

**DRAFT**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION  
4444**

**ID #10830  
RESOLUTION E-**

**December 15,**

**2011**

**REDACTED**

**R E S O L U T I O N**

Resolution E-4444. Pacific Gas and Electric Company requests approval of a power purchase agreement with Kiara Solar, Inc.

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

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

By Advice Letter 3754-E filed on November 4, 2010 and supplemental Advice Letter 3754-E-A filed on June 10, 2011.

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**SUMMARY**

**Pacific Gas and Electric Company's renewable energy power purchase agreement with Kiara Solar, Inc complies with the Renewables Portfolio Standard procurement guidelines and is approved without modification.**

Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 3754-E on November 4, 2010 requesting that the California Public Utilities Commission (Commission) approve a power purchase agreement (PPA) between PG&E and Kiara Solar, Inc. (Kiara) for renewable generation from a biomass facility located in Shasta County, California.

The Kiara biomass facility has a nameplate capacity of up to 6.8 megawatts (MW). The facility originally began operations in the early 1980s under the ownership of Hudson Lumber Company with a Qualifying Facility contract with PG&E. The facility was acquired by Wheelabrator Technologies in 1997 but was

shut down in 2003. Approval of the Kiara PPA will facilitate repowering the facility and provide PG&E deliveries of up to 50 gigawatt-hours (GWh) per year. On June 10, 2011, PG&E and Kiara amended the PPA to increase the project, capacity from 5.8 to 6.8 MW, decrease the contract price, increase the Security deposit, extend the guaranteed commercial operational date from December 31, 2010 to December 31, 2011, and revised provisions to conform exactly to the “non-modifiable” terms set forth in Appendix C of D.10-03-021, as modified by D.11-01-025. These amendments increase the value of the project to PG&E and its ratepayers.

This resolution approves the Kiara PPA without modification. PG&E’s execution of this PPA is consistent with PG&E’s 2011 RPS Procurement Plan, including its resource need, which the Commission approved in Decision 11-04-030. Deliveries under the Kiara PPA 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 agreement. Approving the biomass PPA will allow use of existing biomass facilities which is consistent with Executive Order S-06-06 which encourages bioenergy development.

According to Kiara Solar Inc., the project will generate 15 direct local jobs at the facility and the reactivation of the drying kilns will result in about 35 direct local jobs. The project will create approximately 200-250 jobs in the local area while also generating renewable energy.<sup>1</sup>

The following table provides a summary of the Kiara PPA:

<b>Generating facility</b>	<b>Type</b>	<b>Term Years</b>	<b>MW Capacity</b>	<b>GWh Energy</b>	<b>Online Date</b>	<b>Location</b>
Kiara Biomass	Biomass	15	6.8	50	12/31/2011	Shasta County, CA

**BACKGROUND**

**Overview of the Renewables Portfolio Standard (RPS) Program**

<sup>1</sup> <http://kiarasolar.com/9452.html>

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036 and SB 2 (1x).<sup>2</sup> The RPS program is codified in Public Utilities Code Sections 399.11-399.20.<sup>3</sup> Under SB 2 (1x),<sup>4</sup> the RPS program administered by the Commission requires each retail seller to increase its total procurement of eligible renewable energy resources so that 33 percent of retail sales are served by eligible renewable energy resources no later than December 31, 2020.<sup>5</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 3754-E and AL 3754-E-A 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 3754-E was not protested.

## **DISCUSSION**

### **Pacific Gas and Electric Company requests approval for a renewable energy power purchase agreement with Kiara Solar, Inc.**

On November 4, 2010 Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 3754-E requesting California Public Utilities Commission (Commission) approval of a power purchase agreement (PPA) with Kiara Solar, Inc. (Kiara).

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<sup>2</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); SB 2 (1x) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

<sup>3</sup> All further references to sections refer to Public Utilities Code unless otherwise specified.

<sup>4</sup> SB 2 (1x) becomes effective on December 10, 2011; 90 days after the close of the Legislatures 2011 Extraordinary Session.

<sup>5</sup> SB 2 (1x), § 399.15(b)(2)(B).

Shortly after PG&E filed AL 3754-E, Kiara learned that the requirements for its interconnection agreement would be more extensive than anticipated, making the project's intended commercial operation date of December 31, 2010 impossible to achieve. Energy Division staff suspended its review of the advice letter while the parties renegotiated the PPA.

On June 10, 2011, PG&E submitted an amended contract with Kiara that modified several key terms and conditions. PG&E requests that the Commission approve the Kiara PPA, as amended. PG&E and Kiara amended the PPA to increase the project capacity from 5.8 to 6.8 MW, decrease the contract price, increase the security deposit, extend the Guaranteed Commercial Operational Date from December 31, 2010 to December 31, 2011, and revise provisions to conform exactly to the "non-modifiable" terms set forth in Appendix C Decision (D.)10-03-021, as modified by D.11-01-025.

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

1. Approves the PPA in its 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. Finds that any procurement pursuant to the PPA 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 RPS (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 PPA shall be recovered in rates.
4. 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.
5. 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.

6. 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 in compliance with the EPS adopted in D.07-01-039 because the Project is a generating facility using biomass that would otherwise be disposed of utilizing open burning, forest accumulation, landfill, spreading or composting, which is pre-approved as compliant with the EPS.

**Energy Division Evaluated the Kiara PPA on the following criteria:**

- Consistency with bilateral contracting rules
- Consistency with PG&E's 2009 RPS Procurement Plan
- Consistency with PG&E's Least-Cost, Best-Fit requirements
- Assessment of PG&E's need for the Kiara Solar, Inc. Project
- 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
- Compliance with the minimum quantity condition

**Consistency with Bilateral Contracting Rules**

In its Advice Letter, PG&E explains that it pursued bilateral negotiations with Kiara because the offer was at a favorable price with acceptable terms and conditions and there was a high probability that if the offer had been deferred to PG&E's next RPS Solicitation, the plant's online date would have been significantly delayed. PG&E states that by beginning negotiations rather than waiting until after the next RPS solicitation, the exact timing of which was uncertain, PG&E was able to secure deliveries of RPS-eligible power from the PPA in 2011.<sup>6</sup> During the time the parties were negotiating the PPA, between

<sup>6</sup> AL 3754-E, p.6

April 2010 and September 2010, there was no RPS solicitation scheduled or held.

In D.06-10-019, the Commission established rules pursuant to which the investor owned utilities could enter into bilateral RPS contracts. PG&E adhered to these bilateral contracting rules: 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 Kiara PPA was compared to other RPS offers received in PG&E's 2009 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 Kiara PPA is 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> 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 PPA 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. The Project is expected to deliver approximately 131 GWh per year for a term of 20 years. Deliveries from the Project meet the criteria for renewables procurement contained in PG&E's 2009 Plan and will contribute to PG&E's 20 percent RPS goal under the current flexible compliance rules.

<sup>7</sup> Pub. Util. Code, § 399.14

<sup>8</sup> Pub. Util. Code, §399.14(a)(3)

The Kiara PPA is 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) methodology**

In D.04-07-029, the Commission directs the utilities to use certain criteria in their LCBF selection of renewable resources.<sup>9</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. As described in its 2011 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 Kiara PPA bilaterally and therefore it did not compete directly with other RPS projects. In AL 3754-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 Kiara PPA was executed. Additionally, as part of a project viability assessment, PG&E examined such factors as ownership experience, operations & maintenance experience, and technological feasibility.

The Kiara PPA evaluation is consistent with the LCBF methodology identified in PG&E's 2011 RPS Procurement Plan.

**Assessment of PG&E's need for the Kiara Solar, Inc. Project**

Future RPS compliance obligations are generally<sup>10</sup> defined in SB 2 (1X) as follows: PG&E must procure RPS-eligible resources equivalent to an average of 20 percent of retail sales for 2011-2013; 25 percent of retail sales by the end of 2016; and 33 percent of retail sales by 2020 and for each year thereafter. With this clarity over the near and longer-term RPS targets, our ability to assess PG&E's RPS needs has improved.

To assess PG&E's need for Kiara, our analysis focused on the first compliance period (i.e., 2011-2013). Kiara is expected to restart commercial operation in December 2011. The information provided by PG&E's August 2011 Compliance

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<sup>9</sup> See §399.14(a)(2)(B)

<sup>10</sup> The Commission opened Rulemaking (R.) 11-05-005 to implement the 33% RPS law.

Report<sup>11</sup> demonstrates that Kiara is needed by PG&E to meet its 2011-2013 RPS compliance obligations.

PG&E has demonstrated that it has an incremental need for RPS-eligible generation in the first compliance period. The Kiara PPA will contribute to this need.

### **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. The Commission further refined these STCs more recently in D.10-03-021, as modified by D.11-01-025.

The Kiara 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.

### **Independent Evaluator Review**

PG&E retained independent evaluator (IE) Lewis Hashimoto from Arroyo Seco Consulting, to oversee PG&E’s bilateral negotiations with Kiara and to evaluate the overall merits for CPUC approval of the PPA. AL 3754-E included a public and confidential independent evaluator’s report. AL 3754-E-A included a confidential independent evaluator’s report for the terms and conditions amending the PPA.

The IE states in its report that contract merits CPUC approval. See Confidential Appendix B for the IE’s report.

Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw PG&E’s negotiations with Kiara.

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<sup>11</sup> PG&E 2004-2007 Verified and August 2011 Semi-Annual Compliance Report Pursuant to the California RPS ( Amended and submitted 10-21-2011)



### **Cost Reasonableness**

PG&E asserts that the Kiara PPA is reasonable when considered against the price and other least-cost best-fit standards used for evaluating contracts resulting from PG&E's 2009 RPS solicitation. PG&E also determined the PPA is reasonable when compared against other bilaterals being offered to PG&E during the time when the Kiara PPA was executed and the advice letter was filed with the Commission.

Because there are fewer biomass contracts to compare against than with other technologies, (e.g. solar photovoltaic), the Commission compared the Kiara PPA to recently executed contracts and biomass projects shortlisted in the 2011 RPS Solicitation. Using this analysis and the confidential information provided by PG&E the Commission determines that the cost of the Kiara PPA is reasonable. See Confidential Appendix A for an analysis of the price.

The Kiara PPA compares favorably to the results of PG&E's 2009 RPS solicitation and contracts executed during the same time period.

Payments made by PG&E under the Kiara 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.<sup>12</sup> 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.<sup>13</sup> Contracts that meet certain criteria are eligible for above-MPR funds (AMFs).<sup>14</sup> PG&E has exhausted its AMFs provided by statute;<sup>15</sup> thus, PG&E is not required to procure RPS-eligible generation at

<sup>12</sup> See Pub. Util. Code § 399.15(c).

<sup>13</sup> See Pub. Utils. Code §399.15.

<sup>14</sup> 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 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.

<sup>15</sup> Additionally, on May 28, 2009, the Director of the Energy Division notified PG&E that

above-MPR costs but may voluntarily choose to do so.<sup>16</sup>

Kiara PPA does not meet the eligibility criteria for AMFs because it is the result of bilateral negotiations.

Based on a 2011 commercial online date for the Kiara PPA, the 15 year PPA is above the 2009 MPR.

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

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

### Overview

The Kiara project is located within PG&E's service territory and is interconnected directly to the California Independent System Operator (CAISO) grid. Kiara has hired a contractor that has extensive experience designing and building power plants and emissions control systems. The project and the Participating Transmission Owner (PG&E's transmission business) have executed its Small Generator Interconnection Agreement.

### Technology/Fuel

The Kiara biomass-fired thermal power plant will utilize locally produced wood waste and agricultural waste to produce steam to generate electricity. The advice letter includes an independent fuel study provided by Kiara to confirm it has secured and has sufficient access to fuel to supply the plant. The independent fuel study shows that there is ample fuel in the area. Kiara has appropriately hedged for rising fuel prices.

Kiara Solar, Inc. has entered into three primary agreements to supply waste wood to the Kiara Anderson Plant. The first Agreement is a 25 year agreement with Siskiyou Forest Products that operates a milling operation co-located on the site and adjacent dry kilns. The Anderson Plant supplies waste steam to the Siskiyou dry kilns. The Plant has also entered into two additional agreements to supply the Plant with waste wood from local orchards. Prunings and waste wood

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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 Pub. Util. Code § 399.15(d).

from various almond, walnut and olive orchards will be delivered on an annual basis pursuant to the Agreements as well as associated shells and pits from processing operations related to the orchards. Pursuant to fuel supply plan studies the balance of waste wood will come from spot medium term agreements.

We also note that supporting this project is consistent with Executive Order S-06-06<sup>17</sup> which encourages bioenergy development in California stating that “sustained biomass development offers strategic energy, economic, social and environmental benefits to California, creating jobs through increased private investment within the state.”

### Permitting

The project has obtained its Authority to Construct from the Shasta County Air Quality Management District and has applied for a wastewater discharge permit from the Regional Water Quality Resource Board.

PG&E asserts that the Kiara PPA 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 associated with new long-term (five years or greater) baseload power contracts procured on behalf of California ratepayers.<sup>18</sup>

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.<sup>19</sup>

Generating facilities using certain renewable resources are deemed compliant with the EPS. Because the Facilities will be fueled by biomass that would otherwise be disposed of by open burning, forest accumulation, landfill,

<sup>17</sup> <http://www.dot.ca.gov/hq/energy/Exec%20Order%20S-06-06.pdf>

<sup>18</sup> “Baseload generation” is electricity generation at a power plant “designed and intended to provide electricity at an annualized plant capacity factor of at least 60%.” Pub. Utils. Code § 8340 (a).

<sup>19</sup> D.07-01-039, Attachment 7, p. 4

spreading or composting, the PPA meets the conditions for EPS compliance established in D.07-01-039.<sup>20</sup>

The PPA complies with the EPS because it meets the conditions established in D.07-01-039.

The Kiara PPA meets the conditions for EPS compliance established in D.07-01-039 because the Kiara facility is one of the pre-approved renewable energy technologies listed in D.07-01-039 that are deemed EPS compliant.

### **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.<sup>21</sup> PG&E asserts that the Kiara PPA was discussed at a PRG meeting on June 24, 2010, August 13, 2010, and October 8, 2010. The Kiara amended PPA was not mentioned as being discussed in a PRG meeting.

Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the Kiara PPA.

### **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.<sup>22</sup>

<sup>20</sup> See D.07-01-039, COL 35.

<sup>21</sup> 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.

<sup>22</sup> 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.”<sup>23</sup>

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.

### **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>24</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 a long term contract, delivering pursuant to a contract greater than 10 years in length, the Kiara PPA will contribute to PG&E’s minimum quantity requirement established in D.07-05-028.

<sup>23</sup> See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

<sup>24</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.”

### **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.

### **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 Kiara power purchase agreement (PPA) is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.
2. The Kiara PPA is consistent with PG&E's 2009 RPS Procurement Plan, including PG&E's RPS resource needs, approved by D.09-06-018.
3. The Kiara PPA was evaluated consistent with the Least Cost Best Fit methodology identified in PG&E's 2009 RPS Procurement Plan.
4. PG&E has demonstrated that it has an incremental need for RPS-eligible generation in the first compliance period. The Kiara PPA will contribute to this need.

5. The Kiara 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.
6. Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw PG&E’s negotiations with Kiara and recommends the contract be approved.
7. Executive Order S-06-06 promotes near-term biomass development in California.
8. The Kiara PPA costs are reasonable.
9. The Kiara PPA compares favorably to the results of PG&E’s 2009 RPS solicitation and contracts executed during the same time period.
10. Payments made by PG&E under the Kiara PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E’s administration of the PPA.
11. Based on a 2011 commercial online date for the Kiara PPA, the 15 year PPA is above the 2009 MPR.
12. Since PG&E has exhausted its AMFs, it is voluntarily entering into the PPA at a price that is above the applicable market price referent as permitted by Public Utilities Code § 399.15(d).
13. PG&E asserts that the Kiara PPA is viable and will be developed according to the terms and conditions in the PPA.
14. The Kiara PPA complies with the emission performance standard because it meets the conditions established in D.07-01-039.
15. Pursuant to D.02-08-071, PG&E’s Procurement Review Group participated in the review of the Kiara PPA.
16. As a long term contract, delivering pursuant to a contract greater than 10 years in length, the Kiara PPA will contribute to PG&E’s minimum quantity requirement established in D.07-05-028.

17. 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.
18. AL 3754-E and supplemental AL 3754-E-A should be approved effective today without modification.

**THEREFORE IT IS ORDERED THAT:**

1. Pacific Gas and Electric Company's Advice Letter 3754-E and supplemental Advice Letter 3754-E-A, requesting Commission review and approval of a 15-year power purchase agreement with Kiara Solar, Inc., 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 December 15, 2011; the following Commissioners voting favorably thereon:

\_\_\_\_\_  
PAUL CLANON  
Executive Director

**Confidential Appendix A**

Contract Summary



[REDACTED]

## **Confidential Appendix B**

Independent Evaluator Report

[REDACTED]

