PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #10063
RESOLUTION E-4390
January 27, 2011

REDACTED

RESOLUTION

Resolution E-4390. Pacific Gas and Electric Company requests approval of contracts with Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP; all affiliates of Greengate Power Corporation.

PROPOSED OUTCOME: This Resolution approves cost recovery for Pacific Gas and Electric Company's contracts with Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP. The contracts are approved without modifications.

ESTIMATED COST: Costs of the contracts are confidential at this time.

By Advice Letter 3620-E filed on February 22, 2010 and supplemental Advice Letter 3620-E-A filed on May 5, 2010.

SUMMARY

Pacific Gas and Electric Company's contracts with Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP comply with the Renewables Portfolio Standard (RPS) procurement guidelines and are approved without modification

Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 3620-E on February 22, 2010, requesting California Public Utilities Commission (Commission) review and approval of three contracts between PG&E and Greengate Power Corporation. For purpose of meeting its RPS targets, PG&E executed the 20 year contracts with Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP, all subsidiaries of Greengate, through bilateral negotiations. Each 150 megawatt wind facility is being developed in Alberta, Canada. The Halkirk I facility is scheduled to achieve commercial operation by December 31, 2011 and the Blackspring Ridge IA and

Blackspring Ridge IB facilities are scheduled to achieve commercial operation by December 31, 2012. On May 5, 2010, PG&E filed supplemental AL 3620-E-A to bring the contracts into conformance with Decision 10-03-021.

This resolution approves the Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP contracts without modification. PG&E's execution of these contracts is consistent with PG&E's 2009 RPS Procurement Plan, including its resource need, which the Commission approved in Decision 09-06-018. Subject to ex-post verification through the California Energy Commission's (CEC) verification and tracking methodology, the CEC has determined that PG&E's contract structure and strategy for importing the energy and Green Attributes associated with the facilities' generation meets the RPS delivery requirements established in the California Energy Commission's Renewables Portfolio Standard Eligibility Guidebook.

Deliveries under the Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP contracts are reasonably priced and fully recoverable in rates over the life of the contract, subject to Commission review of PG&E's administration of the contracts.

The following table provides a summary of the Greengate contracts:

Generating Facility	Technology Type	Capacity (MW)	Energy (GWh/yr)	Online Date	Term (Years)	Location
Halkirk I	Wind	150	484	12/31/2011	20	Alberta, Canada
Blackspring Ridge IA	Wind	150	445	12/31/2012	20	Alberta, Canada
Blackspring Ridge IB	Wind	150	445	12/31/2012	20	Alberta, Canada

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 and SB 1036.[1] The RPS program is codified in Public Utilities Code Sections 399.11-399.20.[2] The RPS program administered by the Commission requires each utility to increase its total procurement of eligible renewable energy resources by at least one percent of retail sales per year so that 20 percent of the utility's retail sales are procured from eligible renewable energy resources no later than December 31, 2010.[3]

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 Advice Letter 3620-E and supplemental Advice Letter 3620-E-A was made by publication in the Commission's Daily Calendar. PG&E states that copies of the Advice Letters were mailed and distributed in accordance with Section IV of General Order 96-B.

PROTESTS

PG&E's Advice Letter AL 3620-E was timely protested on March 15, 2010 by The Utility Reform Network (TURN). PG&E responded to TURN's protest on March 23, 2010.

DISCUSSION

Pacific Gas and Electric Company requests approval of three contracts with Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP

On February 22, 2010, Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 3620-E requesting California Public Utilities Commission (Commission) approval of three long-term contracts with Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind

[1] SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007).

[2] All further references to sections refer to Public Utilities (Pub. Util.) Code unless otherwise specified.

[3] *See,* Pub. Util. Code § 399.15(b)(1).

Project LP contracts, each subsidiaries of Greengate Power Corporation. The contracts were negotiated bilaterally in 2009 and 2010.

On May 5, 2010, PG&E filed supplemental AL 3620-E-A to bring the Greengate contracts and AL 3620-E into conformance with Decision (D.) 10-03-021. Specifically, PG&E amended the contracts to include new standard terms and conditions and to demonstrate whether the contracts meet the conditions established in the decision for RPS compliance purposes. On May 6, 2010, the Commission adopted D.10-05-018 to stay D.10-03-021, pending consideration of petitions for modification (PFM), and has not subsequently ruled on the PFMs. Therefore, the Commission accepts the amendments to the standard terms and conditions in each contract, but makes no judgment on the additional information provided in Confidential Appendix B of supplemental AL 3620-E-A.

The Greengate contracts concern generation from an as-available wind resource located outside the United States and the California Independent System Operator (CAISO) balancing area. PG&E asserts that the transactions under the Greengate contracts will comply with the California Energy Commission's (CEC) RPS eligibility requirements for facilities located outside the United States and the RPS delivery requirements for firmed and shaped deliveries of out-of-state power where deliveries occur at a different time than generation.

The Commission's approval of the contract will authorize PG&E to accept future RPS-eligible generation that will contribute towards PG&E's 20% RPS mandate, and the 20-year contracts will contribute to PG&E long-term RPS goals. With expected annual RPS-eligible deliveries of approximately 1,400 gigawatt-hours (GWh) commencing in 2012 and 2013, the Greengate contracts represent a significant contribution towards PG&E's RPS annual obligation.

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

1. Approves the PPAs in their entirety, including payments to be made by PG&E pursuant to the PPAs, subject to the Commission's review of PG&E's administration of the PPAs.
2. Finds that any procurement pursuant to the PPAs 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 PPAs shall be recovered in rates.
4. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:
    a. The PPAs are consistent with PG&E's 2009 RPS procurement plan.
    b. The terms of the PPAs, 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 PPAs:
    a. The utility's costs under the PPAs shall be recovered through PG&E's Energy Resource Recovery Account.
    b. Any stranded costs that may arise from the PPAs 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:
    a. The PPAs are not a covered procurement subject to the EPS because the generating facilities have a forecast capacity factor of less than 60 percent each and, therefore, are not baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules.

Energy Division Evaluated the Greengate Contracts on these Grounds:

- Consistency with bilateral contracting rules
- Consistency with PG&E's 2009 RPS Procurement Plan
- Consistency with PG&E's Least-Cost, Best-Fit requirements
- Independent Evaluator review
- Cost reasonableness
- Cost containment
- Project viability assessment and development status
- Consistency with RPS eligibility delivery rules

- Consistency with RPS standard terms and conditions
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard
- Procurement Review Group participation
- Contribution to minimum quantity requirement for long-term/new facility contracts
- TURN's protests

Consistency with Bilateral Contracting Rules

According to PG&E, the parties pursued bilateral negotiations because the timeline of the 2009 RPS solicitation would have delayed Greengate's project development.

In D.06-10-019, the Commission established rules pursuant to which the IOUs could enter into bilateral RPS contracts. PG&E adhered to these bilateral contracting rules because the contracts are longer than one month in duration, the contracts were filed by advice letter, the above market costs will not be applied to PG&E's RPS cost limitation and the contracts are reasonably priced, as discussed in more detail below.

In D.09-06-050, this Commission determined that bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation. Accordingly, the Greengate contracts were compared to other RPS contracts received in PG&E's 2009 RPS solicitation, the proposed agreement was reviewed by PG&E's Procurement Review Group and an independent evaluator oversaw the contract evaluation and negotiation.

<u>The Greengate contracts are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.</u>

Consistency with PG&E's 2009 RPS Procurement Plan

In D.09-06-018, the Commission approved PG&E's Procurement Plan (Plan) and bid solicitation materials for PG&E's 2009 RPS solicitation. Pursuant to statute, PG&E's Plan included 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.[4] The objective of PG&E's 2009 Plan was to execute contracts for

[4] Pub. Util. Code § 399.14(a)(3).

RPS-eligible generation between 800 GWh and 1,600 GWh per year, which reflects approximately one to two percent of PG&E's annual retail sales.

PG&E states that the Greengate contracts with expected RPS-eligible deliveries on average of approximately 1,400 GWh per year commencing in 2012 and 2013 meet the criteria for the renewables procurement objectives set forth in PG&E's 2009 Plan.

TURN protested PG&E's AL 3620-E. In its protest, TURN asserts that the Greengate contracts cause PG&E to exceed the procurement authority granted in the decision approving PG&E's 2009 Plan. TURN claims that the Greengate contracts for 1,400 GWh/year, in addition to numerous other contracts that PG&E executed in 2009, results in cumulative volumes that far exceed the procurement authority granted to PG&E. TURN states that allowing PG&E to procure far greater than the CPUC-approved volumes "would make a mockery of the planning process and render the plans completely irrelevant."[5]

In response, PG&E rebutted TURN's protest asserting that the investor-owned utilities (IOUs) are not restricted by the procurement activities identified in the annual RPS procurement plans. As an example, PG&E cites the decision approving its 2008 RPS procurement plan where the Commission stated that each IOU is ultimately responsible for taking all necessary actions to ensure that it meets its RPS targets.[6]

While TURN correctly identifies a potential disconnect between PG&E's 2009 RPS procurement plan and PG&E's total annual RPS contracting activities, the Commission does not believe this justifies denial of the Greengate contracts. PG&E is correct that the Commission has put the burden of proof on the IOUs that they take all reasonable efforts to comply with the RPS goals. This includes making procurement decisions based on a robust resource-need assessment of the IOU's portfolio of contracts, which include projects under development. It is a reasonable assumption that some of the projects for which the IOU's have CPUC-approved contracts for will not be built for one reason or another or will achieve commercial operation later than anticipated. It is reasonable for the IOUs to execute contracts for additional RPS-eligible resources where there is an identified need, for example a RPS compliance deficit.

[5] TURN protest at 4.

[6] *See,* D.08-02-008

It is also worth noting that many of the contracts executed by PG&E in 2009 that TURN is referring to are short-term agreements and several of those are two years or less. As a result, these short-term contracts would either have limited or no procurement overlap with the Greengate contracts (which do not come online until 2012 and 2013) and do not provide long-term RPS-eligible deliveries as the Greengate contracts do. Therefore, TURN's protest on this issue is denied.[7]

<u>The Greengate contracts are consistent with PG&E's 2009 RPS Procurement Plan approved by D.09-06-018.</u>

Consistency with PG&E's Least-Cost, Best-Fit (LCBF) Requirements

The Commission's LCBF decision directs the utilities to use certain criteria to rank offers bid into an RPS solicitation and provides guidance on a bid evaluation process that is used to evaluate which projects are "least-cost best-fit."[8] PG&E's bid evaluation includes a quantitative and qualitative analysis, which focuses on four primary areas: 1) determination of a bid's market value; 2) calculation of transmission adders and integration costs; 3) evaluation of portfolio fit; and 4) consideration of non-price factors. The LCBF evaluation is generally used to establish a shortlist of proposals from PG&E's solicitation so that PG&E can proceed to engage in contract negotiations with counterparties representing bids on the shortlist. PG&E's 2009 RPS solicitation protocol included an explanation of its LCBF methodology.

Based on PG&E's LCBF evaluation, PG&E asserts that the Greengate contracts are competitive when compared to offers PG&E received in its 2009 RPS solicitation.

TURN objects to PG&E's claims that the Greengate projects will provide "additional firm energy generation to PG&E's portfolio." TURN points to sections of PG&E's advice letter where PG&E indicates that it may satisfy the CEC's RPS delivery requirements for the Greengate contracts using existing contracts for import energy. For this reason, TURN asserts that the Greengate contracts will not provide the energy "portfolio benefits" purported by PG&E. TURN requests that the Commission find that PG&E has not demonstrated that the Greengate contract adequately satisfies its portfolio needs.

[7] TURN may raise its concerns about the specificity of PG&E's expressed RPS need in the annual procurement plans and may seek clarification of the authorization granted by the Commission's decisions approving the IOUs' RPS procurement plans in R.08-08-009, or subsequent proceeding.

[8] *See* D.04-07-029.

In response, PG&E argues that TURN proposes a definition for evaluating portfolio benefits that is too narrow. PG&E claims that "portfolio fit" considers how well a transaction's features match PG&E's portfolio needs, including RPS compliance needs.

The Commission agrees with TURN that PG&E has likely overstated the contribution that the Greengate contracts will make to their energy portfolio, as "portfolio fit" is defined in PG&E's LCBF methodology and described in PG&E's advice letter.[9] Because there is not a predetermined schedule for the energy imports used to match the Green Attributes procured pursuant to the Greengate contracts, it is difficult to assign a known "portfolio fit" value, quantitative or qualitative, to these contracts. The independent evaluator notes that there is insufficient information to evaluate the portfolio fit for this contract.[10] PG&E has structured its Greengate contracts in a manner that provides PG&E significant flexibility for satisfying the CEC's delivery requirements and in doing so PG&E should recognize the inherent uncertainty about the "portfolio fit" of these types of long-term contracts.

For the purpose of Commission review, staff assumed that the Greengate contracts will provide no additional value to PG&E's "energy" portfolio because PG&E may use existing contracts to satisfy the CEC's delivery requirements for the Greengate projects. The independent evaluator anticipates that the deliveries will be managed in a manner that would protect ratepayers' interests and the Commission concurs. In this case, staff determines that a poor or zero "portfolio fit" score in LCBF valuation does not render the Greengate contracts a poor value to PG&E or its ratepayers from an RPS compliance perspective.

It is also worth noting that "portfolio fit" is only one metric in the IOUs LCBF evaluation of RPS contracts and the "portfolio fit" criterion has a smaller impact on the overall LCBF evaluation than other contract attributes such as project viability. In future advice letters, PG&E should exercise greater scrutiny when describing the proposed agreement and any purported benefits of RPS agreements.

<u>PG&E's decision to execute the Greengate contracts is consistent with PG&E's RPS least-cost, best-fit cost protocols.</u>

[9] PG&E's 2009 RPS Solicitation Protocols, Section XI (B) is available at: http://www.pge.com/includes/docs/word_xls/b2b/wholesaleelectricsuppliersolicitation/2009RPS/Amended_Solicitation_Protocol062909.DOC

[10] AL 3620-E, Appendix H.

Independent Evaluator Review

PG&E retained independent evaluator (IE) Lewis Hashimoto of Arroyo Seco Consulting to oversee PG&E's bilateral negotiations with Greengate and to evaluate overall merits for CPUC approval of the contracts. AL 3620-E included a public and confidential independent evaluator's report. The IE in its report determined that negotiations between PG&E and Greengate were fair and that Greengate was not given preferential treatment over sellers participating in the RPS solicitation. The IE considers the projects to be highly viable, ranks the contract prices as moderate to low in comparison to competing alternatives, ranks the net market valuations as moderate to high, and finds that all three contracts merit CPUC approval.

Consistent with D.06-05-039, an independent evaluator oversaw PG&E's negotiations with Greengate. The IE concurs with PG&E's decision to execute the agreement and finds that the Greengate contracts merit Commission approval.

Cost Reasonableness

The Commission's reasonableness review for RPS PPA prices includes a comparison of the proposed contract price(s) to other RPS offers received in recent RPS solicitations and contracts that have recently received CPUC approval. Using this analysis, and the confidential analysis provided by PG&E in AL 3620-E, the Commission determines that the cost of the Greengate contracts are reasonable. Confidential Appendix B includes a detailed discussion of the contractual pricing terms.

The Greengate contracts compare favorably to the results of PG&E's 2009 solicitation and other comparable contracts.

Payments made by PG&E under the Greengate contracts are fully recoverable in rates over the life of the contracts, subject to Commission review of PG&E's administration of the contracts.

Cost Containment

Pursuant to statute, the Commission calculates a market price referent (MPR) to assess whether a proposed RPS contract has above-market costs.[11] The nature of this contract, where satisfying the CEC's delivery requirements relies on future energy contracts, requires estimating a levelized long-term energy cost in order to make a comparison to the MPR, which represents a levelized long-term energy and capacity cost. <u>Based on the Greengate projects' 2012 and 2013 commercial online dates and PG&E's cost forecast for import energy over the 20-year contract term, PG&E estimates that the all-in price of the contracts (energy, capacity and Green Attributes) exceeds the applicable 2009 MPR.</u>[12]

Contracts that meet certain criteria are eligible for above-MPR funds (AMFs).[13] The Greengate contracts were bilaterally negotiated, and therefore do not meet the eligibility criteria for AMFs.[14]

<u>PG&E voluntarily entered into the Greengate contracts, which PG&E estimates will exceed the applicable 2009 MPR on an all-in levelized cost basis.</u>

Project Viability Assessment and Development Status

PG&E asserts that the Greengate projects are viable and will be developed according to the terms and conditions in the contracts. PG&E evaluated the viability of the Greengate contracts 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 3620-E include a comparison of HP Ranch III's project viability score relative to all bids PG&E received in its 2009 RPS solicitation and all shortlisted projects. Based on this analysis, <u>the viability of the</u>

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[11] *See* Pub. Util. Code § 399.15(c).

[12] *See* Resolution E-4298.

[13] SB 1036 codified in § 399.15(d)(2) the following criteria: the contract was selected through a competitive solicitation, the contract covers a duration of no less than 10 years, the contracted project is a new facility that will commence commercial operations after January 1, 2005, the contract is not for renewable energy credits, and the above-market costs of a contract do not include any indirect expenses including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades.

[14] Additionally, on May 28, 2009, the Director of the Energy Division notified PG&E that it had exhausted its AMF account, meaning PG&E is no longer required to sign contracts for power priced above the MPR, but may voluntarily choose to do so.

Greengate projects is reasonable compared to other recent projects offered to PG&E.

PG&E provided the following information about the project's developer and development status:

Developer experience

Principals of Greengate's project development team participated in the development of wind projects in British Columbia and Alberta, Cananda between 2003 and 2009.

Resource quality and technology

The Greengate projects are being developed in high quality wind resource areas. The projects expect to use commercially demonstrated VESTAS V90 1.8 MW wind turbine technology.

Site control and permitting status

Greengate has secured site control that will allow for construction and operation of the projects. All permits are expected to be obtained in a timely manner to achieve the conditions precedent in the contracts.

Interconnection and transmission

Greengate has secured interconnection agreements for the projects, which will utilize existing infrastructure.

Consistency with RPS Eligibility Delivery Rules

The CEC determines RPS eligibility and delivery requirements for RPS facilities and generation, including for facilities that do not have their first point of interconnection to the transmission network within the state of California. The CEC, through its Renewables Portfolio Standard Eligibility Guidebook (Guidebook), has adopted guidelines for pre-certifying and certifying RPS eligible facilities located both in California and out-of-state. The CEC has also established delivery requirements for facilities interconnected outside the state, pursuant to the provisions in Public Resources Code Section 25741, Subdivision (a). For RPS contracts that require CPUC approval, the CEC provides written documentation addressing whether a proposed contract delivery structure would be eligible for the RPS. Throughout the term of the contract, eligibility and delivery is verified and tracked through the Western Renewable Energy Generating Information System (WREGIS).

In AL 3620-E, PG&E describes the Greengate contract structure in the following manner. PG&E will purchase energy, capacity and Green Attributes at each project's busbar and immediately and continuously resell the energy and capacity back to Greengate at each of the same projects' busbars while retaining the Green Attributes for its own use. PG&E will then purchase energy at a CAISO import point(s) (e.g., COB); rebundle an equivalent volume of import energy with the Green Attributes purchased under the contracts; and import the bundled RPS-eligible energy into California during the same calendar year and over the 20-year contract term. Deliveries of import energy will be documented with a North American Electric Reliability Corporation (NERC) E-tag that relates import energy deliveries to generated energy from the Greengate projects.

The CEC has determined that the Greengate contracts meet the CEC's delivery requirements for RPS eligibility. See Appendix A: CEC Letter Regarding Eligibility of the Greengate Contracts' Delivery Structure.

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. On May 5, 2010, PG&E filed supplemental AL 3620-E-A to, in part, amend the Greengate contracts to conform with the Commission's RPS standard terms and conditions adopted to D.10-03-021.

The Greengate contracts include the Commission adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009 and amended by D.08-08-028, and non-modifiable terms related to tradable renewable energy credits in stayed D.10-03-021.

Compliance with the Interim Greenhouse Gas Emissions Performance Standard

California Pub. Util. Code §§ 8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers. D.07-01-039 adopted an interim Emissions Performance Standard (EPS) that establishes an emission rate quota for obligated facilities to levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant.

The EPS applies to all energy contracts for baseload generation that are at least five years in duration. In most cases, generating facilities using renewable resources are deemed compliant with the EPS except where intermittent renewable energy is firmed and shaped, or Green Attributes are delivered with energy generated at a different time from non-renewable resources. In this case, D.07-01-039 specifically defines the following eligibility condition:

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> For specified contracts with intermittent renewable resources (defined as solar, wind and run-of-river hydroelectricity), the amount of substitute energy purchases from unspecified resources is limited such that total purchases under the contract (whether from the intermittent renewable resource or from substitute unspecified sources) do not exceed the total expected output of the specified renewable powerplant over the term of the contract.[15]

The Greengate contracts are long-term contracts with facilities that will generate intermittent renewable energy. As described above, PG&E may satisfy the CEC's delivery requirements using incremental energy imports or existing energy import contracts.

<u>PG&E shall comply with the EPS requirements attributed to the Greengate contracts and is subject to Commission rules to verify the EPS compliance of these contracts.</u>

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.[16] PG&E asserts that the Greengate contracts were discussed at several PRG meetings in August 2009, December 2009, and February 2010.[17]

<u>Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the PPA.</u>

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

[15] D.07-01-039, Conclusion of Law 40. Note: These compliance rules specifically apply to IOUs, additional compliance rules may apply to other RPS-obligated load serving entities.

[16] PG&E's PRG includes representatives of the Union of Concerned Scientists, the California Utility Employees, The Utility Reform Network, the California Public Utility Commission's Energy Division and Division of Ratepayer Advocates, and PG&E ratepayer Jan Reid.

[17] AL 3620-E at 14.

D.07-05-028 established a "minimum quantity" condition on the ability of utilities to count an eligible contract of less than 10 years duration for compliance with the RPS program.[18] 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 percent of the utility's previous year's retail sales.

As new facilities, delivering pursuant to long-term contracts, the Greengate contracts will contribute to PG&E's minimum quantity requirement established in D.07-05-028.

Commission denies TURN's protest in part and accepts TURN's protest in part

TURN filed its protest shortly after the Commission adopted D.10-03-012, which established rules addressing tradable renewable energy credit (TREC) procurement and trading for RPS compliance. TURN argued in its protest that the Greengate contracts constitute a TREC purchase pursuant to D.10-03-012 and that prior to CPUC Approval of the contracts PG&E must demonstrate that that the transaction would not cause deliveries of TRECs to exceed the 25% cap in any future year.

On May 6, 2010, the Commission adopted D.10-05-018 to stay D.10-03-021, pending consideration of petitions for modification (PFM), and has not subsequently ruled on the PFMs. As a result, the Commission has not adopted any rules that would define PG&E's Greengate contracts as TREC contracts or any rules establishing limitations on TRECs for RPS compliance.

A thorough examination of the issues related to the use of TRECs for RPS compliance, including the value of different contract structures, is taking place in R.06-02-012 and R.08-08-009 and we do not prejudge the outcome of those proceedings here. Accordingly, TURN's protest is denied without prejudice.

TURN's protests concerning an inconsistency between the Greengate contracts and PG&E's 2009 RPS procurement plan, which we deny, and the expected value that the Greengate contracts may contribute to PG&E energy portfolio, which we accept, are discussed and disposed of above.

[18] 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."

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.[19]

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."[20]

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 enforcement activities shall be reviewed pursuant to the Commission's authority to review the utilities' administration of contracts.

Confidential Information

[19] *See, e.g.* D. 08-04-009 at Appendix A, STC 6, Eligibility.

[20] *See, e.g.* D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

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. 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.

FINDINGS AND CONCLUSIONS

1. Pacific Gas and Electric Company's contracts with Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP are consistent with the bilateral contracting guidelines established in Decision 06-10-019 and Decision 09-06-050.
2. Pacific Gas and Electric Company's contracts with Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP are consistent with Pacific Gas and Electric Company's 2009 Renewables Portfolio Standard (RPS) Procurement Plan, approved by Decision 09-06-018.
3. Pacific Gas and Electric Company's decision to execute contracts with Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP is consistent with Pacific Gas and Electric Company's least-cost, best-fit cost protocols.

4. Consistent with Decision 06-05-039 and Decision 09-06-050, an independent evaluator oversaw Pacific Gas and Electric Company's negotiation of the contracts with Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP.
5. The total all-in costs of the contracts with Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP are reasonable based on their relation to bids received in response to Pacific Gas and Electric Company's 2009 solicitation for renewable resources and recent bilateral offers.
6. Pacific Gas and Electric Company estimated that the levelized all-in costs for Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP contracts will exceed the applicable 2009 market price referent.
7. Pursuant to Public Utilities Code § 399.15(d), Pacific Gas and Electric Company voluntarily enters into the contracts with Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP.
8. The viability of the Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP projects are reasonable compared to other projects offered to Pacific Gas and Electric Company.
9. The Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP contracts include the Commission adopted RPS "non-modifiable" standard terms and conditions, as set forth in Decision 08-04-009, as amended by Decision 08-08-028.
10. The California Energy Commission has determined that Pacific Gas and Electric Company's contracts with Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP and the associated import strategy would meet the delivery requirements for RPS eligibility.
11. The Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP must comply with the Emissions Performance Standard consistent with Decision 07-01-039 and Pacific Gas and Electric Company is subject to Commission rules to verify compliance of these contracts with the Emissions Performance Standard.
12. Pursuant to Decision 02-08-071, Pacific Gas and Electric Company's Procurement Review Group participated in the review of the Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP contracts.

13. Procurement pursuant to the Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP contracts is procurement from eligible renewable energy resources for purposes of determining Pacific Gas and Electric Company'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.
14. 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 Pacific Gas and Electric Company of its obligation to enforce compliance with this agreement.
15. Payments made by Pacific Gas and Electric Company under the Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP contracts are fully recoverable in rates over the life of the contracts, subject to Commission review of Pacific Gas and Electric Company's administration of the contracts.
16. 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.
17. Advice Letter 3620-E should be approved effective today without modifications.
18. Supplemental Advice Letter 3620-E-A should be approved with respect to contract amendments detailed in Appendix A1, Appendix A2 and Appendix A3; and should be denied without prejudice in all other aspects.

<u>THEREFORE IT IS ORDERED THAT:</u>

1. Pacific Gas and Electric Company's contracts with Halkirk I Wind Project LP, Blackspring Ridge IA Wind Project LP, and Blackspring Ridge IB Wind Project LP filed in Advice Letter 3620-E is approved without modification.
2. Pacific Gas and Electric Company's supplemental Advice Letter 3620-E-A is approved with respect to contract amendments detailed in Appendix A1, Appendix A2 and Appendix A3; and is denied without prejudice in all other aspects.

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 January 27, 2011; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Appendix A

California Energy Commission Letter Regarding Eligibility of the PG&E and Greengate Contracts' Delivery Structure

STATE OF CALIFORNIA – THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, *Governor*

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

April 30, 2010

The California Energy Commission, through its staff, has reviewed the proposed contracting structure between Halkirk I Wind Project, Blackspring Ridge IA Wind Project, and Blackspring Ridge IB Wind Project and Greengate and Pacific Gas and Electric, as described in excerpted sections from pages 2 through 4 of Advice Letter #3620-E and provided in "Attachment A-Greengate Power Corp./PG&E," and page 5 as shown in the schematic design titled, "Attachment B-Greengate Power Corp./PG&E Delivery Structure."

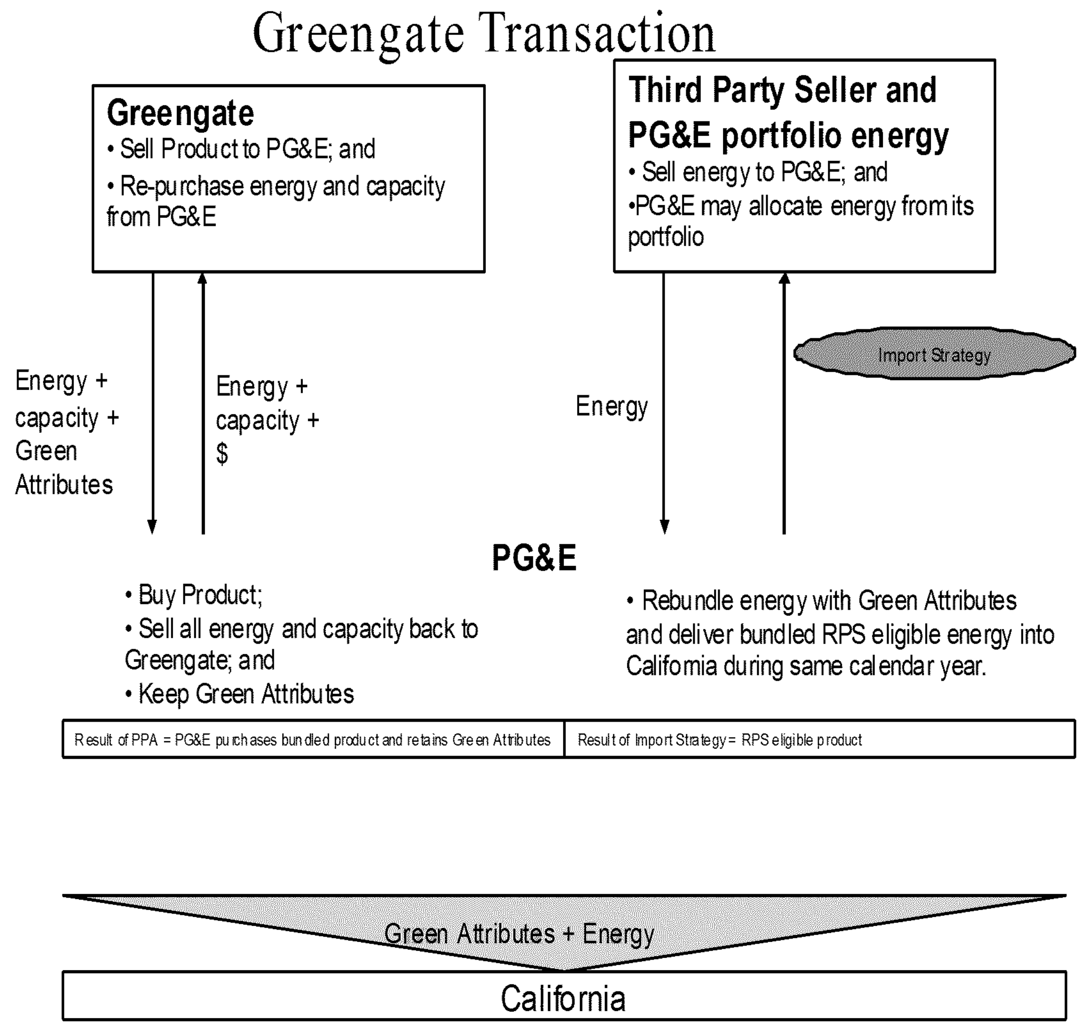
Assuming that all eligibility requirements for the Renewables Portfolio Standard (RPS) are met, including that the firm energy delivered to California is from a generator located outside California, the Energy Commission staff has determined that this structure would meet the RPS delivery requirements according to the *Renewables Portfolio Standard Eligibility Guidebook* (CEC-300-2007-006-ED3-CMF, January 2008).

Tony Gonçalves
Manager, Renewable Energy Office
California Energy Commission

Attachments

Contract and Delivery Structure[21]

[21] AL 3620-E at 5.



Confidential Appendix B

Summary of Greengate Contract Terms and Conditions

[REDACTED]

Confidential Appendix C

Independent Evaluator's Report

[REDACTED]