

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**RESOLUTION E-4203
November 6, 2008**

REDACTED

R E S O L U T I O N

Resolution E-4203. Pacific Gas and Electric Company (PG&E) requests approval of amendments to a renewable procurement contract, which has previously received Commission approval. The amended contract is approved without modification.

By Advice Letter 3260-E filed on April 30, 2008.

SUMMARY

PG&E's amended renewable contract complies with the Renewable Portfolio Standard (RPS) procurement guidelines and is approved without modification

PG&E filed Advice Letter (AL) 3260-E filed on April 30, 2008, requesting Commission review and approval of a Third Amendment to an existing agreement between PG&E and CalRENEW-1 LLC (CalRenew).¹ The Third Amendment modifies contract terms and conditions which will allow the agreement between PG&E and CalRenew to remain in effect, without affecting project capacity, expected generation or contract price. PG&E's request is granted without modification.

Generating Facility	Type	Term Years	MW Capacity	Annual Deliveries	Online Date	Project Location
CalRenew-1	Photovoltaic	20	5 MW	9 GWh	4/30/2010	Mendota, CA

The Third Amendment does not impact the contract price, which was previously determined by the Commission to be reasonable. Therefore, deliveries from this

¹ The original contact, with subsequent amendments, was filed by AL 3074-E; AL 3074-E-A; AL 3074-E-B, and was approved in Resolution E-4132 on December 20, 2007.

amended contract are fully recoverable in rates over the life of the contract, subject to Commission review of PG&E's administration of the amended contract.

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

The California Renewables Portfolio Standard (RPS) Program was established by Senate Bill 1078² and codified by California Pub. Util. Code Section 399.11, et seq. The statute required that a retail seller of electricity such as PG&E purchase a certain percentage of electricity generated by Eligible Renewable Energy Resources (ERR). Originally, each utility was required to increase its total procurement of ERRs by at least 1 percent of annual retail sales per year until 20 percent is reached, subject to the Commission's rules on flexible compliance, no later than 2017.

The State's Energy Action Plan (EAP) called for acceleration of this RPS goal to reach 20 percent by 2010.³ This was reiterated again in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004,⁴ which encouraged the utilities to procure cost-effective renewable generation in excess of their RPS annual procurement targets (APTs)⁵, in order to make progress towards the goal expressed in the EAP. On September 26, 2006, Governor Schwarzenegger signed

² Chapter 516, statutes of 2002, effective January 1, 2003 (SB 1078)

³ The Energy Action Plan was jointly adopted by the Commission, the California Energy Resources Conservation and Development Commission (CEC) and the California Power Authority (CPA). The Commission adopted the EAP on May 8, 2003.

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

⁵ APT - An LSE's APT for a given year is the amount of renewable generation an LSE must procure in order to meet the statutory requirement that it increase its total eligible renewable procurement by at least 1% of retail sales per year.

Senate Bill (SB) 107,⁶ which officially accelerates the State's RPS targets to 20 percent by 2010, subject to the Commission's rules on flexible compliance.⁷

PG&E requests approval of contract amendments

On April 30, 2008, PG&E filed AL 3260-E requesting Commission approval of amendments to a Commission approved renewable procurement contract. The Third Amendment modifies contract terms and conditions which will allow the agreement between buyer and seller to remain viable. Specifically, the project's guaranteed commercial online date and guaranteed construction start date are extended for one year and the no-fault termination clause related to the availability of the federal ITC is extended for one year. If the Third Amendment is approved, the contract will remain in effect with no impact on significant terms and conditions, *e.g.*, contract quantity and price. Approval will provide incremental supplies of renewable resources and contribute towards the 20 percent renewables procurement goal required by California's RPS statute.⁸

PG&E requests final "CPUC Approval" of contract amendments

PG&E requests that Commission approve a resolution which:

1. Finds that entry into the Third Amendment is reasonable;
2. Approves the Third Amendment in its entirety, including payments to be made by PG&E pursuant to the PPA as amended by the Third Amendment, subject to Commission's review of PG&E's administration of the PPA as amended by the Third Amendment; and
3. Finds that the Third Amendment has no effect upon the RPS eligibility of the project.

⁶ Chapter 464, Statutes of 2006 (SB 107)

⁷ Pub. Util. Code Section 399.14(a)(2)(C)

⁸ 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 R.04-04-026; R.06-02-012; R.06-05-027; R.08-08-009.

NOTICE

Notice of AL 3260-E was made by publication in the Commission's Daily Calendar. Pacific Gas and Electric states that copies of the Advice Letter was mailed and distributed in accordance with Section IV of General Order 96-B.

PROTESTS

This AL was not protested.

DISCUSSION

Description of the amended contract

The following table summarizes the substantive features of the amended contract. The online date reflects the one-year extension pursuant to the Third Amendment.

Generating Facility	Type	Term Years	MW Capacity	Annual Deliveries	Online Date	Project Location
CalRenew-1	Photovoltaic	20	5 MW	9 GWh	4/30/2010	Mendota, CA

The proposed Third Amendment results in a one-year extension of the project's guaranteed commercial online date, guaranteed construction start date and the no-fault termination clause related to availability of the federal ITC. Specifically, CalRenew's facility is now expected to achieve commercial operation by April 30, 2010. The original contract, which was approved on December 20, 2007 by Resolution E-4132, is otherwise unchanged.

The Third Amendment was executed by the parties because project viability relied on the availability of the federal Investment Tax Credit (ITC), which was set to expire at the end of 2008 and had not yet been extended. The original PPA included a no-fault termination clause associated with the availability of the ITC, which could have been triggered if the contract was not amended. Further, critical project viability milestones such as equipment purchases were put on hold because of the uncertainty associated with the expiring ITC, which directly impacted the feasibility of the commercial online date. On October 3, 2008, President Bush signed the Emergency Economic Stabilization Act of 2008, House Resolution (H.R.) 1424 (2008), which in part extended the ITC for solar energy

projects.⁹ The recent extension of the ITC and the Third Amendment will enable CalRenew to make capital investments necessary to facilitate development of its project.

While the contract price is unchanged by the Third Amendment, the later commercial online date results in a smaller requirement of above-market funds (AMFs) for the project. Each year, the Commission adopts by Resolution, the market price referent (MPR) for use in the annual RPS solicitations. The MPR functions to deem per se reasonable, and allow to be recovered in rates, procurement and administrative costs associated with long-term contracts which result from a competitive solicitation. The annual MPR Resolution produces a matrix of MPR values differentiated by the length of contract term and project online date. Because the 2006 MPR for a 20-year contract with a 2010 online date is greater than the 2009 online date, the contract requires less AMFs pursuant to the Third Amendment. The final AMF requirement for PG&E's contract with CalRenew will be determined upon the Commission's implementation of SB 1036.^{10, 11} See Confidential Appendix A for detailed description of the Third Amendment.

The amended contract remains a viable contract

The Third Amendment considered herein identifies agreed upon project milestones, including achievement of project finance and construction start and commercial operation deadlines. The Sellers' obligations to meet these milestones are supported by performance assurance securities.

⁹ <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:H.R.1424>: (Last visited October 6, 2008)

¹⁰ Chapter 685, Statutes of 2007 (SB 1036)

¹¹ The Commission implemented the rate-making aspects of SB 1036 in Resolution E-4160. http://docs.cpuc.ca.gov/word_pdf/COMMENT_RESOLUTION/80089.pdf The remaining implementation issues surrounding the above-MPR funds will be addressed by a future Commission Resolution. Website: <http://www.cpuc.ca.gov/PUC/energy/electric/RenewableEnergy/hot/SB1036implementation.htm>

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

No comments were filed.

FINDINGS

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. PG&E filed Advice Letter 3260-E on April 30, 2008 requesting Commission review and approval of a Third Amendment to its renewable energy contract with CalRENEW-1, LLC.
3. The original contract between PG&E and CalRENEW-1, LLC, with the exception of the Third Amendment, is otherwise unchanged.
4. Advice Letter 3260-E was not protested.
5. Procurement pursuant to the contract, as amended by the Third Amendment, 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.
6. The payments made under the contract, as amended by the Third Amendment, between PG&E and Seller 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 Commission review of PG&E's administration of the contract.

7. The payments made under the contract, as amended by the Third Amendment, including all renewable procurement and administrative costs identified in Section 399.14(g) shall be recovered in rates.
8. 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.
9. The Third Amendment is reasonable and should be approved.
10. Advice Letter 3260-E should be approved effective today.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter 3260-E is approved without modification.
2. The payments made under this contract, as amended by the Third Amendment, between PG&E and Seller 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 contract.
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 November 6, 2008; the following Commissioners voting favorably thereon:

/s/PAUL CLANON
PAUL CLANON
Executive Director

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

Confidential Appendix A

Summary of the Third Amendment

[REDACTED]

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



October 7, 2008

I.D. #7996
Draft Resolution E-4203
Nov. 6 Commission Meeting

TO: PARTIES TO DRAFT RESOLUTION E-4203
(R.06-02-012, R.06-02-013 and R.08-08-009)

Enclosed is draft Resolution E-4203 of the Energy Division addressing PG&E's advice letter (AL) 3260-E. It will be on the agenda at the November 6, 2008 Commission meeting. The Commission may then vote on this Resolution or it may postpone a vote until later.

When the Commission votes on a draft Resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different Resolution. Only when the Commission acts does the Resolution become binding on the parties.

Parties may submit comments on the draft Resolution no later than Monday, October 27, 2008.

An original and two copies of the comments, with a certificate of service, should be submitted to:

Honesto Gatchalian
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
fax: 415-703-2200
email: jnj@cpuc.ca.gov

An electronic copy of the comments should be submitted to:

Sean Simon
Energy Division
svn@cpuc.ca.gov

Those submitting comments and reply comments must serve a copy of their comments on 1) the entire service list attached to the draft Resolution, 2) all Commissioners, and 3) the Director of the Energy Division.

Comments may be submitted electronically.

Comments shall be limited to five pages in length plus a subject index listing the recommended changes to the draft Resolution and an appendix setting forth the proposed findings and ordering paragraphs.

Comments shall focus on factual, legal or technical errors in the proposed draft Resolution. Comments that merely reargue positions taken in the advice letter or protests will be accorded no weight and are not to be submitted.

Reply comments shall be served on parties and Energy Division no later than Monday, November 3, 2008 and may also be submitted electronically.

Late submitted comments or reply comments will not be considered.

Judith Ikle
Program Manager
Energy Division

Attachment:
Certificate of Service

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of Draft Resolution E-4203 on all parties in these filings or their attorneys as shown on the attached list.

Dated October 7, 2008 at San Francisco, California.

Maria Salinas

NOTICE

Parties should notify the Energy Division, Public Utilities
Commission, 505 Van Ness Avenue, Room 4002
San Francisco, CA 94102, of any change of address to
ensure that they continue to receive documents. You
must indicate the Resolution number on the service list
on which your name appears.