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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ID #10672

ENERGY DIVISION **RESOLUTION E-4423**
October 6, 2011

REDACTED

R E S O L U T I O N

Resolution E-4423. Pacific Gas and Electric Company

PROPOSED OUTCOME: This Resolution approves cost recovery for the long-term renewable power purchase agreement between Pacific Gas and Electric Company and Vasco Winds, LLC.

ESTIMATED COST: Costs of the power purchase agreement are confidential at this time.

By Advice Letter 3822-E Filed on March 30, 2011.

SUMMARY

Pacific Gas and Electric Company's renewable energy power purchase agreement with Vasco Winds, LLC complies with the Renewables Portfolio Standard procurement guidelines and is approved without modification.

Pacific Gas and Electric Company (PG&E) filed Advice Letter 3822-E on March 30, 2011, requesting the California Public Utilities Commission (Commission) review and approve a 25-year renewable energy power purchase agreement (PPA) between PG&E and Vasco Winds, LLC. PG&E is also requesting Commission review and approval of an amendment to a Qualifying Facility PPA between PG&E and Green Ridge Power, LLC which reflects the decommissioning of facilities under the Green Ridge PPA in order to develop the Vasco Winds facility under the Vasco Winds PPA.

The Vasco Wind facility is a repower project that is part of a settlement agreement between NextEra, Californians for Renewable Energy (CARE), and the Attorney General mandating the replacement of outdated wind turbines with new models that reduce avian mortality.

The Vasco Winds PPA is for deliveries of up to 211 gigawatt-hours (GWh) of RPS eligible energy from the Vasco Winds facility which is a repower of a portion of an existing wind facility owned by Green Ridge Power, LLC. The Vasco Winds facility will be located in the Altamont Wind Resource Area within Contra Costa County, California and has a contract capacity of up to 78.2 megawatts (MW).

This resolution approves the Vasco Winds, LLC PPA without modification. PG&E's execution of this power purchase agreement is consistent with PG&E's 2009 and 2011 RPS Procurement Plan, including its resource need, which the Commission approved in Decisions 09-06-018 and 11-04-030. Deliveries under the Vasco Winds, LLC power purchase agreement 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 power purchase agreement.

The following table provides a summary of the Vasco Winds, LLC power purchase agreement:

Generating facility	Type	Term Years	MW Capacity	GWh Energy	Online Date	Location
Vasco Winds	Wind Repower	25	78.2	211	11/1/2012	Contra Costa County, CA

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] Furthermore, SB 2 (1x)[4] mandates that the amount of electricity generated per

[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 Code unless otherwise specified.

[3] *See* § 399.15(b)(1).

[4] Stats. 2011, Ch. 1 (Simitian)

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year from eligible renewable resources be increased to an amount that equals an average of 20% of the total electricity sold to retail customers in California for the period 2011-2013; 25% of retail sales by December 31, 2016; and 33% of retail sales by December 31, 2020.[5]

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 3822-E was made by publication in the Commission's Daily Calendar. PG&E 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 3822-E was not protested.

DISCUSSION

Pacific Gas & Electric Company requests approval of a renewable energy power purchase agreement with Vasco Winds, LLC.

On March 30, 2011, Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 3822-E requesting California Public Utilities Commission (Commission) approval of a long-term power purchase agreement (PPA) with Vasco Winds, LLC, (Vasco).

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

1. Approves the PPA and the First Amendment in their entirety, including payments to be made by PG&E pursuant to the PPA, subject to the Commission's review of PG&E's administration of the PPA.

2. Approves the Green Ridge Amendment in its entirety.

3. Finds that any procurement pursuant to the PPA is procurement from an eligible renewable energy resource for purposes of determining PG&E's compliance

[5] SB 2 (1x) was signed by Governor Brown on April 12, 2011. The law becomes effective 90 days from the conclusion of the extraordinary session.

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.

4. Finds that all procurement and administrative costs, as provided by Public Utilities Code section 399.14(g), associated with the PPA shall be recovered in rates.

5. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:

    a. The PPA is consistent with PG&E's 2009 RPS procurement plan.

    b. The terms of the PPA, including the price of delivered energy, are reasonable.

6. Adopts the following finding of fact and conclusion of law in support of cost recovery for the PPA:

    a. The utility's costs under the PPA shall be recovered through PG&E's Energy Resource Recovery Account.

    b. Any stranded costs that may arise from the PPA 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.

7. Adopts the following findings with respect to resource compliance with the Emissions Performance Standard ("EPS") adopted in R.06-04-009:

    a. The PPA is not covered procurement subject to the EPS because the generating facility has a forecast capacity factor of less than 60 percent and, therefore, is not baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules.

Energy Division Evaluated the Vasco Winds, LLC PPA on the following criteria:

- Consistency with bilateral contracting rules
- Consistency with PG&E's 2009 and 2011 RPS Procurement Plan
- Consistency with PG&E's Least-Cost, Best-Fit requirements
- Consistency with RPS standard terms and conditions
- Independent Evaluator review
- Cost reasonableness
- Cost containment
- Project viability assessment and development status
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard
- Procurement Review Group participation

Consistency with Bilateral Contracting Rules

PG&E and Vasco Winds negotiated the Vasco PPA on a bilateral basis. PG&E received an offer from Vasco around June 2010, after PG&E's 2009 RPS solicitation. The PPA terms were competitive compared to the 2009 RFO bids and bilateral offers being considered. Had PG&E required Vasco to bid into the 2011 RPS solicitation, which took place in mid 2011, the Vasco project would have been substantially delayed.

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 PPA is longer than one month in duration, the PPA was 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, the Commission determined that bilateral agreements should be reviewed according to the same processes and standards as projects that come through a solicitation. Accordingly, as described below, the Vasco PPA was compared to other RPS offers received in PG&E's 2009 and 2011 RPS solicitation, bilateral negotiations, and recently executed agreements; the proposed agreement was reviewed by PG&E's Procurement Review Group; and an independent evaluator oversaw the project evaluation and PPA negotiation.

The Vasco PPA is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.

Consistency with PG&E's 2011 RPS Procurement Plan

Pursuant to statute, PG&E's RPS Procurement Plan (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.[6] California's RPS statute also requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility[7] to ensure the utility conducted its solicitation according to its Commission-approved procurement plan.[8]

In PG&E's Commission-approved 2011 RPS Plan, PG&E intends to solicit renewable energy contracts equivalent to at least 1 to 2 percent of retail sales annually. This goal is intended to address both the near-term 20 percent compliance mandate established in SBX 1 2 and the longer-term 33 percent state mandate by balancing near-term compliance needs and longer-term portfolio expansion and maintenance. Under SBX 1 2, PG&E has an interim goal of an average of 20 percent RPS for 2011-2013, 25 percent by the end of 2016, and 33 percent by 2020 and for each year thereafter. PG&E is pursuing both short- and long-term contracts to meet these statutory goals. With expected RPS-eligible energy deliveries, on average, of approximately 211 GWh per year for a term of 25-years, the PPA meets the criteria for renewables procurement contained in the 2011 Plan. Additionally, the PPA will contribute to PG&E's longer-term RPS goals.

The Vasco PPA is consistent with PG&E's 2011 RPS Procurement Plan, as approved by D.11-04-030.

Consistency with PG&E's least-cost best-fit (LCBF) methodology

In D.04-07-029, the Commission directs the utilities to use certain criteria in their LCBF selection of renewable resources.[9] The decision offers guidance

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[6] Pub. Util. Code, Section §399.14(a)(3).

[7] Pub. Util. Code, Section §399.14.

[8] PG&E's 2009 RPS Procurement Plan was approved by D.09-06-018 on June 4, 2009.

[9] *See* §399.14(a)(2)(B)

regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations. As described in its 2009 RPS Procurement Plan, PG&E's approved process for identifying LCBF renewable resources focuses on four primary areas:

1. Determination of market value of bid,
2. Calculation of transmission adders and integration costs,
3. Evaluation of portfolio fit, and
4. Consideration of non-price factors.

PG&E negotiated the Vasco PPA bilaterally and therefore it did not compete directly with other RPS projects. In AL 3822-E, PG&E explains that it examined the reasonableness of the PPA using the same LCBF methodology used to evaluate the 2009 RPS Solicitation and with other bilateral contracts offered to PG&E during the same time period that the Vasco PPA was executed. Additionally, as part of a project viability assessment, PG&E examined such factors as ownership experience, O&M experience, and technological feasibility.

<u>The Vasco PPA was evaluated consistent with the LCBF methodology identified in PG&E's 2009 and 2011 RPS Procurement Plan.</u>

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. More recently in D.10-03-021, as modified by D.11-01-025, the Commission further refined these STCs.

<u>The Vasco PPA includes the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.</u>

Independent Evaluator Review

PG&E retained independent evaluator (IE) Lewis Hashimoto from Arroyo Seco Consulting, to oversee PG&E's bilateral negotiations with Vasco and to evaluate the overall merits for CPUC approval of the PPA. AL 3822-E included a public and confidential independent evaluator's report.

The IE states in its report that the negotiations between PG&E and Vasco were fair and that Vasco was not given preferential treatment over sellers participating in the 2009 RPS solicitation. The IE states the PPA has "high valuation, low contract price, high viability, and moderate portfolio fit".

Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw PG&E's negotiations with Vasco and recommends the contract be approved.

Cost Reasonableness

PG&E asserts that the Vasco PPA is reasonable when considered against the pricing and other standards used for evaluating contracts resulting from PG&E's 2009 RPS Solicitation, the PPA was also found to be reasonable when compared against other bilaterals being offered to PG&E during the time when the contract was 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, bilateral offers at the time the contracts were executed, contracts recently approved, contracts pending Commission approval, recently executed contracts, recent bilateral offers and recent solicitation data.

Using this analysis and the confidential analysis provided by PG&E in AL 3822-E, the Commission determines that the cost of the Vasco PPA is reasonable.

The Vasco PPA compares favorably to the results of PG&E's 2009 and 2011 RPS solicitation and other comparable contracts.
Payments made by PG&E under the Vasco PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.

Cost Containment

Pursuant to statute, the Commission calculates a market price referent (MPR) to assess whether a proposed PPA has above-market costs.[10] The MPR is used by the Commission to assess the above-market costs of RPS contracts. There is a statutory limit on above-MPR costs, which serves as a cost containment mechanism for the RPS program.[11] Contracts that meet certain criteria are eligible for above-MPR funds (AMFs).[12]

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

[11] *See* Pub. Util. Code §399.15.

[12] Under Resolution E-4199, a PPA between a utility and a developer must meet the following requirements for the utility to achieve AMFs eligibility: (1) the PPA must have Commission approval and be selected through a competitive solicitation, (2) it must cover a duration of at least 10 years; (3) it must develop a new or repowered facility

PG&E has exhausted its AMFs provided by statute;[13] thus, PG&E is not required to procure RPS-eligible generation at above-MPR costs but may voluntarily choose to do so.[14]

Based on a 2012 commercial online date for the Vasco PPA, the 25-year PPA is below the 2009 MPR. However, the Vasco PPA does not meet the eligibility criteria for AMFs because it is the result of bilateral negotiations.

Since PG&E has exhausted its AMFs, it is voluntarily entering into the PPA at a price that is below the applicable market price referent as permitted by Public Utilities Code § 399.15(d).

Project Viability Assessment and Development Status

The project is an in-state project located within PG&E's service territory and is interconnected directly into the CAISO grid. The development team has experience permitting, financing, constructing and operating power plants in California and throughout the United States. The wind resource is part of a proven wind resource area, with adjacent wind projects in operation and major network upgrades are not expected. Thus the project has a CPUC viability score of 100. When the Advice Letter was filed, the IE gave the project a viability score of 84. PG&E's updated project viability score of 100 reflects changes to previous uncertainties pertaining to land use permitting, site control, execution of interconnection agreements, and financing.

PG&E asserts that the Vasco project is viable and will be developed according to the terms and conditions in the PPA.

Compliance with the Interim Greenhouse Gas Emissions Performance Standard

California Pub. Utils. Code §§ 8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) baseload power contracts procured on behalf of California ratepayers.[15]

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commencing operations on or after January 1, 2005; (4) it must not be a purchase of renewable energy credits; and (5) it must not include any indirect expenses as set forth in the statute.

[13] On May 28, 2009, the Director of the Energy Division notified PG&E that it had exhausted its AMFs account.

[14] *See* Pub. Util. Code § 399.15(d).

[15] "Baseload generation" is electricity generation at a power plant "designed and

D.07-01-039 adopted an interim Emissions Performance Standard (EPS) that establishes an emission rate for obligated facilities at levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. Generating facilities using certain renewable resources are deemed compliant with the EPS.[16]

<u>The Vasco PPA meets the conditions for EPS compliance established in D.07-01-039 because the Vasco facility is one of the pre-approved renewable energy technologies listed in D.07-01-039 that are deemed EPS compliant.</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.[17] PG&E asserts that the Vasco PPA was discussed at PRG meetings in October 8, 2010 and December 10, 2010.

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

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.[18]

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intended to provide electricity at an annualized plant capacity factor of at least 60%." Pub. Utils. Code § 8340 (a).

[16] D.07-01-039, Attachment 7, p. 4

[17] PG&E's PRG includes representatives of the Union of Concerned Scientists, the Coalition of California Utility Employees, The Utility Reform Network, the California Public Utility Commission's Energy Division and Division of Ratepayer Advocates, and the California Department of Water Resources.

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

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."[19]

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

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.

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

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. The Vasco PPA is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.
2. The Vasco PPA is consistent with PG&E's 2011 RPS Procurement Plan, as approved by D.11-04-030.
3. The Vasco PPA was evaluated consistent with the LCBF methodology identified in PG&E's 2009 and 2011 RPS Procurement Plan.
4. The Vasco PPA includes the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.
5. Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw PG&E's negotiations with Vasco and recommends the contract be approved.
6. The Vasco PPA compares favorably to the results of PG&E's 2009 and 2011 RPS solicitation and other comparable contracts.
7. Payments made by PG&E under the Vasco PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.
8. Based on a 2012 commercial online date for the Vasco PPA, the 25-year PPA is below the 2009 MPR. However, the Vasco PPA does not meet the eligibility criteria for AMFs because it is the result of bilateral negotiations.
9. Since PG&E has exhausted its AMFs, it is voluntarily entering into the PPA at a price that is below the applicable market price referent as permitted by Public Utilities Code § 399.15(d).

10. PG&E asserts that the Vasco project is viable and will be developed according to the terms and conditions in the PPA.
11. The Vasco PPA meets the conditions for EPS compliance established in D.07-01-039 because the Vasco facility is one of the pre-approved renewable energy technologies listed in D.07-01-039 that are deemed EPS compliant.
12. Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the Vasco PPA.
13. 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.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's Advice Letter 3822-E, requesting Commission review and approval of a power purchase agreement with Vasco Winds, LLC, is approved without modifications.

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 October 6, 2011; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Contract Summary

[REDACTED]

Confidential Appendix B

Independent Evaluator Report

[REDACTED]