

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #10527  
RESOLUTION E-4415  
July 28, 2011

REDACTED

R E S O L U T I O N

Resolution E-4415. Pacific Gas and Electric Company requests approval of two renewable purchase power agreements with Potrero Hills Energy Producers, LLC and Sunshine Gas Producers, LLC.

PROPOSED OUTCOME: This Resolution approves cost recovery for Pacific Gas and Electric Company's renewable power purchase agreements with Potrero Hills Energy Producers, LLC and Sunshine Gas Producers, LLC. The power purchase agreements are approved with modifications.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter 3623-E filed on February 25, 2010, and Supplemental Advice Letter 3623-E-A filed on April 13, 2011.

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SUMMARY

**PG&E's renewable contracts comply with the Renewables Portfolio Standard (RPS) procurement guidelines and are approved with modifications**

Pacific Gas and Electric (PG&E) filed Advice Letter (AL) 3623-E on February 25, 2010, seeking California Public Utilities Commission (Commission) approval of two renewable purchase power agreements (PPAs) with new landfill gas facilities being developed in California. Both PPAs were negotiated bilaterally with DTE Biomass Energy during the course of PG&E's 2009 RPS solicitation.

PG&E executed a 20-year PPA for generation from the 20 MW Sunshine Gas facility being developed in Sylmar, California and a 25-year PPA for generation from the eight megawatt (MW) Potrero Hills facility that will be located in Suisun City, California. The projects are expected to achieve commercial operation in 2014 and 2015, respectively. Together the projects are expected to deliver

approximately 200 gigawatt-hours (GWh) annually over the life of the PPAs. The projects will be directly interconnected with the California Independent System Operator balancing authority area.

On April 13, 2011, PG&E filed supplemental advice letter 3623-E-A to amend the PPAs. Specifically, the amendments reduced the contract price for any generation provided to PG&E that doesn't also convey capacity value, or resource adequacy value, to PG&E. The PPAs were also amended to include current non-modifiable RPS standard terms and conditions.

This resolution approves PG&E's PPAs with Sunshine Gas Producers, LLC and Potrero Hills Energy Producers, LLC, with modifications. The PPAs are consistent with PG&E's 2009 RPS Procurement Plan approved in D.09-06-018 and the costs are reasonable with the contract prices approved here. The Commission approves specific contract prices set forth in the proposed PPAs that are reasonable and will ensure that the PPAs provide the greatest value for PG&E's ratepayers. With the contract prices approved here, deliveries under the PPAs are fully recoverable in rates over the life of the contracts, subject to Commission review of PG&E's administration of the PPAs.

The following table summarizes the project-specific features of the agreements:

<b>Generating Facility</b>	<b>Type</b>	<b>Term Years</b>	<b>Facility Capacity</b>	<b>Annual Deliveries</b>	<b>Online Date</b>	<b>Project Location</b>
Sunshine Gas	Landfill Gas	20	20 MW	140 GWh	December 15, 2014	Sylmar, CA
Potrero Hill	Landfill Gas	25	8 MW	56 GWh	June 15, 2015	Suisun City, CA

## **BACKGROUND**

### **Overview of RPS Program**

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107 and SB 1036.<sup>1</sup> The RPS program is

<sup>1</sup> SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007).

codified in Public Utilities Code Sections 399.11-399.20.<sup>2</sup> 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.<sup>3</sup> On April 12, 2011, Governor Brown signed legislation to increase the RPS requirement to 33 percent in 2020.<sup>4</sup>

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 AL 3623-E and Supplemental AL 3623-E-A was made by publication in the Commission's Daily Calendar. Pacific Gas and Electric Company states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

## **PROTESTS**

Advice Letter 3623-E was not protested.

## **DISCUSSION**

### **PG&E requests Commission approval of a new renewable energy contract**

Pacific Gas and Electric (PG&E) filed Advice Letter (AL) 3623-E on February 25, 2010 seeking California Public Utilities Commission (Commission) approval of two renewable purchase power agreements (PPAs) with new landfill gas facilities being developed in California. The projects will be directly interconnected with the California Independent System Operator (CAISO) balancing authority area. Both agreements were negotiated bilaterally with DTE Biomass Energy Inc. (DTE Biomass) during the course of PG&E 2009 RPS solicitation.

<sup>2</sup> All further references to sections refer to Public Utilities Code unless otherwise specified.

<sup>3</sup> See § 399.15(b)(1).

<sup>4</sup> The SBX1 2 legislation is available here: [http://www.leginfo.ca.gov/cgi-bin/postquery?bill\\_number=sbx1\\_2&sess=CUR&house=B&search\\_type=email](http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sbx1_2&sess=CUR&house=B&search_type=email)

On April 13, 2011, PG&E filed supplemental advice letter 3623-E-A to amend the PPAs in two ways. First, PG&E and DTE Biomass amended the provision in the original PPAs that the facilities must provide capacity value towards PG&E's resource adequacy requirements. While the facilities will ultimately be considered a resource adequacy resource, DTE Biomass sought a contract amendment to address potential delays in receiving deliverability assessments from the CAISO. Pursuant to the amended PPAs, PG&E will pay a reduced price for any generation provided to PG&E that does not also convey resource adequacy value. PG&E asserts that the reduced contact price will result in an appropriate value of the "energy-only" generation and incentivizes the facilities to qualify as a resource adequacy resource. The second amendment brings the PPAs into conformance with current non-modifiable RPS standard terms and conditions.

PG&E's 20-year PPA with Sunshine Gas Producers, LLC<sup>5</sup> (Sunshine Gas) is expected to provide 140 GWh from a 20 MW facility located in Sylmar, California. The contractual online date for the facility is December 15, 2014, although the PPA allows for earlier deliveries if the project can achieve commercial operation sooner.

PG&E's 25-year PPA with Potrero Hills Energy Producers, LLC<sup>6</sup> (Potrero Hills) is expected to provide 56 gigawatt-hours (GWh) from an eight megawatt (MW) facility located in Suisun City, California. The contractual online date for the facility is June 15, 2015, although the PPA allows for earlier deliveries if the project can achieve commercial operation sooner.

The Commission's approval of the contracts will authorize PG&E to procure future RPS-eligible generation that will contribute towards PG&E's 33% RPS obligation.

**PG&E requests that the Commission issue a resolution containing the following findings:**

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.

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<sup>5</sup> Sunshine Gas Producers, LLC is jointly owned by DTE Biomass Energy Inc. and Landfill Energy Systems, LLC.

<sup>6</sup> Potrero Hills Energy Producers, LLC is owned by DTE Biomass Energy Inc.

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.), 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 deemed EPS-compliant because they are for landfill gas Projects.
  - b. PG&E has provided the notice of procurement required by D.06-01-038 in its Advice Letter filing.

**Energy Division Evaluated the Potrero Hills and Sunshine Gas Contracts on These Grounds:**

- Consistency with Commission guidelines for bilateral contracting
- 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
- Consistency with RPS standard terms and conditions
- Project viability assessment and development status
- Compliance with the minimum quantity condition
- Consistency with the Emissions Performance Standard
- Procurement Review Group participation

### **Consistency with Commission Guidelines for Bilateral Contracting**

The parties pursued bilateral negotiations during the 2009 RPS solicitation. In the advice letter, PG&E explains that it pursued bilateral negotiations because the projects were “attractive” from a project development, that is the projects had achieved certain noteworthy project development milestones, and that the price was competitive with other comparable offers.

In D.06-10-019, the Commission established rules pursuant to which the investor-owned utilities (IOUs) could enter into bilateral RPS contracts. PG&E adhered to these bilateral contracting rules because the contract is longer than one month in duration, the contract was filed by advice letter, the above market costs will not be applied to PG&E’s RPS cost limitation and the contract prices adopted here are reasonable, 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 Sunshine Gas and Potrero Hills PPAs 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 negotiation and evaluation.

PG&E’s bilaterally negotiated Sunshine Gas and Potrero Hills contracts are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.

### **Consistency with PG&E’s 2009 RPS Procurement Plan**

California’s RPS statute requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.<sup>7</sup>

<sup>7</sup> § 399.14.

PG&E's 2009 RPS Procurement Plan (Plan) was conditionally approved by D.09-06-018. Pursuant to statute, PG&E's Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.<sup>8</sup>

PG&E states that the generation procured under the PPAs will meet the resource needs identified in its Plan. In its Plan, PG&E's goal was to procure approximately one to two percent of its retail sales volume, or between 800 to 1,600 GWh per year. Also, PG&E sought bids from facilities that would contribute towards state's 20 percent bioenergy goal within the RPS program.<sup>9</sup> Collectively, the facilities are expected to deliver approximately 200 GWh per year and will contribute to the state's bioenergy goal. Deliveries from the facilities meet the criteria for renewables procurement contained in PG&E's 2009 Plan and will contribute to PG&E's 33 percent RPS goal.

The Sunshine Gas and Potrero Hills PPAs are consistent with PG&E's 2009 RPS Procurement Plan, including PG&E's RPS resource needs, approved by D.09-06-018.

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

The LCBF decision directs the utilities to use certain criteria in their bid ranking.<sup>10</sup> The decision offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations. 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 result of PG&E's LCBF evaluation for any given offer is a project (or contract) specific net market value. This value is a measure of a project's benefits and costs to PG&E that takes into account the project's contract price, indirect costs, such as costs for transmission upgrades, and the economic value of the contract, which reflects capacity and energy attributes.

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<sup>8</sup> § 399.14(a)(3).

<sup>9</sup> See Governor Schwarzenegger's Executive Order S-06-06.

<sup>10</sup> See D.04-07-029.

The LCBF evaluation is generally used to establish a shortlist of proposals from PG&E's solicitation as to which PG&E will engage in contract negotiations. In the case of a bilateral contract, the investor-owned utility evaluates the offer using the same LCBF criteria employed for evaluating competitively bid offers and compares the results to offers under negotiation from recent solicitations. PG&E's 2009 RPS solicitation protocol included an explanation of its LCBF methodology.

PG&E assessed the value of the Sunshine Gas and Potrero Hills offers using the same LCBF evaluation methodology it used for RPS offers received for the 2009 RPS Solicitation. PG&E compared the value of the Sunshine Gas and Potrero Hills offers against offers received in the 2009 Solicitation and against other bilateral offers available to PG&E at that time. PG&E asserts that the contracts are competitive compared to offers PG&E received in its 2009 RPS solicitation and bilateral offers.

The confidential data and analysis provided by PG&E in advice letter 3623-E demonstrates that at the time of contract execution, the Sunshine Gas and Potrero Hills PPAs were within the range of competitive bids received in the 2009 solicitation. Refer to Confidential Appendix A for a comparison of the Sunshine Gas and Potrero Hills PPAs to contracts bid in the 2009 RPS solicitation and bilateral offers.

PG&E's decision to execute the Sunshine Gas and Potrero Hills PPAs is consistent with PG&E's RPS Least-Cost, Best-Fit cost protocols.

### **Independent Evaluator Review**

PG&E retained independent evaluator (IE) Lewis Hashimoto of Arroyo Seco Consulting to oversee PG&E's bilateral negotiations with Sunshine Gas and Potrero Hills and to evaluate overall merits of the PPAs for Commission approval. AL 3623-E included a confidential Independent Evaluator's report.<sup>11</sup> The IE in its report determined that negotiations between PG&E and DTE Biomass Energy Inc. were fair and that the Sunshine Gas and Potrero Hills projects were not given preferential treatment over sellers participating in the RPS solicitation. The IE considers the viability for each of the projects to be moderate, and ranks the net market valuation of the PPAs to be moderate relative to offers bid to PG&E in the 2009 RPS solicitation. The IE concludes that the contracts merit Commission approval.

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<sup>11</sup> AL 3623-E included an IE report concerning the negotiation of the Sunshine Gas and Potrero Hills Landfill PPAs and the value of the contracts.



Consistent with D.06-05-039, an independent evaluator oversaw PG&E's negotiations with DTE Biomass Energy Inc. The IE concurs with PG&E's decision to execute the Sunshine Gas and Potrero Hills PPAs and finds that the contracts merit Commission approval.

### **Cost Reasonableness**

PG&E asserts that the Sunshine Gas and Potrero Hills PPAs are reasonable when considered against the pricing and other standards used for evaluating contracts resulting from PG&E's 2009 RPS Solicitation and when compared against other bilaterals being offered to PG&E when the contracts were executed and the advice letter was filed with the Commission. The Commission's reasonableness review for RPS PPA prices includes a comparison of the proposed contract price(s) to market data. Specifically, contracts are compared to shortlisted projects from the applicable solicitation, contracts recently approved, contracts pending Commission approval, executed contracts, bilateral offers and recent solicitation data.

Approval of the Sunshine Gas and Potrero Hills PPAs will add valuable baseload, new in-state renewable generation to PG&E's portfolio of renewable resources. The Sunshine Gas and Potrero Hills PPAs provide a matrix of contract prices depending on whether certain contractual obligations are met. Staff agree with PG&E that within the range of prices offered there is value to PG&E's ratepayers in approving the PPAs. However, it is unclear from the information provided by PG&E that the various price terms and conditions under the agreements are reasonable. For this reason, the Commission approves the PPAs with modification. Specifically, the Commission approves a single contract price for each PPA while providing the project companies with maximum flexibility to develop the projects. Confidential Appendix A includes a detailed discussion of the contractual pricing terms and the approved price for each PPA.

With the prices approved by this resolution, the costs of the approved Sunshine Gas and Potrero Hills PPAs are reasonable. With the prices approved by this resolution, payments made by PG&E under the PPAs are fully recoverable in rates over the life of the PPAs, subject to Commission review of PG&E's administration of the PPAs.

### **Cost Containment**

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<sup>12</sup> § 399.15(c).

Pursuant to statute, the Commission calculates a market price referent (MPR) to assess whether a proposed RPS contract has above-market costs.<sup>12</sup> Based on the Sunshine Gas and Potrero Hills facilities' commercial operational date, the price of the contract exceeds the applicable 2009 MPR.<sup>13</sup>

Contracts that meet certain criteria are eligible for above-MPR funds (AMFs).<sup>14</sup> The Sunshine Gas and Potrero Hills contracts were bilaterally negotiated, and therefore do not meet the eligibility criteria for AMFs.<sup>15</sup> Public Utilities Code §399.15 (d)(4) states that an investor-owned utility can voluntarily procure contracts at above-MPR prices that are not counted toward the cost limitation.

PG&E voluntarily entered into the Sunshine Gas and Potrero Hills contracts, which PG&E estimates will exceed the applicable 2009 MPR on an all-in levelized cost basis.

### **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. After PG&E filed its advice letter seeking approval of the Sunshine Gas and Potrero Hills PPAs, the Commission further refined these STCs.<sup>16</sup> PG&E filed a supplemental advice letter to amend the PPAs so that they conform to the current RPS non-modifiable STCs.<sup>17</sup>

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<sup>12</sup> § 399.15(c).

<sup>13</sup> See Resolution E-4298.

<sup>14</sup> 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.

<sup>15</sup> 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.

<sup>16</sup> See D.10-03-021, as modified by D.11-01-025.

<sup>17</sup> See AL 3623-E-A.

The Sunshine Gas and Potrero Hills PPAs include the required RPS non-modifiable standard terms and conditions.

### **Project Viability Assessment and Development Status**

PG&E asserts that the Sunshine Gas and Potrero Hills projects are viable and will be developed according to the terms and conditions in the PPAs. PG&E evaluated the viability of the Sunshine Gas and Potrero Hills projects 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 3623-E include a comparison of projects' viability score relative to all bids PG&E received in its 2009 RPS Solicitation and all shortlisted projects. Refer to Confidential Appendix A for the viability comparison of the Sunshine Gas and Potrero Hills projects with contracts bid in the 2009 RPS Solicitation. Based on this analysis, the viability of the Sunshine Gas and Potrero Hills projects are reasonable compared to other comparable projects offered to PG&E.

The following information about the project's developer and development status was provided by PG&E in AL 3623-E.

#### Company/Development Team

Potrero Hills is a 100% owned subsidiary of DTE Biomass and Sunshine Gas is joint venture between Landfill Energy Systems and DTE Biomass. In AL 3623-E, PG&E explains that DTE Biomass has developed and operated landfill gas-to-energy projects since 1987. In 2008, DTE Biomass developed, designed, permitted, and installed three power generation facilities totaling 9.6 MW of capacity. Landfill Energy Systems has developed 22 landfill gas projects, generating 80 MW of power.

#### Technology Type and Level of Maturity

The Sunshine Gas and Potrero Hills facilities will use mature technology that is commercially deployed throughout the landfill gas industry. In AL 3623-E, PG&E explains that the Sunshine Gas facility will employ high-efficiency, low-emissions turbines developed by Solar Turbines. According to PG&E, these turbines are one of the few technologies that allow a landfill project to be permitted in the southern California South Coast Air Quality Management District.

#### Quality of Renewable Resource

PG&E states that Potrero Hills and Sunshine Gas have secured the rights to gas collection at their respective landfills. According to PG&E, DTE Biomass has

commissioned independent gas studies that indicate that sufficient gas will be available to meet the PPA delivery requirements.

### Transmission

Potrero Hills will interconnect and deliver energy to PG&E in NP-15. Sunshine Gas will interconnect and deliver energy to PG&E in Southern California Edison's service territory. Both projects have submitted interconnection requests.

### Site Control

Both facilities have 100% site control.

### Permitting Status

The following tables summarize the permitting activity for each project.

#### *Potrero Hills – Permitting Activity*

<b>Name of Permit or Lease required</b>	<b>Grantor</b>	<b>Description of Permit or Lease</b>	<b>Current Status</b>
Landfill Gas Supply Agreement	Waste Connections, Inc	Lease that provides rights to gas from the landfill	Executed
Site lease	Waste Connections, Inc	Lease providing site and necessary easements to construct facility	Executed
CEQA IS	BAAQMD	Initial study to determine need for additional Environmental Impact Report	Initiated with BAAQMD in Q1-2010 with filing of air permit
CEQA EIR	BAAQMD	CEQA Environmental Impact Report for items identified for further study in the IS	Pending results of Initial Study
Air Permit to Construct	BAAQMD	Required for new emissions sources	Submitted in Q1-2010
Air Permit to Operate	BAAQMD	Issued after construction complete and testing performed to demonstrate compliance with air permit conditions	Not filed, filed after plant is constructed
County Building Permit	Solano County	Building permit(s)	Not Filed, will be filed after air permit to construct is

			issued
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### *Sunshine Gas – Permitting Activity*

<b>Name of Permit or Lease required</b>	<b>Grantor</b>	<b>Description of Permit or Lease</b>	<b>Current Status</b>
Landfill Gas Supply Agreement and Site Lease	Browning-Ferris Industries	Lease that provides rights to gas from the landfill and rights to site to locate its project.	Executed
CEQA IS	SCAQMD	See above	Published Nov 2009
CEQA EIR	SCAQMD	See above	AQMD is currently writing internal draft
Air Permit to Construct	SCAQMD	See above	Submitted April 2008 and reviewed; SCAQMD is drafting permit conditions
Air Permit to Operate	SCAQMD	See above	To be filed after plant is constructed
County Building Permit	Los Angeles County	See above	To be filed after air permit to construct is issued

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

D.07-05-028 established a “minimum quantity” condition on the ability of utilities to count a contract of less than 10 years duration with an existing facility for compliance with the RPS program.<sup>18</sup> 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% of the utility’s previous year’s retail sales.

As new facilities, delivering pursuant contracts greater than 10 years in length, the Sunshine Gas and Potrero Hills PPAs will contribute to PG&E’s minimum quantity requirement established in D.07-05-028.

### **Compliance with the 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)

<sup>18</sup> 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.”

power contracts procured on behalf of California ratepayers. D.07-01-039 adopted an interim Emissions Performance Standard (EPS) that established 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 that are at least five years in duration for baseload generation, which is defined as a facility with a capacity factor greater than 60 percent. In D.07-01-039, the Commission determined that most long-term contracts with generating facilities using eligible renewable resources are deemed compliant with the EPS.

The Sunshine Gas and Potrero Hills PPAs are EPS-compliant pursuant to D.07-01-039 because the Sunshine Gas and Potrero Hills facilities will generate energy using landfill gas.

### **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 investor-owned utilities' (IOU) overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission.<sup>19</sup> PG&E informed its PRG of the Sunshine Gas and Potrero negotiations on November 23, 2009 and December 15, 2009.

Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the Sunshine Gas and Potrero Hills PPAs.

### **RPS Eligibility and CPUC Approval**

Pursuant to Pub. Util. Code § 399.13, the California Energy Commission (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

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<sup>19</sup> PG&E's PRG includes representatives of the Union of Concerned Scientists, the California Utility Employees, The Utility Reform Network, the California Public Utilities Commission's Energy Division and Division of Ratepayer Advocates, the Department of Water Resources and PG&E ratepayer Jan Reid.

reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.<sup>20</sup>

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.”<sup>21</sup>

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor 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**

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.

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<sup>20</sup> See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

<sup>21</sup> See *id.* at Appendix A, STC 1, CPUC Approval.

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 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.

## **FINDINGS AND CONCLUSIONS**

1. Pacific Gas and Electric's contracts with Potrero Hills Energy Producers, LLC and Sunshine Gas Producers, LLC 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 Potrero Hills Energy Producers, LLC and Sunshine Gas Producers, LLC are consistent with Pacific Gas and Electric Company's 2009 Renewables Portfolio Standard Procurement Plan, approved by Decision 09-06-018.
3. Pacific Gas and Electric Company's decision to execute contracts with Potrero Hills Energy Producers, LLC and Sunshine Gas Producers, LLC are consistent with Pacific Gas & Electric Company's least-cost, best-fit 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 Potrero Hills Energy Producers, LLC and Sunshine Gas Producers, LLC contracts.
5. With the prices approved by this resolution and identified in Confidential Appendix A, the total all-in costs of the Potrero Hills Energy Producers, LLC and Sunshine Gas Producers, LLC contracts are reasonable based on their relation to bids received in response to Pacific Gas and Electric Company's 2009 RPS solicitation for renewable resources.



6. All the prices set forth in the Potrero Hills Energy Producers, LLC and Sunshine Gas Producers, LLC contracts 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 contract with Potrero Hills Energy Producers, LLC and Sunshine Gas Producers, LLC at a price that exceeds the applicable market price referent.
8. The viability of the Potrero Hills Energy Producers, LLC and Sunshine Gas Producers, LLC projects are reasonable compared to other projects offered to Pacific Gas and Electric Company.
9. The Potrero Hills Energy Producers, LLC and Sunshine Gas Producers, LLC contracts will contribute to PG&E's minimum quantity requirement established in D.07-05-028.
10. The Commission determined that long-term contracts for generation from landfill gas facilities comply with the Emissions Performance Standard under Decision 07-01-039.
11. Pursuant to Decision 02-08-071, Pacific Gas and Electric Company's Procurement Review Group participated in the review of the Potrero Hills Energy Producers, LLC and Sunshine Gas Producers, LLC contracts.
12. With the prices approved by this resolution and identified in Confidential Appendix A, the total all-in costs of the Potrero Hills Energy Producers, LLC and Sunshine Gas Producers, LLC contracts are reasonable based on their relation to contract price and viability of bids received in response to Pacific Gas and Electric Company's 2009 solicitation for renewable resources and bilateral contracting opportunities.
13. Consistent with the prices approved by this resolution and identified in Confidential Appendix A, payments made by Pacific Gas and Electric Company under the Potrero Hills Energy Producers, LLC and Sunshine Gas Producers, LLC contracts are fully recoverable in rates over the life of the agreements, subject to Commission review of Pacific Gas and Electric Company's administration of the agreements.
14. Procurement pursuant to the Potrero Hills Energy Producers, LLC and Sunshine Gas Producers, LLC contracts is procurement from an eligible renewable energy resource 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.

15. 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 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 Letters 3623-E and 3623-E-A should be approved with modifications.

**THEREFORE IT IS ORDERED THAT:**

1. Pacific Gas and Electric Company's contracts with Potrero Hills Energy Producers, LLC and Sunshine Gas Producers, LLC filed in Advice Letters 3623-E and 3623-E-A are approved consistent with the prices approved by this resolution and identified in Confidential Appendix A.

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 July 28, 2011; the following Commissioners voting favorably thereon:

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PAUL CLANON  
Executive Director

## **Confidential Appendix A**

### **Summary of Sunshine Gas and Potrero Hills Landfill Contract Terms and Conditions**

**[REDACTED]**

