PG&E Responses to Follow-Up Questions Regarding Use of 2010 Vintage RECs

Question 1: Under the existing 20% RPS rules, does PG&E believe that it can bank any procurement from 2010 to 2011 if PG&E has no surplus procurement in 2010? If so, please identify the statutory language or Commission orders that support this position.

Answer 1:
By asking the CPUC to approve the pending short-term RPS transactions, PG&E is not proposing to bank procurement from 2010 to 2011, and in no way believes this issue implicates existing or future banking rules for the RPS program. Rather, this issue is one of REC retirement dates and whether RECs can be purchased in one year and used in another for *initial* counting, not so-called "rollover" counting, which is what banking is in effect. The concept of banking, as implemented by the Commission, applies to surplus RECs that have been used or retired in WREGIS for compliance and therefore are no longer able to be traded. In contrast, the pending short-term deals are conceptually no different than a purchase in 2012 of RECs that were generated in 2011 but never used for compliance in 2011, and which the purchaser would want to count initially (that is, for the first time) for compliance in 2012. That transaction would not be considered "banking," but rather REC procurement during the allowed 3-year REC trading period under the CPUC's TREC Decision. Similarly, a final resolution approving the pending short-term deals would allow the PPAs to become effective and thereby allow PG&E to procure, as of the date that the PPA is effective, 2010-vintage RECs for use in the 2011-2013 compliance period (or, alternatively, the 2011 compliance year under the existing 20% RPS Rules).

In response to Q1, PG&E did not deliver more than 20% of its retail sales as RPS-eligible electricity in 2010. Thus, PG&E did not have excess procurement when compared to the annual procurement target under the existing 20% RPS Program. In this sense, PG&E did not have "surplus" procurement in 2010 and therefore would not be carrying forward. However, these existing banking rules are not the basis under which PG&E believes it can count 2010 RECs in 2011, as outlined above. Further, both legislative language about the time to retire RECs[1] and CPUC decision language from the TREC decision that allowed a 3-year REC trading period,[2] are interpreted by PG&E as having settled that issue fairly definitely within certain prescribed time limitations.

Question 2: If PG&E does have surplus procurement in 2010, does PG&E believe that under SB 2 it can carry forward surplus generation from 2010 to 2011? If so, please identify the supporting statute or Commission orders that support this position.

Answer 2:
As set forth above, by asking the CPUC to approve the pending short-term RPS transactions, PG&E is not proposing to bank procurement from 2010 to 2011.

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[1] SB 2 (1X), Section 399.21(a)(6) (pending effectiveness).
[2] *See* D.11-01-025, App. A at 12 (Ordering Paragraph 10) (revising D.10-03-021).

As indicated in response to Q1, PG&E did not have excess procurement when compared to the annual procurement target under the existing 20% RPS Program and therefore would not be carrying forward.

However, the use of "surplus" in the question is ambiguous because it may refer to other regulatory benchmarks. First, SBX1 2 provides that "[f]or any retail seller procuring at least 14 percent of retail sales from eligible renewable energy resources in 2010, the deficits associated with any previous renewables portfolio standard shall not be added to any procurement requirement pursuant to this article."[3] Surplus may refer to any actual 2010 RPS-eligible deliveries that exceeded 14% of retail sales. In that case, PG&E does have a surplus, since it reported deliveries of 15.9% (not including the 2010-vintage RECs associated with the pending short-term deals). PG&E believes this is an open issue in the 33% RPS legislation implementation.

Additionally, "surplus" could refer to any existing banked surplus remaining under the 20% RPS Program from years prior to 2010. PG&E believes it may have a small remaining bank of such prior-year surpluses as of the end of 2010 (assuming the continued earmarking of post-2010 deliveries to 2010 and earlier years, as allowed under the existing 20% RPS Program).

PG&E continues to review the statute and existing Commission orders regarding the definition and treatment of surpluses given the apparent "clean slate" approach of the 33% RPS legislation.

[3] SBX1 2 (§399.15(a)).