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October 11, 2011

Mr. Honesto Gatchalian
Ms. Maria Salinas
California Public Utilities Commission
Energy Division
505 Van Ness Avenue
San Francisco, CA 94102

Re: PG&E's Comments on Draft Resolution and Alternate Resolution E-4436

Dear Mr. Gatchalian and Ms. Salinas:

Pacific Gas and Electric Company ("PG&E") submits the following comments on Draft Resolution E-4436 ("Draft Resolution") and Alternate Draft Resolution E-4436 ("Draft Alternate"), which were issued on October 20, 2011, with an October 11, 2011, comment deadline.

Introduction

The Draft Resolution rejects without prejudice PG&E's Advice Letter ("AL") 3759-E and Supplemental AL 3759-E-A, which request California Public Utilities Commission ("Commission") approval of a renewable purchase power agreement ("PPA") with a new solar photovoltaic ("PV") facility ("Project") being developed by North Star Solar, LLC. ("North Star Solar"). The Draft Resolution rejects the North Star Solar PPA on the grounds that the contract is not price competitive with the following options: (1) recently executed contracts; and (2) projects currently being offered to PG&E. In contrast, the Draft Alternate would approve the PPA without modification on the grounds that North Star Solar and PG&E re-negotiated the contract price in good faith in light of the Commission's concerns about pricing and the contract price reflects North Star Solar's best available offer.

PG&E requests that the Commission approve the PPA because it is reasonable according to the Least Cost Best Fit ("LCBF") analysis in light of information available at the time of execution, and the parties negotiated in good faith the price decrease reflected in the amendment. PG&E thus requests that the Commission issue and approve the Draft Alternate, subject to the modifications discussed below.

The Commission Should Reject the Draft Resolution and Issue the Draft Alternate.**1. The Draft Resolution Should Not Compare the Project to Projects Available After Execution of the Original PPA.**

The Draft Resolution states that the Commission found that the PPA “compares unfavorably to the bilateral contracts that were being executed by PG&E during the time that the amended PPA was being negotiated and executed”¹ and shortlisted projects from PG&E’s 2011 RPS Solicitation.² In other words, the Commission is comparing the Project against data that was not available at the time the original PPA was executed and submitted for Commission approval.

In this situation, however, the Commission should evaluate the cost reasonableness of Renewables Portfolio Standard (“RPS”) PPAs only on information available at the time of execution of the original PPA. North Star Solar and PG&E negotiated the original PPA, which PG&E submitted for approval in AL 3759-E on November 12, 2010. As explained in AL 3759-E, the PPA compared favorably with other alternatives available at that time. The Commission’s Draft Resolution, issued on May 18, 2011, however, proposed to reject the North Star Solar PPA on the grounds that the contract price is not competitive with projects being offered to PG&E as of May 2011. Though PG&E maintains that the PPA should be compared to options available at the time of execution of the PPA and/or submission for approval, in light of the Commission’s concerns, North Star Solar and PG&E engaged in good faith negotiations to reduce the price. As a result, North Star Solar and PG&E successfully negotiated a price decrease, and PG&E submitted the amendment for approval in AL 3759-E-A on July 27, 2011. The Commission should not penalize North Star Solar for its willingness to engage in good faith renegotiations by comparing the amended PPA to options not available at the time the original PPA was executed.

Moreover, as explained in PG&E’s June 13, 2011, comments on the prior withdrawn Draft Resolution, in order to further the goals of California’s RPS program, the Commission should limit the consideration of proposed PPAs in comparison to alternatives available at the time of execution. The Commission should therefore revise the Draft Resolution to confirm that it is limiting its consideration of the reasonableness of the PPA to a comparison with alternatives and other data available at the time of execution.

2. The PPA Is Competitive With Alternatives Available at Execution.

PG&E examined the reasonableness of the original PPA using the same comparison tools used with RPS transactions received in the 2009 RPS Solicitation and with other bilateral offers available to PG&E at the time of execution. Based on the available data, PG&E concluded that the Project was reasonably priced and viable. PG&E conducted a thorough evaluation of the terms and conditions of the PPA, PG&E’s need for additional renewable resources, the Project’s expected online date, the viability of the Project and experience of the developers, and available alternatives. PG&E executed the PPA based upon its finding that the Project was viable and competitively

¹ Draft Resolution, at 9.

² *Id.*

priced compared to the options available to PG&E and would contribute to PG&E's RPS goals, including providing unique resource diversity and renewable resource integration benefits. The Independent Evaluator ("IE") also found that the Project merited Commission approval when he compared the viability and net market value ("NMV") of the original PPA to the offers bid into the 2009 RPS Solicitation. Thus, the amended PPA, with the substantial price decrease, is only more favorable in comparison to the 2009 RPS Solicitation. Thus, when compared against the appropriate benchmarks, the PPA as amended is reasonable and competitive with other alternatives and should be approved without modification.

3. The Draft Alternate (or the Draft Resolution) Should Be Modified to Indicate That the PPA was Evaluated Consistent with LCBF Methodology.

In both the Draft Resolution and the Draft Alternate, the Commission finds:

[T]hat the North Star contract is higher in price, lower in value, and lower in viability than comparable projects that were being offered to PG&E during the time that the amended PPA was being negotiated and executed. Therefore, the North Star PPA was not evaluated consistent with the LCBF methodology identified in PG&E's 2009 and 2011 RPS Procurement Plan.³

The LCBF methodology was correctly applied, however, as the appropriate application of the LCBF methodology was to compare opportunities available at the time the original PPA (AL 3759-E) was executed. As discussed above, the LCBF analysis should consider only opportunities available at the time of the execution of the original PPA or the submission of the original advice letter.

As demonstrated by the IE Report, PG&E's analysis in the original advice letter adequately supported approval of the North Star Solar PPA. Therefore, the price reduction reflected in the amendment could only weigh further in favor of approval of the PPA. Though the pricing, viability, and terms available in recent bilateral offers, the 2011 solar photovoltaic solicitation, and the 2011 RPS RFO suggest that the market has moved in favor of the buyer, these data points were not available to PG&E at the time of execution and advice letter filing. Energy Division should not punish the Project – and discourage good faith renegotiation benefiting customers – by using the amendment to open the door to comparison to more recent offers.

Moreover, even in light of opportunities available to PG&E after execution of the original PPA, the North Star Solar PPA is not inconsistent with the LCBF methodology. First, the 2009 RPS Procurement Plan is the applicable standard for both the original PPA and the amended PPA. PG&E negotiated the original PPA following its offering in the 2009 RPS Solicitation. PG&E negotiated the amended PPA in response to Energy Division's Draft Resolution E-4405 rejecting the PPA without prejudice. Thus, the 2009 RPS Procurement Plan remains applicable.

Second, Attachment K to the 2009 RPS Procurement Plan requires PG&E to select among offers based upon six criteria: (1) market valuation, (2) portfolio fit, (3) credit, (4) project viability, (5)

³ Draft Resolution, at 7; Draft Alternate, at 8.

RPS goals, and (6) transmission adder. While PG&E may rank projects according to Net Value, “PG&E does not apply a weighting system to the LCBF components in the overall evaluation and selection of Offers. Each LCBF component is a qualitative factor used in the evaluation of an individual Offer.” Further, Attachment K does not compel PG&E to adhere to LCBF methodology in the decision to execute. Specifically, “PG&E notes that the LCBF process is a screening tool that helps with an initial selection of projects. It is only upon shortlisting that substantive discussions with bidders can begin.” Not all offers result in substantive discussions, and PG&E could not have violated LCBF given the flexibility in selection afforded to PG&E in Attachment K.

Conclusion

In order to achieve the goals of renewable resource development, the Commission should evaluate the proposed PPA based upon alternatives available at the time of negotiation and execution. Because the PPA is competitively priced and viable in comparison to the alternatives available to PG&E at the time of execution, and because North Star Solar and PG&E negotiated a further price decrease in good faith, the Commission should approve the PPA as executed by issuing the Draft Alternate. In addition, the Draft Alternate (or the Draft Resolution, if applicable) should be modified to indicate that the PPA was evaluated consistent with the LCBF methodology in light of information available at the time the original PPA was executed.

Sincerely,



Vice President - Regulation and Rates

cc: Commission President Michael R. Peevey
Commissioner Timothy A. Simon
Commissioner Mike Florio
Commissioner Catherine J.K. Sandoval
Commissioner Mark Ferron
Karen Clopton – Chief Administrative Law Judge
Frank Lindh – General Counsel
Julie Fitch, Director - Energy Division
Paul Douglas - Energy Division
Cheryl Lee - Energy Division
Sean Simon - Energy Division
Jason Simon – Energy Division
Service List R.11-05-005

Attachments

Appendix A to PG&E Comments on Draft Alternate Resolution E-4436

Proposed Changes to Findings and Orders

Consistent with its comments on the Draft Resolution, PG&E recommends that the Commission make the following changes to the Findings, Conclusions, and Orders in the Draft Alternate Resolution prior to issuance:

Findings and Conclusions

3. ~~The North Star PPA was not evaluated consistent with the LCBF methodology identified in PG&E's 2009 and 2011 RPS Procurement Plan.~~

Though PG&E opposes issuance of the Draft Resolution, consistent with its comments on the Draft Resolution, PG&E recommends that the Commission make the following changes to the Findings, Conclusions, and Orders in the Draft Resolution:

Findings and Conclusions

1. ~~The North Star PPA was not evaluated consistent with the LCBF methodology identified in PG&E's 2009 and 2011 RPS Procurement Plan.~~

Appendix B to PG&E Comments on Draft Alternate Resolution E-4436

Subject Index Listing Proposed Changes to the Draft Alternate Resolution (not including findings, conclusions and orders addressed in Appendix A)

Page 8. Remove statement: “Therefore, the North Star PPA was not evaluated consistent with the LCBF methodology identified in PG&E’s 2009 and 2011 RPS Procurement Plan.”

Though PG&E opposes issuance of the Draft Resolution, consistent with its comments on the Draft Resolution, PG&E recommends that the Commission make the same change to page 7 of the Draft Resolution

CERTIFICATE OF SERVICE

I certify that I have by mail, e-mail, or hand delivery this day served a true copy of Pacific Gas and Electric Company's comments on Draft Resolution E-4436, regarding PG&E's Advice Letter 3759-E and 3759-E-A on:

- 1) Commissioners Michael Peevey, Mark Ferron, Mike Florio, Catherine Sandoval, and Timothy Simon
- 2) Karen Clopton – Chief Administrative Law Judge
- 3) Julie Fitch – Director, Energy Division
- 4) Frank Lindh – General Counsel
- 5) Jason Simon – Energy Division
- 6) Paul Douglas – Energy Division
- 7) Sean Simon – Energy Division
- 8) Cheryl Lee – Energy Division
- 9) Honesto Gatchalian – Energy Division
- 10) Maria Salinas – Energy Division
- 11) Service List R.11-05-005

/S/ LINDA TOM-MARTINEZ

Linda Tom-Martinez

PACIFIC GAS AND ELECTRIC COMPANY

Date: October 11, 2011