

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**RESOLUTION E-4046
December 14, 2006**

**REDACTED
RESOLUTION**

Resolution E-4046. Pacific Gas and Electric Company (PG&E) requests approval of Geysers Power Company renewable procurement contract. This advice letter is approved with modifications.

By Advice Letter 2915-E filed on October 16, 2006, Supplemental Advice Letter 2915-E-A filed on November 2, 2006, and Substitute Sheet filed on November 6, 2006.

SUMMARY

PG&E's renewable contract complies with the Renewable Portfolio Standard (RPS) procurement guidelines and is approved

PG&E filed Advice Letter (AL) 2915-E on October 16, 2006, requesting Commission review and approval of a power purchase agreement (PPA) executed with the Geysers Power Company, LLC (Geysers). The Agreement between Calpine and PG&E replaces the final year (2007) of an existing contract between the two parties, and continues for five subsequent years, for a total of a six-year contract.

Generating Facility	Type	Term Years	MW	GWh	Online Date	Location
Geysers	Geothermal	6	200	1,752	1/07	Sonoma, CA

Deliveries from this PPA are reasonably priced and the contract price is fully recoverable in rates over the life of the contract, subject to Commission review of PG&E's administration of the contracts. This PPA is not eligible for supplemental energy payments (SEPs) from the California Energy Commission (CEC).

PG&E's request for approval of a non-bypassable charge as a mechanism to recover stranded costs is not addressed in this resolution. However, PG&E may seek this approval in the Long Term Procurement Plan Proceeding, R.06-02-013.

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.

BACKGROUND

Commission issued guidelines and procedures for implementation of the Renewable Portfolio Standard (RPS) program.

Senate Bill (SB) 1078, chaptered on September 12, 2002¹, established the California Renewable Portfolio Standard Program, which required an electrical corporation to increase its use of eligible renewable energy resources² to 20 percent of total retail sales no later than December 31, 2017³.

The State's Energy Action Plan (EAP) called for acceleration of the RPS goal to reach 20 percent by 2010. The Commission adopted this accelerated goal in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004.⁴ On September 26, 2006, Governor Schwarzenegger signed Senate Bill 107⁵, which officially accelerates the State's RPS targets to 20 percent by 2010. SB 107 also establishes new rules regarding the approval of short-term (less than 10 years in duration) and bilateral RPS contracts. The bill takes effect on January 1, 2007.

¹ Statutes of 2002, Chapter 516

² Defined in PU Code section 399.12(a)

³ PU Code Section 399.15(b)(1)

⁴ http://www.cpuc.ca.gov/Published/Final_decision/36206.htm

⁵ SB 107, Chapter 464, Statutes of 2006

In response to SB 1078, the Commission has issued a series of decisions that established the regulatory and transactional parameters of the utility renewables procurement program. On June 19, 2003, the Commission issued its "Order Initiating Implementation of the Senate Bill 1078 Renewable Portfolio Standard Program," D.03-06-071.

On June 9, 2004, the Commission adopted its Market Price Referent methodology⁶ for determining the Utility's share of the RPS seller's bid price, as defined in Public Utilities Code Sections 399.14(a)(2)(A) and 399.15(c). On the same day, the Commission adopted Standard Terms and Conditions for RPS power purchase agreements in D.04-06-014 as required by Public Utilities Code Section 399.14(a)(2)(D). Instructions for evaluating the value of each offer to sell products that are requested in a RPS solicitation were provided in D.04-07-029.

In addition, the Commission has established an annual procurement target (APT) for each utility, which consists of two separate components: the baseline, representing the amount of renewable generation a utility must retain in its portfolio to continue to satisfy its obligations under the RPS targets of previous years, and the incremental procurement target⁷ (IPT), defined as at least one percent of the previous year's total retail electrical sales, including power sold to a utility's customers from its DWR contracts.

Commission established bilateral procurement guidelines for the RPS Program

While the focus of the RPS program is procurement through competitive solicitations, D.03-06-071⁸ allows a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process.

⁶ D.04-06-015, http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/37383.htm

⁷ IPT - The incremental procurement target (IPT) represents the amount of RPS-eligible procurement that the LSE must purchase, in a given year, over and above the total amount the LSE was required to procure in the prior year. An LSE's IPT equals at least 1% of the previous year's total retail electrical sales, including power sold to a utility's customers from its DWR contracts

⁸ http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/27360.htm

According to D.03-06-071, bilateral contracts will only be allowed if they do not require Public Goods Charge (PGC) funds.⁹

In D.06-10-019¹⁰, the Commission clarifies D.03-06-071, stating that while bilaterals are not eligible for SEPs funds via the Market Price Referent (MPR) evaluation process, the contracts must be deemed reasonable. D.06-10-019 also states that the Commission may develop a price evaluation tool for evaluating the reasonableness of utilities' bilateral RPS contracts. However, in the interim, utilities' bilateral contracts can be evaluated prior to establishing formal evaluation criteria.

Commission and California Energy Commission (CEC) have established guidelines for RPS contracts less than 10 years in term.

D.06-03-016¹¹ affirmed that utilities may accept counter-offered contracts for less than 10 years' duration. In D.06-10-019, the Commission clarified that all RPS-obligated LSEs are 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 also notes that SB 107 requires the CPUC to establish minimum quantities of eligible renewable energy resources that must be procured either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005. SB 107 affirms that this quantity must be developed before the Commission authorizes *any* contract of less than 10 year's duration.

Since SB 107 will not be in effect until January 1, 2007, D.06-10-019 provides interim guidance on the CPUC evaluation process for short-term contracts. This decision finds that the CPUC may approve bilateral contracts of any length (longer than one month) before completing the above noted tasks if they are approved prior to January 1, 2007. For

⁹ SB 107 confirms that bilateral contracts can not receive PGC funds, establishing the criteria that to receive the PGC awards, the project must have resulted from a competitive solicitation.

¹⁰ http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/60585.htm

¹¹ http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/54125.htm

approval, the short-term contracts must be deemed reasonable by the CPUC.

Lastly, D.06-10-019 recognizes that the CPUC needs a more robust method of evaluating the price of utilities' contracts of less than 10 years, since the existing MPR calculation is not an appropriate yardstick. The Commission expects to refine its short-term contract evaluation methodology in a future decision.

PG&E requests approval of renegotiated renewable energy contract

On October 16, 2006, PG&E filed AL 2915-E requesting Commission approval of a renewable procurement contract negotiated with the Geysers Power Company (Geysers). PG&E filed a Supplemental Advice Letter on November 2, 2006 to amend certain terms and conditions in the PPA to conform with the "May not be Modified" Standard Contract Terms and Conditions defined in the CPUC D.04-06-014, Appendix A. PG&E filed a Substitute Sheet on November 7, 2006 to correct an inadvertent error in Confidential Appendix B; the substance of this filing is Confidentially Protected under D.06-06-066.

The PPA results from bilateral negotiations as part of an integrated Bankruptcy settlement with Calpine Corporation. The Commission's approval of the PPAs will authorize PG&E to accept future deliveries of incremental supplies of renewable resources and contribute towards the 20 percent renewables procurement goal required by California's RPS statute.¹² On September 26, 2006, PG&E reported a 2007 incremental procurement target of 750 GWh¹³. With the approval of this new PPA¹⁴, PG&E will have contracted for deliveries of up to 1,000 GWh towards that target, or approximately 133% percent of its 2007 IPT.

¹² California Public Utilities Code section 399.11 et seq., as interpreted by D.03-07-061, the "Order Initiating Implementation of the Senate Bill 1078 Renewables Portfolio Standard Program", and subsequent CPUC decisions in Rulemaking (R.) 04-04-026.

¹³ Pacific Gas and Electric Company Renewable Portfolio Standard 2007 Renewable Energy Procurement Plan, September 26, 2006, pg. 6.

¹⁴ The California Energy Commission is responsible for determining the RPS-eligibility of a renewable generator. See Public Utilities Code Section 399.12 and CPUC D.04-06-014.

PG&E requests final “CPUC Approval” of PPA

PG&E requests that Commission approve a resolution containing the findings required by the definition of “CPUC Approval” in Appendix A of D.04-06-014. In addition, PG&E requests that the Commission issue a resolution which:

1. Approves the PPA and its associated hedging plan in its entirety, including payments to be made by PG&E during the entire term of the agreement, subject to CPUC review of PG&E’s administration of the Agreement;
2. Finds that 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.), Decision (D.)03-06-071, or other applicable law;
3. Finds that at least 832 GWh of the annual procurement pursuant to the PPA constitutes incremental procurement by PG&E from an eligible renewable energy resource for purposes of determining PG&E’s compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.03-06-071, or other applicable law;
4. Finds that payments made under the PPA and any indirect costs of renewables procurement identified in Section 399.15(a)(2) shall be recovered in rates.
5. Finds that the costs associated with the PPA and its associated hedging plan are eligible for recovery through a non-bypassable charge over the life of the contracts consistent with the provisions of D.04-12-048.
6. Makes CPUC approval of this PPA contingent on the approval of the related RA PPAs and FERC approval of the settlement between Calpine and PG&E regarding past, current, and limited future Reliability Must Run (RMR) issues.

In D.02-08-071, the Commission required each utility to establish a Procurement Review Group (PRG).

The members of a PRG, subject to an appropriate non-disclosure agreement, have the right to consult with the utilities and review the details of each utility's:

1. Overall transitional procurement needs and strategy;
2. Proposed procurement processes including, but not limited to, the requests for offers (RFOs); and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review and approval.

PG&E's PRG participated on several occasions in discussions of the Calpine Geysers contract proposed in AL 2915-E. The first briefing occurred on August 28, 2006 and provided an overview of the settlement with Calpine. The PRG members were updated on the progress of the settlement negotiations again on September 25, 2006. None of the PRG members objected to this PPA.

Although Energy Division is a member of the PRG, it reserved judgment on the contracts 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.

NOTICE

Notice of AL 2915-E and AL 2915-E-A was made by publication in the Commission's Daily Calendar. Pacific Gas and Electric states that copies of the Advice Letter and Supplemental Advice Letter were mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

Merced Irrigation District and Modesto Irrigation District filed a protest against AL 2915-E

On November 6, 2007, Merced Irrigation District and Modesto Irrigation District ("the Districts") filed a joint protest against Advice Letter 2915-E. While the parties did not object to the Geysers PPA itself, both parties objected to PG&E's request for approval of a non-bypassable charge (NBC) for the costs over the life of the contract. They argued that the Geysers PPA

is not eligible for the cost recovery mechanisms (including the NBC) outlined in D.04-12-048 because the PPA was not a result of a competitive solicitation.

On November 9, 2006, PG&E responded to the Districts' protest by stating that the Districts' narrow reading of D.04-12-048 is not contextually appropriate. Rather, they claim that nowhere in that decision does the Commission actually adopt a policy that contracts resulting from bilateral negotiations are prohibited. PG&E substantiates their argument by pointing to instances of Commission approved non-bypassable charges for resources not procured through competitive solicitations.

On November 30, 2006, the Districts and PG&E filed separate comments on the Draft Resolution. The Districts state that the Commission should not approve NBCs in this Resolution, and they also reaffirmed their preference for all resources to be selected only through competitive solicitations. PG&E asserted in its comments that the Commission approved NBCs, by definition, in Conclusion of Law 16 of D.04-12-048. In addition, PG&E suggested that the proper forum for addressing stranded costs for RPS procurement would be the Energy Resource Recovery Account Forecast Proceeding.

On December 6, 2006, the Districts filed reply comments on the Draft Resolution. The Districts stated that PG&E cited "no relevant authority in support of the requested non-bypassable charge" in its comments on the Draft Resolution. In addition, the Districts asserted that PG&E's request for stranded cost recovery conflicts with PG&E's assertion that the costs of the PPA are reasonable.

DISCUSSION

Description of the project

The following table summarizes the substantive features of the PPA. See confidential Appendix A for a discussion of terms and conditions, and confidential Appendix B for details on the pricing plan:

Generating Facility	Type	Term	MW	GWh	Online	Location
Geysers	Geothermal	6	200	1,752	1/07	Sonoma, CA

Energy Division has reviewed the proposed PPA based upon multiple grounds:

- Consistency with PG&E's 2006 RPS procurement plan
- Compliance with RPS bilateral guidelines
- Consistency with RPS Standard Terms and Conditions (STC)
- Contribution to PG&E's 20% by 2010 RPS procurement goal
- Implications of outcome of FERC settlement and approval of Resource Adequacy PPA
- Reasonableness of the levelized PPA price
- Project viability of Geysers facility
- Protest by Modesto and Merced Irrigation Districts

PPA is consistent with PG&E's 2006 RPS Procurement Plan

California's RPS statute requires the Commission to review renewable energy contracts submitted for approval by a utility. The Commission will then accept or reject proposed PPAs based on their consistency with the utility's approved renewable procurement plan.¹⁵ PG&E's 2006 RPS plan was approved by D.06-05-039 on May 25, 2006. As required by statute, it includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of compliance flexibility mechanisms established by the Commission, and a bid solicitation setting forth the need for renewable generation of various operational characteristics.¹⁶

The PPA fits with identified renewable resource needs

In its approved 2006 RPS Plan, PG&E's portfolio assessment showed a "medium" need for baseload resources beginning in 2007. In order to meet the 20 percent renewable energy target by 2010, PG&E requires incremental energy deliveries from newly contracted resources at an average rate of approximately 700 to 800 GWh per year. Projects capable

¹⁵ Pub. Util. Code Section 399.14 (c).

¹⁶ Pub. Util. Code Sec. 399.14 (a)(3).

of providing actual deliveries with only a short or no delay are especially valuable to PG&E. With a nameplate capacity of 200 MW and the capability of starting deliveries in 2007, the PPA for geothermal-based baseload electricity generation is expected to contribute towards fulfilling PG&E's RPS target.

PPA is consistent with RPS bilateral contracting guidelines

The proposed PPA is consistent with Commission decisions regarding RPS bilateral contracts for the following reasons:

1. The PPA is not seeking Supplemental Energy Payment (SEP) funds.
 - The PPA is ineligible for SEPs because (1) it did not result from a competitive solicitation¹⁷ and (2) it is a preexisting facility¹⁸.
2. Pursuant to D.06-10-019, the PPAs were submitted by advice letter.¹⁹
3. The PPA is at least one month in duration.²⁰
4. The PPA is reasonably priced, based on an assessment the market price of Energy and a comparison of the prices for Environmental Attributes and Resource Adequacy to other RPS contracts. The contract price of bilaterals must be deemed reasonable by the Commission.²¹

¹⁷ "[The CPUC]...will allow prudent bilateral contracts only when such contracts do not require any PGC funds" (D.03-06-071 p. 59, CoL 31, OP 29).

¹⁸ CEC RPS Eligibility Guidebook, April 2006, pp. 17. "A facility that is eligible for the RPS may also be eligible for SEPs. To qualify as eligible for SEPs, ... a facility is either a 'new,' meaning the facility first commences commercial operations on or after January 1, 2002...or 'repowered'..."

¹⁹ "For now, utilities' bilateral RPS contracts, of any length, must be submitted for approval by advice letter. Such contracts are not subject to the MPR, which applies to solicitations, but they must be reasonable (D.03-06-017, *mimeo.*, p. 59)... No bilateral contracts are currently eligible for SEPs." (D.06-10-019, pp.31-32)

²⁰ "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)

²¹ D.06-10-019, p. 31

The Commission intends to include more explicit standards for evaluating the reasonableness of short-term bilateral RPS contracts in a decision in the near future. Until such a decision is approved, the Commission will continue to consider the approval of RPS short-term bilateral contracts only on a case-by-case basis.

The PPA is Consistent with Adopted Standard Terms and Conditions

In D.04-06-014 the Commission set forth standard terms and conditions to be incorporated into RPS agreements, including bilateral contracts. During the course of negotiations, the parties attempted to modify some of the non-modifiable standard terms in order to reach agreement.

PG&E filed a Supplemental Advice Letter (AL 2915-E-A) on November 2, 2006 to amend certain terms and conditions in the PPA to conform with the “May not be Modified” Standard Contract Terms and Conditions defined in the CPUC Decision (D.) 04-06-014, Appendix A.

PPA will contribute significantly to PG&E’s RPS procurement goals

The proposed PPA consists of 17 operational geothermal power plants (200 MW), representing 1,752 GWh of RPS-eligible procurement, 832 GWh of which is from new renewable resources. Also, this PPA contracts for 1,000 GWh per year more than the existing Geysers – PG&E bilateral contract; this incremental RPS eligible energy allows PG&E to reach 133% of its 2007 incremental procurement target (IPT)²².

Approval of PPA is contingent on CPUC approval of related Resource Adequacy PPA and the outcome of the FERC settlement.

In December 2005, Calpine filed for bankruptcy. The proposed contract in AL 2915-E would replace an existing bilateral contract²³ with Calpine that has been submitted for rejection in Calpine’s bankruptcy proceeding, and which will expire at the end of 2007.

²² PG&E’s 2007 IPT is 750 GWh. Pacific Gas and Electric Company Renewable Portfolio Standard 2007 Renewable Energy Procurement Plan, September 26, 2006, pg. 6.

²³ PG&E filed the existing Geysers PPA in Advice Letter 2303-E on November 15, 2002. The advice letter was approved by the CPUC with Resolution E-3805.

In addition to the RPS procurement PPA, PG&E and Calpine have negotiated a Resource Adequacy PPA and a FERC settlement. Jointly these agreements represent an integrated bankruptcy settlement agreement that must be approved or rejected all together. The FERC settlement agreement was filed on October 19, 2006 and will determine whether Calpine will receive its desired or necessary approvals from its Creditors' Committee and/or Bankruptcy Court to perform its obligations under the Agreement. The RA Agreement was filed with the Commission by Advice Letter 2916-E on October 23, 2006, requesting the approval of two PPAs for RA from the Los Medanos and Metcalf Energy Centers.

PPA price and hedging plan are reasonable

Because the proposed PPA is a six-year bilateral contract, the reasonableness of the price can not be directly evaluated by the Market Price Referent (MPR) because (1) the Energy Division only calculates the MPR for contracts 10 years or longer and (2) D.06-10-019 states that bilateral contracts are not subject to the MPR²⁴. Because there is no pre-established process for determining the reasonableness standard for a bilateral contract, D.06-10-019 provides an interim authority allowing the Commission to approve contracts based on a reasonableness standard determined at its own discretion. In the case of the Geysers PPA, the reasonableness of the price is determined by comparing the Energy price to the market price for energy at NP-15, the Environmental Attributes price to similar RPS contracts, and the Resource Adequacy price to the waiver price threshold set by the CPUC. Also, the Commission evaluated the unconventional pricing structure in light of its role within the bankruptcy settlement negotiations.

The pricing in this contract is based on a hedging plan that will effectively fix the price of the RPS energy over the entire contract term.²⁵ The price

²⁴ This does not preclude the use of the MPR to evaluate the reasonableness of a long-term bilateral contract.

²⁵ The Commission has stated a strong preference against RPS contract prices which fluctuate with the price of natural gas. Although PG&E's proposed hedging plan is not the conventional method for fixing a contract price, in the end, it accomplishes this goal.

that the Seller will receive includes the values for Energy, Environmental Attributes (EA) and Resource Adequacy²⁶ (RA). The Commission finds the levelized price reasonable because the prices for the Energy and for EA are competitive and comparable to prices for similar products on the market. The price for RA is reasonable because it is below the price provided for under the Reliability Capacity Services Tariff (RCST)²⁷ and below the waiver price threshold²⁸. See Confidential Appendix B for further price analysis.

The Commission also finds that the value of the proposed contract justifies terminating the existing bilateral Agreement between the two parties. Confidential Appendix B provides a cost-benefit analysis of replacing the final year of the existing PPA with a new six-year bilateral agreement. The analysis demonstrates that the increased notional cost of terminating the contract is small relative to the value of the proposed Geysers contract, which 1) is part of an integrated Bankruptcy settlement package, 2) contracts for reasonably priced local Resource Adequacy, 3) contributes significantly to PG&E's RPS procurement goals, and 4) brings existing baseload generation online in early 2007.

For the above stated reasons²⁹, the Commission finds the hedging plan in this Agreement reasonable. Because the duration of the hedging plan will be longer than five years, according to D.04-12-048 it must be approved by the Commission.³⁰ While we will approve the hedging plan via advice letter for this Geysers contract, this will not be precedent setting.

²⁶ The PPA designates units to provide local and system RA capacity.

²⁷ This proposed tariff recently accepted by FERC is \$73/kW-yr less the energy and A/S value from a hypothetical unit with a 10,500 Btu/kWh heat rate unit. Based on estimates several months ago, that value was in the range of \$20-\$30/kW-yr, leaving an RCST at least in the \$43/kW-yr range.

²⁸ The price for the waiver as set by the CPUC in Decision (D.) 06-06-064 is \$40/kW-yr.

²⁹ The contract 1) fixes the price so that it will not be tied to the price of gas, 2) is part of an integrated Bankruptcy settlement package, 2) contracts for reasonably priced local Resource Adequacy, 3) contributes significantly to PG&E's RPS procurement goals, and 4) brings existing baseload generation online in early 2007.

³⁰ D.04-12-048, page 108. See http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/43224.htm

Geysers facility is a viable project

PG&E believes that the projects are viable because:

Project milestones

The PPA concerns an existing facility; there is no development necessary prior to delivery or any associated milestones

Financeability of resource

The PPA is for an existing facility, so viability issues are minor

Production tax credit

The PPAs are not contingent upon the extension of the federal production tax credits as provided in Section 45 of the Internal Revenue Code of 1986, as amended.

Sponsor's creditworthiness and experience

Geysers parent company, Calpine, is in bankruptcy. To mitigate the risk that the seller will not perform as required by the PPA or will default following the commencement date, Geysers is required to post performance security. The amount of security is equivalent to the amount of six months of what PG&E terms "the revenues at risk", namely, the Environmental and Resource Adequacy adders.

The protest by Merced Irrigation District and Modesto Irrigation District is misguided.

The Districts' protest argues that the proposed non-bypassable charge is not consistent with D.04-12-048 because the Geysers PPA was not the result of a competitive solicitation. They further state that under current Commission decisions, all resources must participate in a competitive solicitation.

The Parties to the protest have incorrectly interpreted D.04-12-048 because all RPS-obligated load serving entities *are* able to enter into bilateral contracts. The Commission specifically addresses the eligibility of bilateral contracts in D.03-06-071 and D. 06-10-019. Further, while D.04-12-048 does state in Conclusion of Law 33 that the Commission *should* adopt a policy

that all resources participate in solicitations, this Decision does not order the Commission to do so. Instead, the Commission expressed a strong preference, but did not a mandate, that all contracts be selected through a competitive solicitation.

PG&E's request for a non-bypassable charge will not be addressed in this Resolution.

D.04-12-048 describes the Commission's current policy on stranded cost recovery for procurement for a variety of different types of procurement. PG&E requests approval of the use of a non-bypassable charge to implement the Commission's stranded cost policy for procurement.

Conclusion of Law 16 of D.04-12-048 states,

"The utilities should be allowed to recover stranded costs for their non-RPS resource commitments from departing load over either the life of the contract or 10 years, whichever is less. The ten-year recovery period should also apply to any utility-owned generation acquired as a result of the procurement process, commencing once the resource begins commercial operation. Stranded costs arising from RPS procurement activities should be collected from all customers, including departing load, over the life of the contract. The utilities should be allowed the opportunity to justify in their applications, on a case-by-case basis, the desirability of adopting a cost recovery period of longer than ten years for their non-RPS resource commitments. Cost recovery for that portion of a resource acquired by the utilities to meet local reliability needs should be recovered from all customers."

This Resolution does not further interpret or develop Commission policy regarding the use of non-bypassable charges (NBCs) as a mechanism to recover stranded costs. While D.04-12-048 addressed the general policy of stranded cost recovery, it did not identify the implementation mechanism. If PG&E wishes to pursue the approval of NBCs for its procurement contracts, we recommend the issue be addressed through its Long-Term Procurement Plans in R.06-02-013. The Long-Term Procurement Proceeding is the appropriate procedural forum for addressing issues that apply to multiple contracts and multiple utilities. On December 11, 2006, the IOUs will file their Long-Term Procurement Plans in R.06-02-013. As part of those plans, the IOUs have been instructed to file plans that include

procurement implementation plans, including any relevant cost recovery issues.³¹

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 or reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

Comments were filed on November 30, 2006 by Modesto and Merced Irrigation Districts and on November 30 by PG&E, both addressing the issue of stranded cost recovery and non-bypassable charges. Modesto and Merced Irrigation Districts filed reply comments on the same issue on December 6, 2006.

FINDINGS OF FACT

1. PG&E filed Advice Letter 2915-E on October 16, 2006 requesting Commission review and approval of a renewable energy resource procurement contract, including its associated hedging plan, between Geysers Power Company and PG&E.
2. PG&E filed Supplemental Advice Letter 2915-E-A on November 2, 2006 to amend certain terms and conditions in the PPA to conform with the "May not be Modified" Standard Contract Terms and Conditions defined in the CPUC Decision D.04-06-014, Appendix A.
3. A protest to AL-2915-E was filed by the Merced Irrigation District and Modesto Irrigation District on November 6, 2006.
4. PG&E filed Reply Comments to the protest on November 9, 2006.

³¹ Reference: See R.06-02-013, Phase 2 Scoping Memo, Issued September 25, 2006, Volume I, Attachment A, Section VII, page 21

5. On November 7, PG&E filed a Substitute Sheet to correct an inadvertent error in the Confidential Appendix B; the Sheet was submitted as Confidentially Protected under D.06-06-066.
6. Comments to the Draft Resolution were filed by the Merced Irrigation District and Modesto Irrigation District on November 29, 2006 and reply comments were filed December 6, 2006.
7. PG&E filed Comments to the Draft Resolution on November 30, 2006.
8. PG&E briefed its Procurement Review Group regarding the Geysers contract on August 28, 2006, and again on September 25, 2006. The members of PG&E's PRG either supported or did not oppose the approval of this contract.
9. The PPA designates units to provide local and system Resource Adequacy capacity.
10. The price for Resource Adequacy in this PPA is below the waiver price threshold as set by D.06-06-064.
11. The Geysers RPS procurement PPA is part of an integrated bankruptcy settlement, which also includes a related Resource Adequacy PPA and FERC settlement regarding Reliability Must Run (RMR) issues.

CONCLUSIONS OF LAW:

1. 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.
2. The Commission requires each utility to establish a Procurement Review Group (PRG) to review the utilities' interim procurement needs and strategy, proposed procurement process, and selected contracts.
3. D.03-06-071 allows a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process.
4. D.06-10-019 allows all RPS-obligated LSEs 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.
5. The pricing plan for short-term bilateral contracts must be reasonable.

6. D.04-06-014 set forth standard terms and conditions to be incorporated into RPS PPAs, including bilateral contracts. Some of the standard terms and conditions are non-modifiable.
7. Because this resolution is dated prior to January 1, 2007, it is not subject to the development of new pre-conditions for RPS contracts adopted in Senate Bill 107.
8. Subject to CEC verification requirements, procurement pursuant to these Agreements constitutes procurement from eligible renewable energy resources for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.
9. Procurement pursuant to these Agreements constitutes incremental procurement or procurement for baseline replenishment by PG&E from eligible renewable energy resources for purposes of determining PG&E's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard, Decision 03-06-071, or other applicable law.
10. The payments made under this contract between PG&E and Sellers 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 project, subject to CPUC review of PG&E's administration of the PPA.
11. 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.
12. This Agreement and its hedging plan are reasonable and should be approved.
13. Approval of this advice letter does not constitute a precedent for future renewable procurement contract price structures.
14. Our approval of the hedging plan by advice letter is not precedent setting.

15. The payments made under the PPA and any indirect costs of renewables procurement identified in Section 399.15(a)(2) shall be recovered in rates.
16. AL 2915-EA should be approved with modifications effective today; PG&E's request for a non-bypassable charge may be addressed in R.06-02-013.
17. CPUC approval of this PPA is contingent on the approval of the related Resource Adequacy PPAs and FERC approval of the settlement between Calpine and PG&E regarding past, current, and limited future Reliability Must Run (RMR) issues.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter AL 2915-EA is approved with modifications.
2. The payments made under this contract between PG&E and Sellers 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 project, subject to CPUC review of PG&E's administration of the PPA.
3. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 14, 2006; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

Confidential Appendix A

Contract Summary: Geysers Power Company

REDACTED

Confidential Appendix B
Price Evaluation

REDACTED

Confidential Appendix C
Project's Contribution Toward RPS
Goals

REDACTED