: This Resolution approves cost recovery for a renewable power purchase agreement (PPA) resulting from bilateral negotiations between PG&E and Puget Sound Energy, Inc. The PPA and associated hedging strategy are approved without modification.

ESTIMATED COST: Actual costs of this contract are confidential at this time.

By Advice Letter 3457-E filed on May 6, 2009.

SUMMARY

PG&E's proposed power purchase agreement complies with the RPS procurement guidelines and is approved.

PG&E filed Advice Letter (AL) 3457-E on May 6, 2009, requesting California Public Utilities Commission (Commission) review and approval of a bilateral PPA with Puget Sound Energy, Inc. (Puget) and an associated hedging strategy. Pursuant to the proposed PPA, PG&E will procure 1,000 gigawatt-hours (GWh) from Puget's Hopkins Ridge and Wild Horse wind facilities operating in Washington State. PG&E's request is granted because the PPA is consistent with Decision (D.) 08-02-008, which approved PG&E's 2008 RPS Procurement Plan and because the costs of the PPA are reasonable. Payments made under the PPA between PG&E and Puget are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA. The energy acquired from the facilities will count towards PG&E's RPS requirements.

Generating Facilities	Technology	Contract Term (Years)	Capacity (MW)	Expected Deliveries (GWh/yr)	Commercial Operation Date	Project Locations
Hopkins Ridge and Wild Horse	Wind	1	385	1000	2011	Columbia County, WA and Kittitas County, WA

The Advice Letter was protested by the Division of Ratepayer Advocates and Californians for Renewable Energy, Inc. The Commission denies both protests. The proposed contract price is reasonable, and all costs of the contract are fully recoverable in rates over the life of the contract, subject to Commission review of PG&E's administration of the contract.

AL 3457-E is approved without modification.

Confidential information about the contract should remain confidential

This Resolution finds that certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583, General Order (G.O.) 66-C, and D.06-06-066 should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

Pursuant to D.06-06-066 and the decision's Appendix I "IOU Matrix", this Commission adopted a "window of confidentiality" for individual contracts for RPS energy or capacity. Specifically, this Commission determined that RPS contracts should be confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their own affiliates, which should be public.

BACKGROUND

The RPS Program requires each utility to increase the amount of renewable energy in its portfolio

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 set forth in Public Utilities (Pub. Util.) Code §§ 399.11-399.20. An RPS is a market-based policy mechanism that requires a retail seller of electricity purchase a certain percentage of its electric portfolio from electricity generated by Eligible Renewable Energy Resources (ERR). Under the California RPS, each utility is required to increase its total procurement of ERRs by at least one percent of annual retail sales per year so that twenty percent of its retail sales are supplied by ERRs by 2010.²

In response to SB 1078 and SB 107, the Commission has issued a series of decisions that establish the regulatory and transactional parameters of the investor owned utility (IOU) renewables procurement program.³

- On June 19, 2003, the Commission issued its “Order Initiating Implementation of the Senate Bill 1078 Renewable Portfolio Standard Program,” D.03-06-071.
- In D.02-08-071, the Commission required each utility to establish a Procurement Review Group whose members, subject to an appropriate non-disclosure agreement, would have the right to consult with the utilities and review the details of each utility’s: overall interim procurement strategy; proposed procurement processes including, but not limited to, requests for offers and proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review.
- Instructions for utility evaluation of each offer to sell ERRs requested in an RPS solicitation were provided in D.04-07-029, as required by Pub. Util.

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 On November 17, 2008, Governor Schwarzenegger signed Executive Order S-14-08, which established a 33 percent PRS target to be met by 2020.

³ RPS decisions are available on the Commission’s RPS website:
<http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>

Code §399.14(a)(2)(B). The bid evaluation methodology is known as ‘least-cost, best-fit.’

- The Commission adopted standard terms and conditions (STCs) for RPS power purchase agreements in D.04-06-014, as required by Pub. Util. Code §399.14(a)(2)(D). These STCs are compiled in D.08-04-009, as modified by D.08-08-028, and as a result there are now thirteen STCs of which four are non-modifiable.
- In D.06-05-039, the Commission required participation of an Independent Evaluator (IE) in the IOU’s competitive RPS procurement process. The IE’s role is to ensure that the IOU’s RPS solicitation is undertaken in a fair and consistent manner. The IE also provides additional oversight during contract negotiations.
- D.06-10-050, as modified by D.07-03-046, outlined the RPS reporting and compliance methodologies and rules. In this decision, the Commission established methodologies to calculate a load serving entities’ (LSE) initial baseline procurement amount, annual procurement target (APT) and incremental procurement amount (IPT).
- The Commission adopted its market price referent (MPR) methodology in D.04-06-015 for determining the utility’s share of the RPS seller’s bid price (the contract payments at or below the MPR), as defined in Pub. Util. Code §399.14(a)(2)(A) and 399.15(c). The Commission refined the MPR methodology in D.05-12-042 and D.08-10-026. Resolutions adopted MPR values for the 2005, 2006, 2007, and 2008 RPS solicitations.⁴
- In D.07-05-028, the Commission established a minimum quota for contracting with new facilities or executing long-term contracts for RPS-eligible generation. Specifically, in order for an LSE to count for RPS compliance, deliveries from contracts of less than ten years’ duration with RPS-eligible facilities that commenced commercial operation prior to January 1, 2005 must in each calendar year enter into contracts of at least ten years’ duration and/or short-term contracts with facilities that commenced commercial operation on or after January 1, 2005 for energy deliveries equivalent to at least 0.25% of that LSE’s prior year’s retail sales.

⁴ MPR resolutions are available here:

<http://www.cpuc.ca.gov/PUC/energy/Renewables/mpr>

- The Commission established guidelines for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process (D.03-06-071 and D.06-10-019). More recently, in D.09-06-050, this Commission determined that bilateral RPS contracts should be evaluated using the same methods and criteria that are used to review contracts that result from a competitive solicitation.

Energy from RPS facilities located out-of-state must be delivered to California

The California Energy Commission (CEC) is responsible for certifying the eligibility of renewable energy facilities for the RPS program, as well as verifying and tracking the generation and delivery of renewable energy claimed for compliance with the RPS program. If a renewable energy facility has its first point of interconnection to the transmission network outside of California, it must satisfy all of the following additional requirements:⁵

1. It is connected to the transmission network within the Western Electricity Coordinating Council (WECC) service territory.
2. It commences initial commercial operation after January 1, 2005.
3. Electricity produced by the facility is delivered to an in-state location.
4. It will not cause or contribute to any violation of a California environmental quality standard or requirement.
5. If the facility is outside of the United States, it is developed and operated in a manner that is as protective of the environment as a similar facility located in the state.
6. It participates in the Western Renewable Energy Generation Information System (WREGIS), the accounting system to verify compliance with the renewables portfolio standard by retail sellers

While facilities located in California or with their first point of interconnection in the state are automatically deemed “delivered”, eligible renewable energy from

⁵ Public Resources (PR) Code 25741(b)(2)(B)

out-of-state facilities must be “scheduled for consumption by California end-use retail customers” to be counted for compliance with the RPS program.⁶

Interim Greenhouse Gas Emissions Performance Standard (EPS) established emission rate limitations for long-term electricity procurement

A greenhouse gas emissions performance standard (EPS) was established by Senate Bill 1368⁷, which requires that the Commission consider emissions costs associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers.

On January 25, 2007, the Commission approved D.07-01-039 which 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.⁸ The EPS applies to all energy contracts for baseload generation that are at least five years in duration.⁹ 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.

PG&E requests Commission approval of a new renewable energy contract and an associated hedging strategy

On May 6, 2009, PG&E filed AL 3457-E requesting Commission approval of a renewable procurement contract with Puget Sound Energy, Inc., which was negotiated bilaterally. The Commission’s approval of the PPA will authorize PG&E to fully recover in rates, payments made pursuant to the PPA and associated hedging strategy.

⁶ PR Code Section 25741(a)

⁷ Chapter 464, Statutes of 2006 (SB 1368)

⁸ D.07-01-039 adopted an emission rate of 1,100 pounds of carbon dioxide per megawatt-hour for the proxy CCGT (section 1.2, page 8)
http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/64072.PDF

⁹ “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%.” § 8340 (a)

1. Approves the PPA and its associated Hedging Strategy in their entireties, including payments to be made by PG&E pursuant to the Agreement and Hedging Strategy, subject to the Commission's review of PG&E's administration of the Agreement and Hedging Strategy.
2. Finds that any procurement pursuant to the Agreement 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 RPS (Public Utilities Code Section 399.11 et seq.) 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 Agreement and the Hedging Strategy shall be recovered in rates.
4. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:
 - a. The PPA and the Hedging Strategy are consistent with PG&E's 2008 RPS procurement plan.
 - b. The terms of the Agreement, 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 Agreement and Hedging Strategy:
 - a. The utility's cost of procurement under the Agreement and Hedging Plan shall be recovered through PG&E's Energy Resource Recovery Account.
 - b. Any stranded costs that may arise from the Agreement 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 EPS adopted in R.06-04-009:
 - a. The Agreement is not a covered procurement subject to the EPS because the generating facilities have a forecast annualized capacity factor of less than 60 percent and therefore are not

baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules

- b. Puget's renewable generating facilities are intermittent renewable resources for purposes of compliance with the EPS adopted in R.06-04-009.
- c. The use of system energy to deliver electricity under the terms of the Agreement is consistent with the EPS.

NOTICE

Notice of AL 3457-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

Advice Letter 3457-E was protested.

On May 26, 2009 AL 3457-E was timely protested by the Division of Ratepayer Advocates (DRA) and Californians for Renewable Energy Inc. (CARE).

PG&E responded to the protests of DRA and CARE on June 2, 2009.

In DRA's protest, DRA recommends that the Commission reject AL 3457-E without prejudice for the following reasons:

- The final price of the contract is unknown and not transparent.
- The price of the renewable or green attribute is too high.

PG&E responded to DRA's protest asserting that their protest should be rejected because the costs of the Agreement and associated Hedging Strategy are reasonable when compared against the market for RPS-eligible energy.

CARE protests AL 3457-E on the following grounds:

- The facilities are not eligible renewable resources.

- The agreement is inconsistent with the California Environmental Quality Act (CEQA) and Rule 2.4 of the Commission’s Rules of Practice and Procedure.
- The Commission lacks the authority to fix the price of import energy by PG&E with any person or other entity.

PG&E responded to CARE’s protest asserting that their protest should be rejected because the facilities are RPS-eligible, the issues raised are outside the scope of the advice letter, and the hedging agreement is not “price fixing.”

DISCUSSION

The following table summarizes the substantive features of the PPA. See Confidential Appendix B for a detailed discussion of PPA terms and conditions.

Generating Facilities	Technology	Contract Term (Years)	Capacity (MW)	Expected Deliveries (GWh/yr)	Commercial Operation Date	Project Locations
Hopkins Ridge and Wild Horse	Wind	1	385	1000	2011	Columbia County, WA and Kittitas County, WA

PG&E requests approval of a bilaterally negotiated PPA with Puget. The PPA provides that PG&E will procure RPS-eligible energy from two operating wind facilities, Hopkins Ridge and Wild Horse.¹⁰ The facilities are located in Washington State and began operating on November 27, 2005 and December 22, 2006, respectively. Both facilities are certified by the CEC as RPS-eligible facilities.¹¹ Deliveries from the facilities are expected to commence in 2011 and occur for one year. (See table above.)

¹⁰ Pursuant to the PPA, deliveries from other facilities may occur if there are extended outages to the Hopkins Ridge or Wild Horse facilities.

¹¹ CEC List of RPS-eligible facilities:
http://www.energy.ca.gov/portfolio/documents/LIST_RPS_CERT.XLS, accessed September 2, 2009

Energy Division has reviewed the proposed PPA pursuant to Commission decisions

Specifically, Energy Division evaluated the PPA for the following criteria:

- Consistency with PG&E's 2008 RPS Procurement Plan
- Consistency with RPS standard terms and conditions (STC)
- Reasonableness of the levelized all-in price
- Consistency with bilateral contracting guidelines
- Consistency with the RPS delivery rules, as set forth in the CEC's RPS Eligibility Guidebook
- Project viability assessment
- Consistency with Interim Emissions Performance Standard

The PPA is consistent with PG&E's Commission adopted 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.¹² The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission approved procurement plan. 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 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.¹³ The Puget PPA is consistent with PG&E's Commission-approved RPS Plan.

¹² Pub. Util. Code, Section §399.14

¹³ Pub. Util. Code, Section §399.14(a)(3)

The PPA fits with PG&E's identified renewable resource needs

PG&E states that the generation from the facilities will meet the resource needs identified in its 2008 RPS Plan. In its 2008 RPS Plan, PG&E's goal was to procure approximately 800 to 1,600 GWh per year. PG&E's 2008 RPS Plan also noted that dispatchable and near-term deliveries were more valuable to PG&E.

In aggregate, the facilities will annually deliver 1,000 GWhs to PG&E. The PPA considered herein meets the identified resource needs. Deliveries from the facilities will contribute to PG&E's 20 percent goal under the current flexible compliance rules.

The PPA compares favorably to PG&E's 2008 solicitation

Although the PPA was negotiated bilaterally, PG&E conducted a least-cost, best-fit (LCBF) bid evaluation of the PPA to compare it to their 2008 solicitation bids. 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. In this case, LCBF evaluation was conducted for the bilaterally negotiated PPA in order to evaluate the its value relative to PG&E's other RPS options.

PG&E determined that the PPA is reasonable relative to proposals received in response to PG&E's 2008 solicitation because the PPA's market valuation compares favorably with bids from its 2008 solicitation. In addition, the deliveries of import energy from the associated Hedging Strategy are anticipated to match PG&E's portfolio needs for additional energy.

Consistency with RPS standard terms and conditions

The proposed PPA is comprised of the Western Systems Power Pool (WSPP) Agreement and a Confirmation Letter which conforms to the Commission's decisions requiring STCs for RPS contracts.

"May Not be Modified" Terms

The PPA does not deviate from the non-modifiable standard terms and conditions.

“May be Modified” Terms

During the course of negotiations, the parties identified a need to modify some of the modifiable standard terms in order to reach agreement. The changes were based upon mutual agreement reached during negotiations.

PPA price and Hedging Strategy are reasonable and recoverable in rates

Pursuant to the PPA, PG&E will pay Puget for bundled renewable energy delivered as a firm and shaped product. In AL 3457-E, PG&E also requested that the Commission approve an associated hedging strategy. The hedging strategy is a separate transaction from the PPA, but it is proposed in conjunction with the PPA. As part of the proposed hedging strategy, PG&E will make forward purchases at a California Independent System Operator (CAISO) import point to fix the price of approximately 1,000 GWh of import energy for 2011. The result of the hedging transaction is generation of an approximately equivalent term and amount as PG&E’s PPA with Puget.¹⁴ Thus, the total expected costs of the PPA are the sum of the PPA price and associated hedging strategy.

Based on the information provided in AL 3547-E, the total expected costs of the PPA are reasonable.¹⁵ Confidential Appendix B shows the costs are reasonable because the Puget contract price compares favorably to all bids, including shortlisted bids, PG&E’s received through its 2008 RPS solicitation. (Confidential Appendix B also includes further price analysis and detailed discussions of the contractual pricing terms.)

In addition, the total expected costs of the Puget PPA is at or below the 10-year 2008 MPR for a facility beginning operation in 2011.¹⁶ While comparing the

¹⁴ The Commission strongly discourages the utilities from entering into RPS contracts that negate the hedging value of renewables. Although PG&E’s proposed Hedging Strategy is not the conventional method, the hedging plan effectively provides a hedging benefit to the transaction between Puget and PG&E that is similar to the hedging value of renewables.

¹⁵ While D.09-06-050 recently established a process for fast-tracking short-term contracts, AL 3457-E was filed before the Commission approved the decision. Thus, the contract price was reviewed using the standard RPS process.

¹⁶ Resolution E-4118: http://docs.cpuc.ca.gov/published/Final_resolution/73594.htm

Puget contract price to the 2008 MPR for a 10-year contract is imperfect because there is no 2008 MPR for a one-year contract, the MPR can be an additional reference point in determining price reasonableness for this contract.

Hedging Strategy

PG&E plans to begin executing its hedging strategy no more than 60 days from the date PG&E receives final, non-appealable CPUC-Approval of its PPA. While we will approve the hedging strategy via advice letter, this will not be precedent setting. Additionally, the Commission requests that within 30 days from PG&E's execution of its hedging strategy that PG&E submit to the Commission a compliance filing by Tier 1 advice letter that documents the fixed price PG&E obtained as a result of its hedging strategy.

PPA is consistent with RPS bilateral contracting guidelines

The Puget PPA is consistent with the bilateral contracting guidelines in D.06-10-019.

1. The PPA will not be applied to PG&E's cost limitation.¹⁷
2. Pursuant to D.06-10-019, the PPA was submitted by advice letter.¹⁸
3. The PPA is at least one month in duration.¹⁹
4. The PPA is reasonably priced.²⁰

Most recently, in D.09-06-050, the Commission determined that bilateral contracts should be reviewed according to the same processes and standards as

¹⁷ The PPA is ineligible for the cost limitation because it did not result from a competitive solicitation. (PU Code §399.15(d)(2))

¹⁸ "For now, utilities' bilateral RPS contracts, of any length, must be submitted for approval by advice letter." (D.06-10-019, p.31)

¹⁹ "All RPS-obligated LSEs are also free to enter into bilateral contracts of any length with RPS-eligible generators, as long as the contracts are at least one month in duration, to enable the CEC to verify RPS procurement claims." (D.06-10-019 p. 29)

²⁰ The contract price of bilaterals must be deemed reasonable by the Commission. (D.06-10-019, p. 31)

contracts that come through a solicitation. AL 3457-E was submitted before this decision was adopted, however. Thus, the Commission conducted its review of the contract based on previous bilateral contract decisions. Specifically, the contract was evaluated based on the four requirements listed above, as identified in D.06-10-019.

Proposed delivery structure complies with CEC's guidelines

The CEC is responsible for determining whether out-of-state RPS projects satisfy the delivery requirements for the RPS program. For each out-of-state project that the Commission reviews, the CEC provides the Commission with written documentation addressing whether the proposal satisfies the delivery requirements.

On August 11, 2009, the CEC provided the Commission with a letter declaring that the proposed Puget delivery structure satisfies the RPS delivery requirements. This letter, which also includes a brief overview of Puget's delivery structure, can be found in Appendix A.

Project viability assessment and operational status

PG&E believes the PPA is viable and Puget will be able to meet the terms and conditions in the PPA. Based on information provided by PG&E about the facilities, the Commission finds no project viability risk associated with the Puget PPA because the facilities are online and generating.

PG&E's Procurement Review Group (PRG) participated in the review of the PPA and associated hedging strategy.

The PRG for PG&E consists of: California Department of Water Resources, Union of Concerned Scientists, Division of Ratepayer Advocates, 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 the PRG of the proposed transaction on March 23, 2009. Although Energy Division is a member of the PRG, it reserved judgment on the contract and hedging strategy until the advice letter was filed. Energy Division reviewed the transaction independently of the PRG, and allowed for a full protest period before concluding its analysis. The PRG feedback, as described in the confidential information provided with the advice letter, did not provide a basis for disapproval of the PPA.

PPA is compliant with D.07-05-028

D.07-05-028 established a condition (called the “minimum quantity”) on the ability of utilities to count an eligible contract of less than 10 years duration with a facility that commenced commercial operations prior to January 1, 2005 for compliance with the RPS program.²¹ The decision says that in the calendar year that the short-term contract with an existing facility is executed, the utility must also enter into long-term contract(s) or contract(s) with new facilities equivalent to at least 0.25% of the utility’s previous year’s retail sales.

The Hopkins Ridge and Wild Horse facilities began commercial operation after January 1, 2005. Thus, the minimum quota requirement does not apply.

Consistency with Interim Emissions Performance Standard

The EPS does not apply to a contract of less than five years. The Puget PPA is expected to have a term of less than five years, thus the EPS does not apply to this contract.

DRA’s protest is denied

DRA protests AL 3457-E on the grounds that:

- 1) The final price of the contract is unknown and not transparent; and
- 2) The price of the renewable or green attribute is too high. DRA argues that since PG&E has not executed its Hedging Strategy the final price of the contract is not known thus it cannot be determined whether or not it is reasonable.

PG&E responded to DRA’s protest. In PG&E’s reply, PG&E asserts that the Puget PPA and the associated hedging strategy are reasonable when compared against the market for RPS-eligible energy. PG&E further argues that while they have not executed its Hedging Strategy, the Commission has sufficient information to make a determination on the reasonableness of the PPA and Hedging Strategy.

²¹ Contracts of less than 10 years duration are considered “short-term” contracts and facilities that commenced commercial operations prior to January 1, 2005 are considered “existing”.

Pursuant to the PPA, Puget will deliver a firm and shaped, bundled energy product in exchange for an all-in contract price paid by PG&E. The Commission has reviewed the all-in contract price and as noted above the contract price was found to be reasonable (See "PPA price and Hedging Strategy are reasonable and recoverable in rates"). Thus, DRA's protest is denied.

CARE's protest is denied

CARE protests AL 3457-E on the following grounds:

- 1) The Puget wind facilities are not eligible renewable resources as defined in Public Resource Code 25741 as required by Pub. Util. Code Section 399.12(c);
- 2) The PPA is inconsistent with the California Environmental Quality Act (CEQA) and Rule 2.4 of the Commission's Rules of Practice and Procedure since PG&E has not "analyze[d] or identif[ied] the negative environmental impacts (attributes) of wind indirectly on greenhouse gas emissions and directly on avian species;"²² and
- 3) "The Commission lacks authority to approve 'price fixing' to fix the price of import energy by PG&E with any person or other entity."

As described above and noted in PG&E's response to CARE's protest, the Puget wind facilities are certified as RPS-eligible facilities; therefore, energy from the facilities is RPS-eligible.

CARE's arguments regarding CEQA lack merit for several reasons. First, the scope of this Resolution is confined only to approval of PG&E's anticipated costs as reasonable and the Commission herein expresses no opinion about any issue other than PG&E's anticipated costs. Second, approval of PG&E's anticipated costs is not an "approval" of a "project" within the meaning of CEQA. (Public Resources Code Section 21065; CEQA Guidelines, Cal. Code Regs., tit. 14, §§ 15352(a), 15378). Therefore, CARE's protest regarding the PPA being inconsistent with CEQA and Rule 2.4 of the Commission's Rules of Practice and Procedure is denied.

²² Protest of CARE to Contract for Procurement of Renewable Energy Resources between PG&E and Puget Sound Energy, Inc., filed May 26, 2009

PG&E describes their Hedging Strategy as a way to manage their RPS transaction with Puget with the purpose of obtaining imported energy deliveries at a fixed price. Approval of PG&E's Hedging Strategy is not approval of "price fixing" between PG&E and another person or entity. That is, approval of PG&E's Hedging Strategy is not approval for any agreement that would restrict price competition. Therefore, the Commission denies CARE's protest regarding "price fixing".

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.

DRA filed timely comments on October 5, 2009 and PG&E filed reply comments on October 12, 2009.

DRA comments that the compliance filing required of PG&E should be made by advice letter. We carefully considered DRA's recommendation and modified the draft Resolution accordingly.

PG&E recommends in its reply comments that DRA's comments should be rejected and the draft Resolution should be modified. In its comments, PG&E argues for rejecting DRA's comments because the draft Resolution already addresses and resolves the reasonableness of the contract and associated hedging strategy. PG&E also recommends that modifications be made to the draft Resolution to: 1) waive the protest period for the compliance filing and 2) limit Commission review of the compliance filing to confirming that PG&E executed its hedging strategy as proposed in AL 3457-E. PG&E argues that these modifications will eliminate any unnecessary comments and provide regulatory certainty. The Commission's General Orders define the advice letter process, including the basis and process for filing protests. We do not believe that the compliance filing required of PG&E is so unique that it requires specific

guidance beyond what is provided in the Commission's General Orders. Therefore, PG&E's recommendation for modifications is unwarranted.

FINDINGS

1. Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 3457-E on May 6, 2009 requesting Commission review and approval of a renewable energy resource power purchase agreement (PPA) with Puget Sound Energy, Inc.
2. The RPS Program requires each utility, including PG&E, to increase the amount of renewable energy in its portfolio to 20 percent by 2010, increasing by a minimum of one percent per year.
3. On November 17, 2008, Governor Schwarzenegger issued Executive Order S-14-08, which sets a target for energy retailers to deliver 33 percent of electrical energy from renewable resources by 2020.
4. The Commission requires each utility to establish a Procurement Review Group to review the utilities' procurement process and selected contracts.
5. The California Energy Commission is responsible for certifying the eligibility of renewable energy facilities for the RPS program, as well as verifying and tracking the generation and delivery of renewable energy claimed for compliance with the RPS program.
6. The Division of Ratepayer Advocates (DRA) and Californians for Renewable Energy, Inc. (CARE) filed protests to AL 3457-E on May 26, 2009.
7. PG&E filed responses to DRA's and CARE's protests on June 2, 2009.
8. The PPA is consistent with PG&E's approved 2008 RPS Procurement Plan, which was approved by D.08-02-008.
9. The PPA fits with PG&E's identified renewable resource needs.
10. D.04-06-014 and D.07-11-025 set forth standard terms and conditions to be incorporated into each RPS PPA. Those terms were compiled and published by D.08-04-009, as modified by D.08-08-028.
11. The PPA includes the Commission adopted RPS standard terms and conditions deemed "non-modifiable".
12. PG&E is to submit within 30 days from when its hedging transaction is executed a compliance filing by Tier 1 advice letter to the Commission that documents the fixed price PG&E obtained as a result of its hedging strategy.

13. The CEC provided the Commission with written confirmation that the proposed delivery structure for the Puget PPA complies with the RPS Eligibility Guidebook.
14. The PPA is exempt from the EPS because the term of the PPA is less than five years.
15. DRA's and CARE's protests are denied.
16. DRA filed timely comments on October 5, 2009 and PG&E filed timely reply comments on October 12, 2009
17. Any stranded costs that may arise from the PPA are subject to the provisions of D.08-09-012 that authorize recovery of stranded renewables procurement costs over the life of the contract.
18. 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.), D.03-06-071 and D.06-10-050, or other applicable law.
19. The payments made under the PPA between PG&E and Puget Sound Energy, Inc. are reasonable and in the public interest; accordingly, the payments to be made by PG&E are fully recoverable in rates over the life of the projects, subject to Commission review of PG&E's administration of the PPA.
20. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should not be disclosed. Accordingly, the confidential appendices, marked "[REDACTED]" in the redacted copy, should not be made public upon Commission approval of this resolution.
21. The PPA and Hedging Strategy are reasonable and should be approved.
22. Approval of this advice letter does not constitute a precedent for future renewable procurement contract price structures.
23. Our approval of the Hedging Strategy by advice letter is not precedent setting.
24. AL 3457-E should be approved effective today.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's Advice Letter 3457-E, requesting Commission review and approval of a power purchase agreement with Puget Sound Energy, Inc., is approved without modification.
2. Pacific Gas and Electric Company is to submit within 30 days from when its hedging transaction is executed a compliance filing by Tier 1 advice letter to the Commission that documents the fixed price PG&E obtained as a result of its hedging strategy.
3. The costs of the contract between Pacific Gas & Electric Company and Puget Sound Energy, Inc. are reasonable and in the public interest; accordingly, the payments to be made by Pacific Gas & Electric pursuant to the power purchase agreement are fully recoverable in rates over the life of the power purchase agreement, subject to Commission review of Pacific Gas & Electric's administration of the power purchase agreement.

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 October 15, 2009; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON
PAUL CLANON
Executive Director

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

Appendix A

CEC Letter Regarding Eligibility of Puget's Proposed Delivery Structure

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



August 11, 2009

The California Energy Commission, through its staff, has reviewed the proposed contracting structure between Puget Sound Energy and Pacific Gas & Electric Company, as described in the excerpt from pages 3-4 of Advice Letter #3457-E in "Attachment A-Puget Sound Energy/Pacific Gas & Electric Company" and shown in the schematic design titled, "Attachment B-Puget Sound Energy/Pacific Gas & Electric Company Delivery Structure."

The Energy Commission staff has determined that the proposed contracting structure would meet the RPS delivery requirements according to the *Renewables Portfolio Standard Eligibility Guidebook* (CEC-300-2007-006-ED3-CMF, January 2008), contingent on the following:

- All eligibility requirements for the Renewables Portfolio Standard (RPS) are met;
- All parties involved in renewable energy credit transactions participate in the Energy Commission's Renewables Portfolio Standard Tracking and Verification System; and
- Delivery of the energy import in Step 3 occurs within the same calendar year as when the Seller generates energy A and "green attributes" in Step 1.

A handwritten signature in blue ink, appearing to read "Tony Gonçalves".

Tony Gonçalves
Manager, Renewable Energy Office
California Energy Commission

Attachments

ATTACHMENT A

Puget Sound Energy/Pacific Gas & Electric Company

PG&E will receive 1,000 GWh of bundled renewable energy delivered as a firm and shaped product at Mid-Columbia ("Mid-C"). The Agreement includes a firming and shaping service whereby intermittent energy generated by the Project is shaped and converted to firm energy delivered to PG&E at Mid-C. PG&E will match the Green Attributes associated with the energy generated by the Project with firm import energy procured under a separate transaction or transactions and delivered into California in the same calendar year. Deliveries of import energy will be documented with a North American Electric Reliability Corporation ("NERC") E-tag that relates such deliveries to generated energy from the Project through a note in the miscellaneous field. This structure complies with the CEC's RPS eligibility requirements for firm and shaped deliveries of out-of-state power where deliveries occur at a different time than generation.¹

As part of managing this RPS transaction, PG&E will execute its Hedging Strategy. The Hedging Strategy has two components. The first component is discussed in Confidential Appendix D. Under the second component of the Hedging Strategy, PG&E will make forward purchases at a CAISO import point, most likely the California-Oregon border ("COB"), to fix the price of approximately 1,000 GWh of import energy for 2011. Within 60 days of CPUC Approval of the Agreement and the Hedging Strategy, PG&E will implement the second component of the Hedging Strategy through a competitive process, with the selected products balancing maximum product liquidity and overall energy portfolio needs.

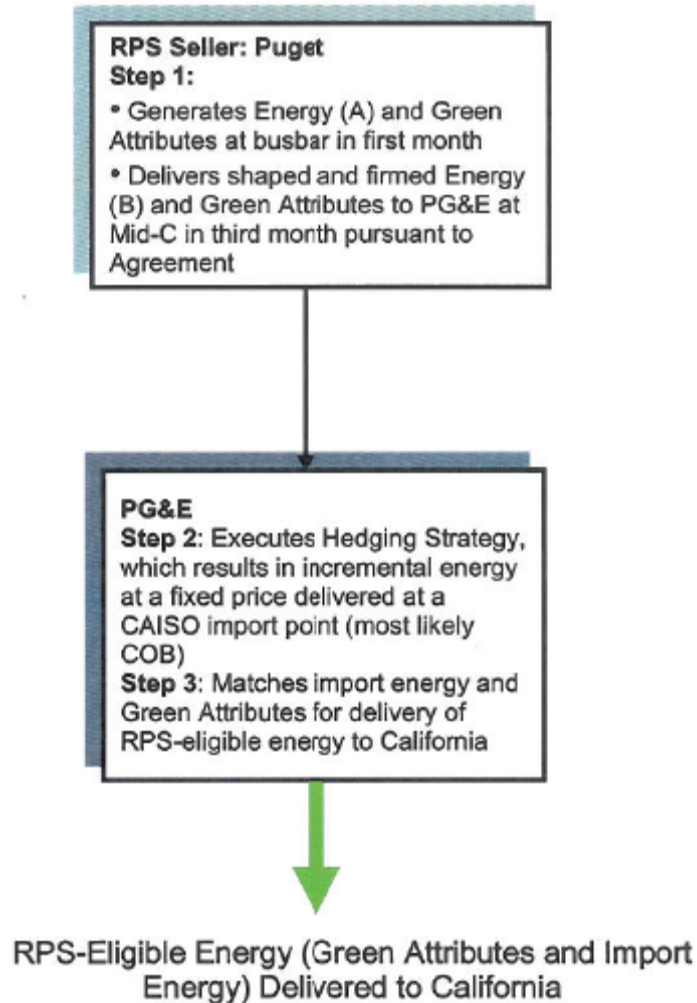
The Hedging Strategy is designed in part to fix the price of import energy at a CAISO import point and provide incremental import energy into California.

¹ See California Energy Commission Renewables Portfolio Standard Eligibility Guidebook, Third Edition, CEC-300-2007-006-ED3-CMF, adopted December 19, 2007, at 23-24.

ATTACHMENT B

Puget Sound Energy/Pacific Gas & Electric Company

Diagram of Delivery Structure for Puget Sound Energy, Inc. RPS Transaction



Confidential Appendix B

Contract Summary

[REDACTED]