



Brian K. Cherry
Vice President
Regulatory Relations

77 Beale Street
San Francisco, CA 94105

Mailing Address
Mail Code B10C
Pacific Gas and Electric Company
P.O. Box 770000
San Francisco, CA 94177
Fax: 415-973-7226

Redacted

January 20, 2010

Honesto Gatchalian
California Public Utilities Commission
Energy Division
Tariff Unit, 4th Floor
505 Van Ness Avenue
San Francisco, CA 94102

Re: Reply to DRA's Protest to PG&E's Advice Letter 3583-E

I. Introduction

Pacific Gas and Electric Company ("PG&E") filed Advice Letter 3583-E on December 23, 2009 ("Advice Letter 3583-E" or "Advice Letter"), seeking California Public Utilities Commission ("Commission" or "CPUC") approval of three wind energy purchase agreements ("Agreements") between Shell Energy North America (US), L.P. ("Shell") and PG&E. The Division of Ratepayer Advocates ("DRA") filed a protest to the Advice Letter on January 12, 2010 ("Protest"). PG&E hereby replies to DRA's Protest.

DRA recommends rejection of the Advice Letter because the cost of the Agreements exceeds the market price referent ("MPR") and other price benchmarks.^{1/} DRA also expresses concern about whether the Agreements' provisions protect ratepayers from undue risk and about the timing of PG&E's submission of the Agreements for Commission approval, given that deliveries under the Agreements began in January 2010.^{2/}

As discussed below, the Agreements are reasonable when compared against the market for Renewables Portfolio Standard ("RPS")-eligible energy, will result in near-term deliveries from highly viable projects that will contribute to 2010 goals, and adequately protect ratepayers from undue risk. Further, there is no harm to ratepayers in PG&E's receipt of energy deliveries under the Agreements prior to Commission approval of the Agreements. For these reasons, the Commission should reject DRA's Protest and approve the Advice Letter.

^{1/} DRA Protest at 4.

^{2/} *Id.* at 4.

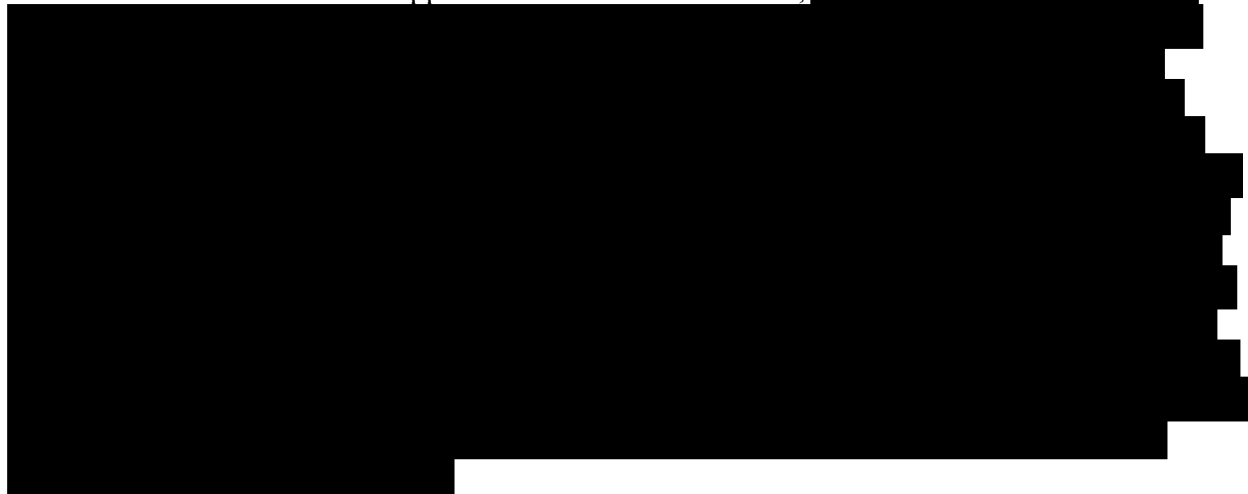
II. The Agreements are Reasonable When Compared Against the Market for RPS-Eligible Energy.

DRA does not argue that the Agreement prices are unreasonable when compared with current market opportunities for RPS-eligible energy. Instead, DRA objects to the Agreements solely because the prices are above the price benchmarks established for fast-track review of short-term RPS contracts and the five-year MPR for projects commencing commercial operation in 2010.^{3/}

The price benchmarks set forth in Commission Decision (“D.”) 09-06-050 for fast-track review of short-term RPS contracts are not an appropriate measure of reasonableness of the Agreements. Short-term contracts that meet these benchmarks and satisfy the other requirements of D.09-06-050 are considered per se reasonable and may be submitted for simplified and expedited Commission approval through the Tier 2 advice letter process.^{4/} It does not follow, however, that short-term contracts that do not meet these price benchmarks are unreasonable. In fact, the Commission expressly stated that such contracts could still be submitted for review through the regular Tier 3 advice letter process.^{5/}

Further, the reasonableness inquiry should not begin and end with a comparison of the price of the Agreements against the MPR. The MPR represents only the price of electricity from a non-renewable energy source,^{6/} not a specific, competitive renewable price. When properly viewed against other available RPS options, the Agreements are clearly reasonable and their approval is in the best interest of PG&E’s customers.

As described in Confidential Appendix D to the Advice letter,



^{3/} DRA Protest at 3.

^{4/} D.09-06-050, Ordering Paragraph 2.

^{5/} *Id* at Ordering Paragraph 13.

^{6/} D.04-06-015 at 7, n. 10 (“[W]e will clarify also what the MPR is not: it does not represent the cost, capacity or output profile of a specific type of renewable generation technology. . . . [T]he MPR is to represent the presumptive cost of electricity from a non-renewable energy source.”); see also D.05-12-042 at 6-7 (quoting D.04-06-015).

[REDACTED]

The Agreements present cost-effective renewable energy opportunities for PG&E’s customers. Moreover, the Projects^{8/} are highly viable and will provide near-term deliveries that will contribute to the 2010 RPS target. The Commission should find that the Agreements are reasonable and should approve the Advice Letter without modification.

III. The Agreements Adequately Protect Ratepayers from Undue Risk.

DRA questions whether the Agreements sufficiently protect ratepayers against undue risk. This concern appears to be based on differences between the Agreements and PG&E’s 2009 form power purchase agreement for short-term contracts, as well as the Independent Evaluator’s (“IE”) qualified opinion regarding the fairness of the negotiation process due to the IE’s lack of participation in negotiations.^{9/}

DRA states that [REDACTED] DRA fails to explain, however, that the IE subsequently concluded that [REDACTED]

[REDACTED] The IE also concluded that “the variations in the contract terms, when compared to PG&E’s 2009 Form Agreement for short-term contracts, are fair to customers and competing counterparties.”^{12/} Thus, while there are differences between the EEI Master Agreement and PG&E’s form agreement, such differences do not expose ratepayers to undue risk.

DRA also questions whether ratepayers have been exposed to undue risk because the IE did not participate directly in negotiations regarding the Agreements.^{13/} PG&E acknowledges that the IE did not directly observe any negotiations between PG&E and Shell regarding the Agreements, and is committed to ensuring IE involvement in current and future RPS negotiations.

7/ [REDACTED]

8/ “Projects” as used in this reply has the same meaning set forth in Advice Letter 3583-E.

9/ DRA Protest at 2.

10/ *Id.*

11/ [REDACTED]

12/ Advice Letter, Appendix I at I-54.

13/ DRA Protest at 2.

However,

[REDACTED]

Ultimately, the IE found that the Agreements merit Commission approval. Because the terms of the executed Agreements are fair to ratepayers and there were no commercial negotiations other than PG&E deciding to move forward with the proposed offers, DRA's concern regarding the fairness of the negotiation process should be rejected.

IV. There is No Harm to Ratepayers in PG&E's Purchase of Energy Prior to Commission Approval of the Agreements.

DRA expresses concern that PG&E is receiving deliveries under the Agreements prior to Commission approval of the Agreements. DRA claims that "[r]equesting approval of a PPA after the commencement of energy delivery eliminates the opportunity for a detailed review of the project prior to the approval of a PPA," and recommends that power purchase agreements should be approved before energy deliveries begin.^{16/} Because there is no harm to ratepayers in PG&E's receipt of deliveries prior to CPUC Approval and because PG&E has existing, independent authority to purchase such energy in the short-term, the Commission should reject DRA's concerns.

As PG&E explained in the Advice Letter, deliveries under the Agreements began in January 2010, and will continue through December 31, 2010 for Big Horn and December 31, 2011 for Combine Hills II and Wheat Field.^{17/}

[REDACTED]

If CPUC Approval is obtained, PG&E will pay a true-up settlement amount for the Green Attributes produced prior to CPUC Approval.^{20/}

14/ [REDACTED]

15/ Advice Letter, Appendix I at I-57.

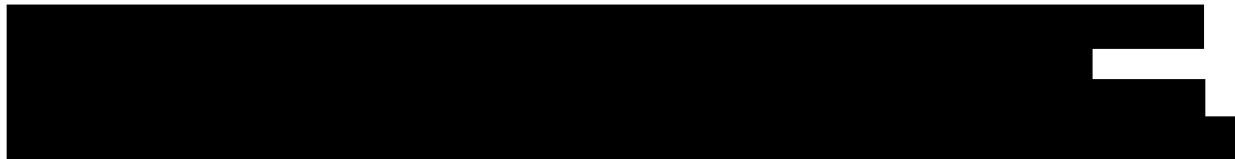
16/ DRA Protest at 4.

17/ Advice Letter at 2-3.

18/ [REDACTED]

19/ *Id.* at D-5.

20/ Advice Letter at 2.



There is no harm to ratepayers, then, in PG&E's receipt of energy deliveries prior to CPUC Approval. In fact, the Agreements' structure is beneficial to ratepayers because it preserves the Commission's ability to approve the procurement of competitively-priced RPS-eligible power that might otherwise have been sold to a third party not subject to California's RPS goals.

Further, PG&E has existing, independent authority to purchase these interim energy deliveries in the short-term under its Conformed 2006 Long-Term Procurement Plan ("LTPP").^{21/} If the Commission ultimately decided not to approve the Agreements, PG&E would follow its LTPP by submitting the resulting short-term contractual obligation as part of its quarterly compliance filing, including justification for the need and process used to incur the obligation.^{22/} The reasonableness of these purchases would be based on the best available market information for similar products.

V. Conclusion

For the foregoing reasons, the Commission should reject DRA's Protest and approve Advice Letter 3583-E.

Sincerely,



Brian K. Cherry
Vice President, Regulatory Relations

cc: Cynthia Walker, Program Manager, DRA
Julie Fitch, Director Energy Division
Marcelo Poirier, DRA
Paul Douglas, Energy Division
Sean Simon, Energy Division
R.08-08-009 Service List
R.06-02-012 Service List
R.08-02-007 Service List

^{21/} Conformed 2006 LTPP, Sheet No. 11, Item #10; Sheet No. 20, Item #8.

^{22/} Conformed 2006 LTPP, Sheet No. 20, Item #8.

**DECLARATION OF CHARLES H. POST
SEEKING CONFIDENTIAL TREATMENT
FOR CERTAIN DATA AND INFORMATION CONTAINED IN A REPLY TO DRA'S
PROTEST TO PG&E'S ADVICE LETTER 3583-E**

(PACIFIC GAS AND ELECTRIC COMPANY - U 39 E)

I, Charles H. Post, declare:

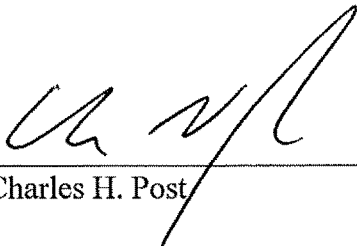
1. I am presently employed by Pacific Gas and Electric Company ("PG&E"), and have been an employee for more than 8 years. My current title is Principal within PG&E's Energy Procurement Department. In this position, my responsibilities include negotiating PG&E's Renewables Portfolio Standard Program ("RPS") Power Purchase Agreements. In carrying out these responsibilities, I have acquired knowledge of PG&E's contracts with numerous counterparties. I have also gained knowledge of the operations of such sellers in general and, based on my experience in dealing with facility and contract owners, I am familiar with the types of data and information about their contracts and operations that such owners would consider confidential and proprietary.

2. Based on my knowledge and experience, and in accordance with Decision ("D.") 08-04-023 and the August 22, 2006 "Administrative Law Judge's Ruling Clarifying Interim Procedures for Complying with Decision 06-06-066," I make this declaration seeking confidential treatment of PG&E's reply to DRA's protest of Advice Letter 3583-E, submitted on January 20, 2010.

3. Attached to this declaration is a matrix identifying the data and information for which PG&E is seeking confidential treatment. The matrix specifies that the material PG&E is seeking to protect constitutes the particular type of data and information listed in Appendix 1 of D.06-06-066 and Appendix C of D.08-04-023 (the "IOU Matrix"). The matrix also specifies the

category or categories in the IOU Matrix to which the data and information corresponds, and why confidential protection is justified. Finally, the matrix specifies that: (1) PG&E is complying with the limitations specified in the IOU Matrix for that type of data or information; (2) the information is not already public; and (3) the data cannot be aggregated, redacted, summarized or otherwise protected in a way that allows partial disclosure. By this reference, I am incorporating into this declaration all of the explanatory text in the attached matrix that is pertinent to this filing.

I declare under penalty of perjury, under the laws of the State of California that, to the best of my knowledge, the foregoing is true and correct. Executed on January 20, 2010 at San Francisco, California.



Charles H. Post

PACIFIC GAS AND ELECTRIC COMPANY
 Reply to protest associated with Advice Letter 3583-E
 January 20, 2010

IDENTIFICATION OF CONFIDENTIAL INFORMATION PER DECISION 06-06-066 AND DECISION 09-04-023

Redaction Reference	1) The material submitted constitutes a particular type of data listed in the Matrix, appended as Appendix 1 to D.06-06-066 and Appendix C to D.08-04-023 (Y/N)	2) Which category or categories in the Matrix the data correspond to:	3) That it is complying with the limitations on confidentiality specified in the Matrix for that type of data (Y/N)	4) That the information is not already public (Y/N)	5) The data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure (Y/N)	PG&E's Justification for Confidential Treatment	Length of Time
1	Document: Reply to protest associated with Advice Letter 3583-E						
Reply	Y	Item VIII A) Bid information and B) Specific quantitative analysis involved in scoring and evaluating of participating bids. Item VII G) Renewable Resource Contracts under RPS program - Contracts without SEPs. Item VII (un-numbered category following VII G) Score sheets, analyses, evaluations of proposed RPS projects.	Y	Y	Y	The reply contains bid information from the 2009 solicitation and discusses, analyzes and evaluates the Projects and the terms of the three separate Confirmations to the existing Edison Electric Institute master power purchase and sale agreement between PG&E and Shell (the "Confirmations"). Disclosure of this information would provide valuable market sensitive information to competitors. Since negotiations are still in progress with bidders from the 2005, 2006, 2007, 2008 and 2009 solicitations and with other counterparties, this information should remain confidential. Release of this information would be damaging to negotiations. Furthermore, the counterparty to the Confirmations has an expectation that the terms of the Confirmations will remain confidential pursuant to confidentiality provisions in the Confirmations.	For information covered under Item VIII A), remain confidential until after final contracts submitted to CPUC for approval For information covered under Item VIII B), remain confidential for three years after winning bidders selected For information covered under Item VII G) and Item VII (un-numbered category following VII G), remain confidential for three years