

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4433
November 10, 2011

REDACTED

R E S O L U T I O N

Resolution E-4433. Pacific Gas and Electric Company

PROPOSED OUTCOME: This Resolution approves cost recovery for the long-term renewable power purchase agreement between Pacific Gas and Electric Company and Mojave Solar, LLC, an affiliate of Abengoa Solar, Inc. The power purchase agreement is approved.

ESTIMATED COST: Costs of the power purchase agreement are confidential at this time.

By Advice Letter 3876-E filed on July 19, 2011 and Supplemental Advice Letter 3876-E-A filed on August 29, 2011

SUMMARY

Pacific Gas and Electric Company's renewable energy power purchase agreement with Mojave Solar, LLC is approved.

Pacific Gas and Electric Company (PG&E) filed Advice Letter 3876-E on July 19, 2011, requesting the California Public Utilities Commission (Commission) approval of a 25-year renewable energy power purchase agreement (PPA) between PG&E and Mojave Solar, LLC. Mojave Solar, LLC, an affiliate of Abengoa Solar, Inc., is developing a 250 megawatt concentrating solar power parabolic trough renewable energy generation facility in San Bernardino County, California. PG&E states that the project is expected to produce approximately 617 gigawatt-hours of generation annually beginning in July, 2014.

The Mojave Solar, LLC project (Mojave Solar) was selected through PG&E's 2007 Renewables Portfolio Standard (RPS) solicitation. PG&E initially submitted a

PPA with Mojave Solar, LLC on October 27, 2009 (in Advice Letter 3547-E). While the PPA was pending Commission approval, Mojave Solar, LLC learned that the transmission network upgrades necessary for the project to provide resource adequacy to PG&E would not be completed until several years after the project was scheduled to achieve commercial operation. Because the PPA required that the facility provide resource adequacy PG&E and Mojave Solar renegotiated the PPA. According to PG&E, its objective during the renegotiation was to accommodate the delay with transmission network upgrades, facilitate the project meeting the requirements for a Department of Energy Federal Loan Guarantee and to maintain the value of the original PPA.

Mojave Solar is the furthest developed new utility-scale solar thermal project that the Commission has encountered in our capacity of reviewing the utilities' RPS power purchase agreements. Mojave Solar has obtained critical project development components (e.g., permit to construct, transmission interconnection agreement and financing commitments), leaving only a Commission approved power purchase agreement as the final milestone in order initiate project construction. Also, solar thermal facilities offer better operational characteristics than other intermittent renewable facilities.

For all the strengths underlying the Mojave Solar project, it has one significant weakness – the cost. Information provided by PG&E shows that this contract is significantly more costly than other procurement opportunities available to PG&E, including projects from the 2009 and 2011 RPS solicitation. The Mojave Solar contract also exceeds the average price of RPS contract recently approved by this Commission. Lastly, the Mojave Solar contract ranks low on a net market value basis, a comparison of an RPS contract's total costs and benefits, relative to other contracts. The low net market value of the contract is further impacted by the significant transmission network upgrade costs required to make the project fully deliverable, which is necessary for the project to provide PG&E with resource adequacy credit pursuant to the PPA. It is important to note that these transmission network upgrades are not necessary for the project to interconnect and deliver its generation to PG&E.

In considering the strengths and weaknesses of PG&E's PPA with Mojave Solar, the Commission finds that the value of adding the Mojave Solar project to California's fleet of renewable energy generation capacity warrants approving the relatively high priced contract. The Mojave Solar project is highly viable and the solar thermal facility will enhance the resource diversity of PG&E's portfolio.

While PG&E has not established a definitive need for a project that is expected to achieve commercial operation in 2014, the RPS program establishes long-term goals. It is difficult to know how much generation will be delivered from projects under contract with PG&E today but not yet constructed. For these reasons, the Commission approves PG&E's RPS contract with Mojave Solar.

The following table provides a summary of the Mojave Solar, LLC power purchase agreement and facility:

Generating Facility	Mojave Solar
Technology	Solar thermal (wet cooled, trough, no storage)
Contract Length	25 years
Facility Capacity	250 megawatts
Annual Deliveries	617 gigawatt-hours
Online Date	July, 2014
Project Location	San Bernardino County, California

BACKGROUND

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, SB 1036 and SB 2 (1x).¹ The RPS program is codified in Public Utilities Code Sections 399.11-399.20.² Under SB 2 (1x),³ the RPS program administered by the Commission requires each retail seller to increase its total procurement of eligible renewable energy resources so that 33 percent of retail sales are served by eligible renewable energy resources no later than December 31, 2020.⁴

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); SB 2 (1x) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

² All further references to sections refer to Public Utilities Code unless otherwise specified.

³ SB 2 (1x) becomes effective on December 10, 2011; 90 days after the close of the Legislatures 2011 Extraordinary Session.

⁴ See SB 2 (1x), § 399.15(b)(2)(B).

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 3876-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 AL 3876-E was timely protested on August 8, 2011 by The Division of Ratepayer Advocates (DRA). PG&E responded to DRA's protest on August 15, 2011.

DISCUSSION

Pacific Gas & Electric Company requests approval of a renewable energy power purchase agreement with Mojave Solar, LLC.

On July 19, 2011, Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 3876-E requesting California Public Utilities Commission (Commission) approval of a 25 year power purchase agreement (PPA) with Mojave Solar, LLC, an affiliate of Abengoa Solar, Inc.⁵ The PPA concerns a new 250 megawatt (MW) concentrating solar power parabolic trough renewable energy generation facility in San Bernardino County, California. The project is scheduled to achieve commercial operation in July 2014 and PG&E expects to procure approximately 617 gigawatt-hours (GWh) of generation annually over the contract term.

PG&E shortlisted the Mojave Solar, LLC project (Mojave Solar) through PG&E's 2007 Renewables Portfolio Standard (RPS) solicitation as one of a collection of projects for which they would pursue contract negotiations. PG&E initially submitted a PPA with Mojave Solar on October 27, 2009 (AL 3547-E).⁶ During

⁵ PG&E filed substitute sheets to AL 3876-E on July 20, 2011 and September 9, 2011 to correct errors in the confidential appendices.

⁶ PG&E withdrew AL 3547-E on July 19, 2011, the same day that AL 3876-E was filed.

the time that the original PPA was pending Commission approval, Mojave Solar learned the transmission network upgrades needed for the project to be deemed “fully deliverable” by the California Independent System Operator (CAISO) would be delayed until after the project’s commercial online date. Because the PPA required the project to be fully deliverable so that Mojave Solar would provide resource adequacy (RA) credit to PG&E, the parties agreed that contract amendments were necessary to address the period of time when the project would be interconnected and delivering energy to PG&E, but before the transmission network upgrades for deliverability would be complete.⁷

In AL 3876-E PG&E explains:

Under the Original PPA, Mojave Solar was obligated to ensure that all of the required Southern California Edison Company (“SCE”) transmission network upgrades (“Transmission Network Upgrades”) were complete prior to commercial operation of the Project, which would have ensured that PG&E received full Resource Adequacy (“RA”) credit from the Project. In 2010, Mojave Solar informed PG&E that the Delivery Network Upgrades, as defined in the Large Generator Interconnection Agreement (“LGIA”) with SCE, would not be completed until February, 2018. As a result, PG&E entered into negotiations with Mojave Solar to address this issue.

The PPA filed with the AL 3876-E includes terms and conditions that effect payments between PG&E and Mojave Solar for deliveries that occur prior to the

⁷ Specific term and concept definitions are provided here to benefit the reader.

Resource Adequacy: The purpose of the Resource Adequacy program is to provide sufficient resources to the CAISO to ensure the safe and reliable operation of the transmission grid in real time. The program is also designed to provide appropriate incentives for the siting and construction of new resources needed for reliability in the future. Commission-jurisdictional load serving entities are required to have sufficient capacity under contract to meet expected system needs plus a 15 percent reserve margin.

Deliverability: Deliverability is the ability of the output of a generating resource to be delivered to aggregate load. Deliverability studies model peak demand periods and assume that all generating resources are dispatched to meet demand. A generating resource must be deemed “fully deliverable” by the CAISO in order for that resource to contribute to a load serving entity’s Resource Adequacy requirements.

completion of the transmission network upgrades. PG&E states that the company's objective during the re-negotiations with Mojave Solar was to accommodate a delay in the transmission network upgrades, facilitate the project meeting the requirements for the Department of Energy Federal Loan Guarantee and to maintain the value of the original PPA.

Pursuant to the PPA, Mojave Solar is required to provide PG&E with RA, and therefore, Mojave Solar needs the transmission network upgrades (deliverability upgrades) constructed. However, in order to qualify for the Department of Energy Federal Loan Guarantee and to receive the Federal investment tax credit Mojave Solar must start construction prior to knowing whether the deliverability upgrades are approved by the Commission.⁸ In the event that the deliverability upgrades are not approved, Mojave Solar is required to pay PG&E the cost of resource adequacy procured by PG&E that otherwise would have been provided by the facility if it were fully deliverable.

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

1. Approves the PPA in its entirety, including payments to be made by PG&E pursuant to the PPA, subject to the Commission's review of PG&E's administration of the PPA.
2. Finds that any procurement pursuant to the PPA is procurement from an eligible renewable energy resource for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.) ("RPS") Decision ("D.") 03-06-071 and D.06-10-050, or other applicable law.
3. Finds that all procurement and administrative costs, as provided by Public Utilities Code section 399.14(g), associated with the PPA shall be recovered in rates.
4. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:

⁸ The timing for when SCE will file its Certificate of Public Convenience and Necessity is unclear.

- a. The PPA is consistent with PG&E's 2007 and 2011 RPS procurement plans.
 - 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 ("ERRA").
 - 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:
- c. The PPA is not covered procurement subject to the EPS because the generating facility has a forecast capacity factor of less than 60 percent and, therefore, is not baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules.

Energy Division Evaluated the Mojave Solar, LLC PPA on the following criteria:

- Consistency with PG&E's 2007 and 2011 RPS procurement plan
- Assessment of PG&E's RPS Need
- Consistency with PG&E's Least-Cost, Best-Fit requirements
- Impact of deliverability upgrades on project viability and contract value
- Consistency with RPS standard terms and conditions
- Independent Evaluator review
- Cost reasonableness
- Cost containment
- Project viability assessment and development status
- Compliance with the minimum quantity condition

- Compliance with the Interim Greenhouse Gas Emissions Performance Standard
- Procurement Review Group participation
- DRA's protest

Consistency with PG&E's 2007 and 2011 RPS procurement plan

Pursuant to statute, PG&E's RPS procurement plans include 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.⁹ California's RPS statute also requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility¹⁰ to ensure the utility conducted its solicitation according to its Commission-approved procurement plan.¹¹

Because so much time has lapsed from when the Mojave Solar project bid into PG&E's 2007 solicitation and when the contract was finally submitted for Commission approval, staff also evaluated the contract for consistency with PG&E's most recently adopted RPS procurement plan.

The Mojave Solar contract resulted from PG&E's 2007 RPS solicitation. The Commission finds that PG&E's decision to shortlist the Mojave Solar project was consistent with PG&E's approved 2007 RPS procurement plan. In PG&E's 2011 RPS procurement plan, PG&E stated its intent to execute renewable energy contracts with viable counterparties equivalent to 1 to 2 percent of retail sales annually.¹² This goal is intended to facilitate compliance with the existing 20 percent compliance requirement and build a portfolio of renewable resources to comply with the longer-term 33 percent goal. The Commission finds that PG&E's decision to execute the Mojave Solar contract is reasonably consistent with PG&E's objective to secure contracts with viable sellers.

⁹ Pub. Util. Code, Section §399.14(a)(3).

¹⁰ Pub. Util. Code, Section §399.14.

¹¹ PG&E's 2007 RPS Procurement Plan was approved by D.07-02-011.

¹² PG&E's 2011 RPS Procurement Plan was approved by D.11-04-030.

The Mojave Solar PPA is reasonably consistent with PG&E's 2007 and 2011 RPS procurement plans.

Assessment of PG&E's need for the Mojave Solar project

Future RPS compliance obligations are generally¹³ defined in SB 2 (1x) as follows: PG&E must procure RPS-eligible resources equivalent to an average of 20 percent of retail sales for 2011-2013; 25 percent of retail sales by the end of 2016; and 33 percent of retail sales by 2020 and for each year thereafter. With this clarity over the near and longer-term RPS targets, our ability to assess PG&E's RPS needs has improved.

PG&E asserts that approval of the Mojave Solar project is necessary for PG&E to meet its RPS need in the second and third compliance periods (i.e., 2014-2016 and 2017-2020). PG&E provided an assessment of its RPS need based on a scenario analysis of all the contracts in its portfolio including operational projects whose contracts will expire prior to 2020 and projects under contract that have not achieved commercial operation. In its analysis, PG&E's assumes that the percentage of signed contracts that will reach commercial operation in the future will be higher than it has been historically, and PG&E states the number of expiring contracts that are renewed might well be fewer than what has been assumed for planning purposes.

Our analysis finds that using PG&E's assumptions, PG&E is potentially on track to meet the second compliance period target without generation from Mojave Solar. Although there will be sufficient procurement opportunities in the next few years for PG&E to secure resources for the third compliance period, PG&E's ability to procure those resources at competitive prices depends on renewal of federal investment tax credits that expire at the end of 2016.

PG&E has not made a clear demonstration of need for the Mojave Solar PPA.

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

In D.04-07-029, the Commission directs the utilities to use certain criteria in their LCBF selection of renewable resources.¹⁴ The decision offers guidance regarding

¹³ The Commission opened Rulemaking (R.) 11-05-005 to implement the 33% RPS law.

¹⁴ See §399.14(a)(2)(B)

the process by which the utility ranks bids in order to select or “shortlist” the bids with which it will commence negotiations. As described in recent RPS procurement plans, PG&E’s approved process for identifying LCBF renewable resources focuses on four primary areas:

1. Determination of market value of bid,
2. Calculation of transmission adders and integration costs,
3. Evaluation of portfolio fit, and
4. Consideration of non-price factors.

The first two components noted above are used to determine a contract’s net market value (NMV). Because PG&E’s calculation of Mojave Solar’s NMV is critical to our evaluation of the PPA, we include a detailed description of PG&E’s methodology. The NMV calculation quantifies a project’s benefits and costs. Specifically, it takes into account the contract price, indirect costs, such as costs for transmission network upgrades, and project attributes such as resource adequacy value. Because transmission network upgrade costs are ultimately paid by California ratepayers, the NMV calculation includes these costs, thus allowing the utility and the Commission to evaluate the total costs of a given contract relative to other offers.

Qualitative factors, such as a project’s likelihood of success (i.e., viability) are also part of the RPS program’s least-cost, best-fit procurement process, but they are not factored into the net market value calculation discussed above. The Commission considers a project’s NMV along with the qualitative attributes when determining reasonableness.

The following are explanations for each variable (in \$/MWh units) included in PG&E’s net market value calculation:¹⁵

¹⁵ PG&E measures net market value by treating the levelized time-of-delivery adjusted contract price as a negative value. A project with a higher net market value will be considered a better proposal, all else equal, than a project with a lower net market value (i.e., a project with a net market value of negative 10 will be considered better than a proposal with a net market value of negative 100).

1. Levelized time-of-delivery (TOD) adjusted Energy Cost. The all-in levelized TOD-adjusted contract price, on a negative basis.
2. Levelized Energy Value. PG&E's estimate of the forward market price for the project's delivered energy.
3. Levelized Capacity Value. PG&E's estimate of the resource adequacy value for the project.
4. Transmission Adder. The indirect cost associated with necessary transmission network upgrades and potential transmission congestion.

The NMV calculation, with all units in \$/MWh, can be represented as:

$$\text{NMV} = (\text{contract price} - \text{energy value} - \text{capacity value} + \text{transmission network cost}) * (-1)$$

In AL 3876-E, PG&E explains that it examined the reasonableness of the Mojave Solar PPA using the same LCBF methodology used to evaluate bids received in the 2009 RPS solicitation and with other bilateral contracts offered to PG&E during the same time period that the PPA was executed. Additionally, PG&E states that the LCBF evaluation included indirect costs such as transmission and integration costs. When discussing the LCBF evaluation of the PPA, PG&E concludes that the project is highly viable and that it provides diversity to PG&E's RPS portfolio.

The unique viability characteristics of the project, which are not quantitatively accounted for in the NMV calculation, justify an otherwise low net market value.

Impact of deliverability upgrades on project viability and contract value

Because PG&E did not address the risks associated with the permitting and construction of the deliverability upgrades that Mojave Solar needs to be fully deliverable according to its LGIA,¹⁶ Commission staff sought out public information about the transmission project.

Additional information about the Coolwater-Lugo project and the risks it might face in the permitting process is provided in SCE's December 2010 petition to

¹⁶ Refer to FERC Docket ER11-2204.

FERC for incentive rate treatment for the South of Kramer project (FERC docket EL11-10).^{17,18} In justifying their request for incentive rate treatment, SCE describes the South of Kramer project as “not routine” and one that “will require complex environmental reviews under both state and federal law.”¹⁹ It is clear from reading SCE’s petition that the transmission project will face challenges, which in turn may have a direct impact on the economic viability of the Mojave Solar project.

Also, there is a temporal disconnect between Mojave Solar’s development timeline and the procedural and construction timeline (if approved) for the Coolwater-Lugo project. Mojave Solar’s commercial online date is June 2014 and completion of the Coolwater-Lugo project is estimated at 2018.²⁰ The Coolwater-Lugo project was approved by the CAISO in its 2010-2011 Transmission Plan.²¹ The Coolwater-Lugo project was approved by the CAISO on the basis of an interconnection agreement(s), and was thus not subject to a cost effectiveness analysis. SCE has not filed a Certificate of Public Convenience and Necessity

¹⁷ A copy of SCE’s December 2010 petition to FERC for incentive rate treatment for the South of Kramer project, is available here:

[http://www3.sce.com/sscc/law/dis/dbattach3e.nsf/0/8825710D00783249882577F400830EFB/\\$FILE/101209+EL11-10+SCE+Petition+for+Declaratory+VOL+1.pdf](http://www3.sce.com/sscc/law/dis/dbattach3e.nsf/0/8825710D00783249882577F400830EFB/$FILE/101209+EL11-10+SCE+Petition+for+Declaratory+VOL+1.pdf)

¹⁸ In the petition, SCE describes the South of Kramer project as composed of two parts: the Jasper substation, and the Coolwater-Lugo line. The Coolwater-Lugo line, which is the part of the project needed by Mojave Solar to be fully deliverable, has two sections: 47 miles of new 220 kilo-volt (kV) between the Coolwater substation and the new Jasper substation, and 16 miles of new 500kV, initially energized at 220kv, between the new Jasper substation and the existing Lugo substation. The Coolwater-Jasper section of the line is primarily through a new right-of-way, while much of the Jasper-Lugo section follows the existing Pisgah-Lugo right-of-way.

¹⁹ SCE’s December 2010 petition to FERC for incentive rate treatment for the South of Kramer project, at 30.

²⁰ According to SCE’s December 2010 petition to FERC for incentive rate treatment for the South of Kramer project.

²¹ The CAISO’s 2010-2011 Transmission Plan is available here; refer to Table E1 and methodology description on pages 229-232).

<http://www.caiso.com/Documents/Board-approvedISO2010-2011TransmissionPlan.pdf>

(CPCN) application with the Commission to request approval to construct the transmission line.²² Therefore, timing of when the Commission will decide on the Coolwater-Lugo project is unknown, but will certainly occur after the Mojave Solar project is under development. If SCE submits a CPCN application for the Coolwater-Lugo transmission project, the Commission will have to weigh many factors, including cost effectiveness and the environmental review required under the CEQA, when determining whether to approve the line.

Nothing in this resolution is meant to imply that the Commission has made a determination with regards to the merits of the Coolwater-Lugo project or SCE's larger South of Kramer transmission project.

Consistency with RPS Standard Terms and Conditions

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, four of which are considered "non-modifiable." The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028. More recently in D.10-03-021, as modified by D.11-01-025, the Commission further refined these STCs.

The Mojave Solar PPA includes the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.

Independent Evaluator Review

PG&E retained independent evaluator (IE) Wayne Oliver from Merrimack Energy Group, Inc., to oversee PG&E's negotiations with Mojave Solar for the original and amended PPA and to evaluate the overall merits for Commission approval of the PPA. AL 3876-E included a public and confidential independent evaluator's report. On August 29, 2011, PG&E submitted supplemental AL 3876-E to provide an updated version of the independent evaluator reports wherein the IE expanded his analysis to include a comparison to offers that PG&E

²² The Commission's review of transmission line applications (i.e., the CPCN) takes place under two concurrent and parallel processes: (1) environmental review pursuant to the California Environmental Quality Act (CEQA); and (2) review of project need and costs pursuant to Public Utilities Code sections 1001 et seq. and General Order (G.O.) 131-D.

received during the 2009 RPS solicitation. The IE also adjusted his overall assessment about the PPA.

The IE concludes that PG&E's decision to shortlist the project in the 2007 RPS solicitation was reasonable and consistent with the requirements and evaluation criteria set forth in PG&E's solicitation protocols, which were approved by the Commission.

The IE report describes the Mojave Solar as a high cost, highly viable project. The IE offers the following assessment of the Mojave Solar project. Positively, the IE remarks on the project sponsor's (Abengoa Solar) experience and the developments milestones achieved by the Mojave Solar project. Negatively, the IE states that the Mojave Solar project is one of the highest priced contracts relative to projects included on PG&E's shortlists from the 2007, 2008 and 2009 RPS solicitations. The IE also states that the net market value of the contract does not compare favorably to other projects on the shortlists, whether or not transmission cost adders are included. In conclusion, the IE expresses concerns regarding the value of the Mojave Solar contract based on the contract price and net market value.

Consistent with D.06-05-039, an independent evaluator oversaw PG&E's negotiations with Mojave Solar.

Cost Reasonableness

The Commission's reasonableness review for RPS PPA prices includes a comparison of the contract price and net market value to market data. Specifically, contracts are compared to shortlisted projects from the applicable solicitation, bilateral offers at the time the contract was executed, contracts recently approved, contracts pending Commission approval, recently executed contracts, recent bilateral offers and recent solicitation data.

PG&E asserts that the Mojave Solar PPA is reasonable when considering the project's high viability and the added diversity that Commission approval of the PPA will provide to PG&E's RPS portfolio. PG&E compared the project with offers received in the 2009 RPS solicitation and with bilateral offers currently available to PG&E.

Based on the information provided by PG&E in its advice letter, the price and net market value of the Mojave Solar PPA is not competitive with other projects. (Refer to Confidential Appendix A for a comparison of the Mojave Solar project's price, net market value and viability compared to other projects.) Mojave Solar also stands out from other projects for its high viability, a factor that the Commission considers in its cost reasonableness assessment.²³ It is also worth noting that the RPS program covers an array of different technologies that can have significantly different costs associated with their projects, and different technologies provide different value to a utility's portfolio. For example, the operating characteristics of solar thermal may be superior to other intermittent resources due to the properties of steam generation.

On balance, the Commission finds that the benefits of approving the Mojave Solar PPA justify the costs. Accordingly, the Commission approves the Mojave Solar PPA. Payments made by PG&E under the Mojave Solar 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 Containmentment

Pursuant to statute, the Commission calculates a market price referent (MPR) to assess whether a proposed PPA has above-market costs.²⁴ The MPR is used by the Commission to assess the above-market costs of RPS contracts. There is a statutory limit on above-MPR costs, which serves as a cost containment mechanism for the RPS program.²⁵ Contracts that meet certain criteria are eligible for above-MPR funds (AMFs).²⁶

²³ In 2009, the Commission instituted a standardized renewable project development evaluation tool to ensure that the utilities were sufficiently considering project viability when evaluating RPS contracts.

²⁴ See Pub. Util. Code § 399.15(c).

²⁵ See Pub. Util. Code §399.15.

²⁶ Under Resolution E-4199, a PPA between a utility and a developer must meet the following requirements for the utility to achieve AMFs eligibility: (1) the PPA must have Commission approval and be selected through a competitive solicitation, (2) it must cover a duration of at least 10 years; (3) it must develop a new or repowered facility commencing operations on or after January 1, 2005; (4) it must not be a purchase

Footnote continued on next page

PG&E has exhausted its AMFs provided by statute;²⁷ thus, PG&E is not required to procure RPS-eligible generation at above-MPR costs but may voluntarily choose to do so.²⁸

Based on a 2014 commercial online date for the Mojave Solar PPA, the 25-year PPA is above the 2009 MPR. Since PG&E has exhausted its AMFs, it is voluntarily entering into the PPA at a price that is above the applicable market price referent as permitted by Public Utilities Code § 399.15(d).

Project Viability Assessment and Development Status

PG&E asserts that the Mojave Solar project is viable and will be developed according to the terms and conditions in the PPA. PG&E evaluated the viability of the project using the Commission-approved project viability calculator, which uses standardized criteria to quantify a project's strengths and weaknesses in key areas of renewable project development. The confidential work papers for AL 3876-E include a comparison of projects' viability score relative to all bids PG&E received in its 2009 RPS Solicitation and all shortlisted projects. Refer to Confidential Appendix A. Based on this analysis, the viability of the Mojave Solar project is high compared to other comparable projects offered to PG&E.

The following information about the project's developer and development status was provided by PG&E in AL 3876-E.

Company/Development Team

Mojave Solar's affiliate, Abengoa Solar, is an experienced developer of renewable projects. PG&E asserts that Abengoa Solar has 343 MW of large-scale solar projects in operation and 780 MW of additional projects under construction.

of renewable energy credits; and (5) it must not include any indirect expenses as set forth in the statute.

²⁷ On May 28, 2009, the Director of the Energy Division notified PG&E that it had exhausted its AMFs account.

²⁸ See Pub. Util. Code § 399.15(d).

Technology Type and Level of Maturity

Mojave Solar will utilize commercialized concentrating solar thermal trough technology with wet cooling.

Quality of Renewable Resource

The Mojave Solar facility is being developed in the Mojave Desert where the solar resource is excellent and well known. PG&E explains that several solar thermal facilities are operating in the region. The estimated water usage for the project is 2,160 acre-feet per year and ample rights are owned to satisfy the project's need.

Transmission

According to PG&E, the project will interconnect into the CAISO-controlled grid at the Water Valley (or Lockhart) substation. SCE is the Participating Transmission Owner and will construct network reliability upgrades consisting of a Special Protection System (SPS). The SPS and Interconnection facilities, distribution upgrades, and network reliability upgrades are scheduled for completion by February 1, 2013. PG&E states that Network upgrades for deliverability (Coolwater-Lugo transmission project) are to be completed within seven years of receipt of Abandoned Plant Approval and Mojave Solar's authorization to proceed. The estimated completion date for these upgrades is February 1, 2018.

Site Control

Abengoa Solar has purchased the Mojave Solar site, which is comprised of approximately 1,765 acres.

Financing

The project will be funded through a combination of long-term debt, tax equity, and sponsor equity. The Mojave Solar project has received a \$1.2 billion loan guarantee from the Department of Energy. Also, Mojave Solar seeks to utilize the US Treasury Grant in lieu of the 30% investment tax credit. The Treasury Grant requires that project construction begin prior to December 31, 2011 and the project must be placed in service by December 31, 2016.

Permitting Status

PG&E's advice letter²⁹ shows that the Mojave Solar facility has obtained key permits necessary to construct and operate the facility, including an approved Application for Certification from the California Energy Commission.³⁰

Contribution to Minimum Quantity Requirement for Long-Term/New Facility Contracts

D.07-05-028 established a "minimum quantity" condition on the ability of utilities to count a contract of less than 10 years duration with an existing facility for compliance with the RPS program.³¹ In the calendar year that a short-term contract with an existing facility is executed, the utility must also enter into long-term contracts or contracts with new facilities equivalent to at least 0.25% of the utility's previous year's retail sales.

As a new facility, delivering pursuant a contract greater than 10 years in length, the Mojave Solar PPA will contribute to PG&E's minimum quantity requirement established in D.07-05-028.

Compliance with the Interim Greenhouse Gas Emissions Performance Standard

California Pub. Utils. Code §§ 8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) baseload power contracts procured on behalf of California ratepayers.³²

²⁹ Refer to AL 3876-E, pages 14-16.

³⁰ Information about Mojave Solar's Application for Certification is available here: <http://www.energy.ca.gov/sitingcases/abengoa/index.html>

³¹ For purposes of D.07-05-028, 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."

³² "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).

D.07-01-039 adopted an interim Emissions Performance Standard (EPS) that establishes an emission rate for obligated facilities at levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. Generating facilities using certain renewable resources are deemed compliant with the EPS.³³

The Mojave Solar PPA meets the conditions for EPS compliance established in D.07-01-039 because the Mojave Solar facility will utilize one of the pre-approved renewable energy technologies listed in D.07-01-039 that are deemed EPS compliant.

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.³⁴ PG&E asserts that its PRG has been briefed on the Mojave Solar project since the project was shortlisted in 2007 and most recently on May 17, 2011.

Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the Mojave Solar PPA.

DRA's protest

In its protest, DRA notes that there are both positive and negative aspects of the Mojave Solar PPA. DRA appears to agree with PG&E and the independent evaluator that the project is highly viable and that approving the PPA for this in-state solar thermal facility will provide qualitative benefits to PG&E and its ratepayers. DRA raises concern about the project's ability to interconnect to the transmission grid but their protest does not identify any specific problem or harm to ratepayers that may occur. DRA is primarily concerned about the costs

³³ D.07-01-039, Attachment 7, p. 4

³⁴ PG&E's PRG includes representatives of the Union of Concerned Scientists, the Coalition of California Utility Employees, The Utility Reform Network, the California Public Utility Commission's Energy Division and Division of Ratepayer Advocates, and the California Department of Water Resources.

of the contract. DRA determines that the price does not appear reasonable when compared to the “consistently lower prices of renewable contracts brought forth by the utilities...” and for this reason DRA recommends that the Commission reject the advice letter.³⁵ DRA also requests that if the contract is approved but the price is higher than offers in PG&E’s 2011 RPS solicitation that the Commission require PG&E file an application.

PG&E requests that the Commission reject DRA’s protest and approve the PPA. In its response to DRA’s protest, PG&E clarified that the interconnection and transmission projects necessary for Mojave Solar to interconnect and deliver its generation to PG&E will be available within the timeframe that the project expects to achieve commercial operation. PG&E reiterates the positive attributes of the project, namely its high viability, and does not dispute DRA’s claim that the contract price is high relative to other offers. PG&E also requests that Commission reject DRA’s suggestion that PG&E should be required to file an application to seek approval of the PPA on the grounds that DRA’s request conflicts with the RPS program and Commission goals.

DRA accurately portrays the characteristics of PG&E’s contract with Mojave Solar as a highly viable project with a high contract price. The Commission evaluated the cost and benefits of PG&E’s contract with Mojave Solar and determined that it should be approved. Also, PG&E’s use of the Tier 3 advice letter process is consistent with Commission rules for seeking approval of RPS contracts. Accordingly, the Commission rejects DRA’s protest.

Diversity in Subcontracting Consistent with General Order 156

Abengoa Solar Inc. (“Abengoa Solar”), the project developer of the Mojave Solar Project, has made a voluntary commitment to diversity by undertaking an outreach effort to recruit minorities, women, and disabled veterans (WMDVBE) on subcontracting in construction and professional services consistent with Assembly Bill No. 2758 and GO 156 as part of the construction of the Mojave Solar Project.

³⁵ DRA protest at 3.

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.³⁶

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.”³⁷

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, neither 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 finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract

³⁶ See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

³⁷ See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

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.

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. Accordingly, this draft resolution was issued to parties for comments no later than 30 days prior to being considered by the Commission. Comments were filed by PG&E, Abengoa and DRA on October 31, 2011.

DRA opposes the Alternate Draft Resolution. DRA opposes the Mojave Solar Project and states in its comments that the basis for opposition to the project is the project's "extremely high price." DRA states that if the Commission decides to approve the project, it should do so through Draft Resolution E-4433 Option B, which amends the PPA contract to remove the obligation that Abengoa provide replacement Resource Adequacy value after 2010. DRA argues that Option B protects ratepayers from the "worst-case scenario" in which substantial transmission upgrades are performed and are used solely by the Mojave Solar Project.

PG&E recommends approval of the Alternate Draft Resolution but does not provide supporting rationale for this recommendation.

Abengoa also recommends approval of the Alternate Draft Resolution and provides several supporting arguments. Abengoa states that the project is highly viable, having obtained all necessary permits, secured the necessary equity, received transmission interconnection and obtained a \$1.2 billion loan guarantee from the Department of Energy (DOE). Abengoa states that PG&E approval is the only hurdle left before full construction can begin. Abengoa points out that a project such as Mojave that has cleared all development hurdles should not be compared to projects that are only at the bidding stage and may not be developed.

Abengoa also states that the Mojave Solar project is undervalued compared with the highly intermittent wind and solar photovoltaic (PV) projects that have dominated recent utility RPS solicitations. Abengoa states that solar thermal projects are less intermittent and more predictable than wind and PV resources, thereby requiring a lower integration cost. Furthermore, Abengoa argues that there is value to diversifying the renewable portfolio with solar thermal projects that have more stable output and follow load better than wind or solar PV.

Finally, Abengoa argues that it is not appropriate to allocate all of the costs of the proposed transmission upgrades to the Mojave Solar Project, since a significant number of additional renewable projects will benefit from the upgrades.

The Commission agrees with PG&E and Abengoa that the PPA between PG&E and Mojave Solar LLC should be approved without amendments. Although the Commission does not dispute DRA's argument that the price of the PPA is higher than those obtained in recent solicitations, the benefits of the Mojave Solar project described in Abengoa's comments justify Commission approval despite the higher price.

In addition, the Commission finds that it is not appropriate to modify the PPA by removing the provision requiring Mojave Solar to provide PG&E the value of replacement RA beyond 2020. DRA states: "If the transmission upgrades are not required by the terms of the PPA, ratepayers can at least save that money and PG&E will be compensated by Abengoa for the RA it is not receiving from the project." The modification in question actually does the opposite, however: It

states that PG&E will *not* be compensated by Abengoa for replacement RA after 2020. Thus, the contract should be approved without modification.

FINDINGS AND CONCLUSIONS

1. Pacific Gas and Electric Company's (PG&E) power purchase agreement (PPA) with Mojave Solar, LLC (Mojave Solar) is reasonably consistent with Pacific Gas and Electric Company's 2007 and 2011 Renewables Portfolio Standard Procurement Plan, approved by Decision (D.) 07-02-011 and D.11-04-030.
2. PG&E has not clearly demonstrated a need for the Mojave Solar PPA.
3. Consistent with D.06-05-039 an independent evaluator oversaw PG&E's negotiation of the contract between PG&E and Mojave Solar, LLC.
4. The net market value for the Mojave Solar project is not competitive with projects received and shortlisted in PG&E's 2009 and 2011 RPS solicitations and when compared to bilateral contracts currently being offered to PG&E.
5. Construction of the Mojave Solar project will likely begin before a determination is made on the transmission network upgrades necessary for the Mojave Solar project to be deemed fully deliverable by the California Independent System Operator.
6. This resolution does not prejudice any future filing for a Certificate of Public Convenience and Necessity for transmission that would make the Mojave Solar project fully deliverable.
7. The Mojave Solar PPA includes the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.
8. The price in the Mojave Solar PPA exceeds the applicable 2009 market price referent.
9. Pursuant to Public Utilities Code § 399.15(d), PG&E voluntarily enters into the contract with Mojave Solar at a price that exceeds the applicable market price referent.
10. The Mojave Solar project is far along in the development process and has a high project viability ranking.
11. The operating characteristics of solar thermal may be superior to other

intermittent resources due to the properties of steam generation.

12. The Mojave Solar PPA will contribute to PG&E's minimum quantity requirement established in D.07-05-028.
13. The benefits of project viability and portfolio diversity justify approving the Mojave Solar PPA despite its relatively high cost.
14. Abengoa Solar Inc. ("Abengoa Solar"), the project developer of the Mojave Solar Project, has made a voluntary commitment to diversity by undertaking an outreach effort to recruit minorities, women, and disabled veterans (WMDVBE) on subcontracting in construction and professional services consistent with Assembly Bill No. 2758 and GO 156 as part of the construction of the Mojave Solar Project.
15. The Mojave Solar PPA should be approved.
16. The Commission determined that long-term contracts for generation from solar thermal facilities comply with the Emissions Performance Standard under D.07-01-039.
17. Pursuant to Decision 02-08-071, PG&E's Procurement Review Group participated in the review of the Mojave Solar PPA.
18. Procurement pursuant to the Mojave Solar 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.), Decision 03-06-071 and Decision 06-10-050, or other applicable law.
19. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource to count towards an RPS compliance obligation. Nor shall that finding absolve PG&E of its obligation to enforce compliance with the contracts.
20. The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
21. Advice Letters 3876-E and Supplemental 3876-E-A should be approved.

THEREFORE IT IS ORDERED THAT:

1. PG&E's Advice Letter 3876-E and Supplemental 3876-E-A, requesting Commission approval of a power purchase agreement with Mojave Solar, LLC, is approved.

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 November 10, 2011; the following Commissioners voting favorably thereon:

/s/ Paul Clanon
Paul Clanon
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
TIMOTHY ALAN SIMON
CATHERINE J. K. SANDOVAL

I dissent.

/s/ MICHEL PETER FLORIO
Commissioner

I reserve the right to file a concurrence.

/s/ MARK J. FERRON
Commissioner

Confidential Appendix A

Contract Summary

[REDACTED]

Concurrence of Commissioner Mark J. Ferron on E-4433 on November 10, 2011.

First, I'd like to first re-iterate the 3 point position I expressed on October 20th when I voted in favor of the North Star Solar project:

1. I am **deeply** concerned about the potential for rising electricity costs to consumers. I am most concerned about sudden "sticker shock" – possibly wrongly attributed to RPS -- causing the public to reverse policy direction. In the end, we can talk about our concern about costs, but this Commission needs to show action. In fact, Senate Bill x1-2 governing the new 33% Renewable Portfolio Standard charges the CPUC with establishing a limitation on procurement expenditures for renewable energy resources that is explicitly "set at a level that prevents disproportionate rate impacts."
2. Although the cost containment mechanism is yet to be determined, I believe that the only practical way for this to work is for the overall value of a project to be evaluated upfront at the time of the solicitation, rather than at the end of the process as we do now. A consistent, transparent, and well-designed cost containment methodology that is part of the bid evaluation process will reduce the market uncertainty that the current process causes when an individual contract comes before the Commission for final review. In short, I believe that eleventh hour CPUC veto power should be used sparingly.

All that said, we have contracts to approve now. During the period while this cost containment mechanism is being designed and implemented, we must pass judgment on contracts where cost is an important criteria, and often is the key criteria.

3. I believe it is inappropriate to compare the costs of a negotiated and executed contract, which may have gone through years and millions of dollars of development, with the current prices being bid into a solicitation.

Applying these principals to the Abengoa / Mojave Solar project, I can summarize my view as follows:

- The solar thermal technology of Abengoa/Mojave Solar (A/MS) is more expensive than other RPS technologies, even when compared with same vintage projects. The problem is that solar thermal has never really been price competitive with PV although it does have other benefits – such as thermal inertia, which makes it more desirable. Different technologies cost different amounts and have different attributes, so perhaps we should be differentiating our evaluations not just by solicitation cohort but also by technology. Compared with other solar thermal projects using similar technology, this project does compare favorably, perhaps reflecting the benefit of the DOE loan guarantee.
- Resource diversity by technology is worth something, and I think that denying this contract would be a severe blow to the future for solar thermal in this State. PV prices are low now, but may not be in the future, and preserving this technological option for ratepayers is very important.
- In the case of this project, we have very high viability - - the technology is tried and true, the financing is all wrapped up, and we're told that the hard hats are on and the bulldozers are ready to roll - - so we can have high confidence that this project will get built if the Commission approves it.

So in short, while the contract may not be the least cost, it offers several beneficial attributes - - less intermittency and better integration, technology diversification, connection to existing distribution, high viability - - which make it a good fit. I think that it is in the ratepayer interest to approve this contract.

We have a second-level question about whether to approve the contract as originally presented by the parties or based on the modification by Commission staff.

Abengoa/Mojave Solar is in a unique situation where they already have access to transmission. However, there is the potential for congestion on the line such that the project might not be “fully deliverable” during perhaps a few hours out of the year.

In the original contract presented by the two parties, item 41b, Abengoa has agreed to pay damages to PG&E if they do not reach full deliverability status according to our Resource Adequacy rules. The level of those penalty payments change with time and are tied to the Resource Adequacy market.

Of course, in order to avoid these penalty payments, Abengoa has a strong incentive to see that a new transmission line is built. However, Abengoa knew when they signed this contract that they were assuming the risk that the line might not be built. From my perspective, we can approve this option without promising anything further about our future deliberations on this question of transmission.

In item 41a, staff removed provisions relating to Abengoa paying damages if resource adequacy is not provided in an attempt to reduce the risk of the project and improve ratepayer value. However, I don't believe that these revisions have this effect. The economics of this project depend crucially on the financing via a DOE Loan Guarantee and that guarantee was granted on the basis of the existing PPA. Given that the Loan Guarantee program has expired and resources at DOE are being redeployed, I believe there is a significant chance that changing the terms of the PPA at this stage could jeopardize the Loan Guarantee and hence the project.

From my perspective, we can approve this contract without promising anything further about our future deliberations on this question of transmission. We also need to do a serious examination and perhaps harmonization of RPS procurement and our RA rules so that these types of contractual contortions can be avoided in the future.

With that, I will be offering my support on 41b.

Dated November 10, 2011

/s/ Mark J. Ferron
Mark J. Ferron
Commissioner