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Mr. Honesto Gatchalian
California Public Utilities Commission
Energy Division
Tariff Unit, 4th Floor
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Subject: Pacific Gas and Electric Company's Response to the Protest of Advice 3811-E (Amendments to Two Qualifying Facility Power Purchase Agreements With Berry Petroleum): Protest of the Division of Ratepayer Advocates

On March 24, 2010, the Division of Ratepayer Advocates (DRA) submitted its protest to PG&E's Advice 3811-E in which PG&E seeks approval of two amendments to existing qualifying facility (QF) power purchase agreements (PPAs). PG&E hereby replies to DRA's protest. As PG&E discusses below, DRA's interpretation of Decision (D.) 10-10-005 is incorrect in that the Commission did approve a similar increase in firm capacity payments for other similarly-situated QFs in that Decision. DRA's interpretation of the Settlement Agreement is also erroneous in that negotiation and execution of the proposed amendments would not deprive Berry Petroleum of the ability to sign transition PPAs for the period beginning after the expiration of the proposed amendments. As discussed in detail below, DRA has not provided a sufficient basis to deny the advice letter and it should be approved without revision.

Discussion

The proposed amendments with Berry Petroleum provide the following principle attributes: (1) the amendments resolve the requirement to increase capacity payments for the period beginning January 1, 2010 in the Combined Heat and Power and Qualifying Facility Settlement Agreement (herein "Settlement Agreement") approved by the Commission in D.10-12-035; (2) the amendments extend the term of the existing QF PPAs through December 31, 2011 to allow a continuity of sales from the Berry Petroleum facilities until a new PPA would be available for execution, consistent with D. 07-09-040; and (3) the amendments provide curtailment during periods when PG&E would otherwise experience negative pricing.

DRA objects to the amendments for the primary reason that the amendments differ from the obligation in the Settlement Agreement Term Sheet, Section 3.4.4. Section 3.4.4 of the Settlement Agreement Term Sheet requires PG&E to pay a firm capacity price to the listed QFs, rather than the as-available price it was previously ordered by the Commission to pay, if a Seller signs a Transition PPA for the period beginning January 1, 2010. The pro forma Transition PPA, attached as Exhibit 4 to the Settlement Agreement, will be available for execution after the Settlement Agreement becomes effective. Here, instead of signing Transition PPAs retroactive to January 1, 2010, the parties negotiated PPA amendments which would also require PG&E to increase the capacity payments effective January 1, 2010, provided the firm capacity delivery requirements were met during this period. The amendments would not become effective until the Settlement Agreement effective date, anticipated later this year.

DRA's protest erroneously claims that the Commission, in D.11-03-010 denied PG&E's request to true-up the firm capacity payment to four other similarly-situated QFs for the period beginning January 1, 2010, because they did not sign a Transition PPA.¹ However, this is a misreading of D.11-03-010. In that Decision, the Commission approved in their entirety the four proposed new QF PPAs, *each of which contained a requirement to increase or true up the capacity payment effective January 1, 2010*, contingent on the effectiveness of the Settlement Agreement.² D.11-03-010 provides in relevant part:

Pacific Gas and Electric Company's power purchase agreements with Mid-Set Cogeneration Company, Salinas River Cogeneration Company, Coalinga Cogeneration Company and Sargent Canyon Cogeneration Company are approved, contingent on the Qualifying Facility and Combined Heat and Power Program Settlement Agreement becoming effective.³

The proposed amendments similarly would require the capacity payments to be "trued-up" for the period beginning January 2010, but the amendments would not become effective unless and until the Settlement Agreement becomes effective, and the obligation in Section 3.4.4 of the Settlement Agreement term sheet would be effective.

In addition, DRA errs in claiming that the proposed PPA amendments disqualify the two Berry Petroleum QFs from signing Transition PPAs. The proposed PPA amendments extend the term of the existing Berry Petroleum PPAs. Unlike the four QF PPAs approved in D.11-03-010, the amendments do not provide Berry

¹ DRA Protest, pp. 2-3.

² See, Application 10-10-005, p. 7, and Pro Forma PPAs attached as Appendices B, C, D and E, Section 4.02.10(x).

³ *Id.*, Ordering Para. 1.

Petroleum an ability to sell power to PG&E for a long term. The amendments extend the term of QF PPAs to provide time for a Transition PPA to become available and be executed, consistent with the Commission's direction in D.07-09-040.⁴ Section 3.1.1 of the Settlement Agreement states that a CHP Facility currently selling to an IOU under a Legacy PPA, or an extension thereof that is expiring during the Transition Period may sign a Transition PPA with the same utility. Since Berry Petroleum is currently selling to PG&E under extensions of legacy PPAs, and even after the effectiveness of the Amendments would continue to sell to PG&E under extensions of legacy PPAs, the amendments should not affect Berry's eligibility for a Transition PPA. Therefore, contrary to the arguments in DRA's protest, approval of the Advice Letter should not affect Berry's eligibility for a Transition PPA.

Conclusion

The Berry Petroleum PPA amendments are consistent with the Settlement Agreement and fully comply with D.10-12-035 as well as D.07-09-040. As noted in PG&E's advice letter, the amendments settle the obligation in Section 3.4.4 of the Term Sheet, extend the term of the PPAs to allow time to sign a new PPA after the Settlement Agreement is effective, and, in addition, provide the operational benefit of more accurate scheduling of energy and curtailment rights. DRA's protest should be denied and Advice 3811-E should be granted in its entirety.

Sincerely,



Vice President, Regulation and Rates

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⁴ D.07-09-040 Finding of Fact 46 provides: It is reasonable to allow QFs with expiring contracts to extend the non-price terms of their agreements and continue to provide service under the pricing set forth in this decision until such time as the prospective QF Program contracts options are available.