



DRA

*Division of Ratepayer Advocates
California Public Utilities Commission*

505 Van Ness Avenue
San Francisco, California 94102
Tel: 415-703-2381
Fax: 415-703-2057

JOSEPH P. COMO
Acting Director

<http://dra.ca.gov>

PUBLIC

March 21, 2012

CPUC Energy Division
Attention: Tariff Files, Room 4005
505 Van Ness Avenue
San Francisco, CA 94103

Sent Via Email and US Mail

Subject: **Public Protest of the Division of Ratepayer Advocates (DRA) of Pacific Gas & Electric Company's (PG&E) Advice Letter (AL) 4007-E; Amendment to an Existing Power Purchase Agreement for Procurement of Eligible Renewable Energy Resources between Sierra Power Corporation and Pacific Gas and Electric Company**

INTRODUCTION

DRA protests and recommends the Commission reject AL 4007-E unless PG&E demonstrates that the energy delivered under the contract counts towards PG&E's Renewables Portfolio Standard (RPS) goals for Compliance Periods (CPs) 1 and 2. Due to restrictions on banking of short term contracts, it is unclear whether the Power Purchase Agreement (PPA) as amended will continue to qualify as a long-term contract and thus be eligible for banking to make up for compliance deficits in future years. DRA recommends that the Commission reject the Amended PPA unless the energy will be eligible for banking. [REDACTED]

BACKGROUND

PG&E submits AL 4007-E as an amendment to an existing contract the utility has executed with Sierra Pacific Corporation (SPC) for energy and capacity output from a 6 megawatt (MW) biomass facility located in Terra Bella, California. The Commission approved the original PPA in October 2003 through Resolution E-4058.

[REDACTED]

[REDACTED]
The capacity payment of [REDACTED]
remained unchanged [REDACTED]
The levelized price of the contract is [REDACTED]

[REDACTED]
However the concern over the SPC contract lies in the uncertainty of whether the Amended PPA will qualify as a long or short term contract under Public Utilities Code Section 399.13(a)(4)(B). That determination will dictate whether or not banking rules apply. If the Amended PPA is deemed to be short-term and thus not bankable, [REDACTED]

DRA RECOMMENDS THE COMMISSION REJECT THE AMENDED PPA UNLESS PG&E DEMONSTRATES THAT IT QUALIFIES AS A LONG-TERM CONTRACT

DRA does not object to the price or terms and conditions of the Amended PPA

but recommends that Commission approval of the contract be contingent upon PG&E's demonstration that the Amended PPA qualifies as a long-term contract for its RPS need requirement. If it is determined that the Amended PPA is not bankable, the contract should be rejected [REDACTED]

Based on the information provided in the Advice Letter filing, DRA's own analysis of the Amended PPA is inconclusive regarding whether it qualifies as a short or long term PPA. According to PG&E, the Amended PPA is exempt from Decision (D.) 11-12-052 categorization requirements because the SPC contract meets all of the following requirements of §399.16(d):¹

- d) Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article, if all of the following conditions are met:
 - (1) The renewable energy resource was eligible under the rules in place as of the date when the contract was executed.
 - (2) For an electrical corporation, the contract has been approved by the commission, even if that approval occurs after June 1, 2010.
 - (3) Any contract amendments or modifications occurring after June 1, 2010, do not increase the nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource. The duration of the contract may be extended if the original contract specified a procurement commitment of 15 or more years.

Yet the term length of the Amended PPA is only 21 months. By definition, a 21 month long contract qualifies as short-term and, pursuant to the new banking rules set forth in Public Utilities Code Section 399.13(a)(4)(B), short term contracts (contracts of less than 10 years in duration) are not bankable:

Rules permitting retail sellers to accumulate, beginning January 1, 2011, excess procurement in one compliance period to be applied to any subsequent compliance period. The rules shall apply equally to all retail sellers. In determining the quantity of excess procurement for the applicable compliance period, the commission shall deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration. In no event shall electricity products meeting

¹ PG&E AL 4007-E Public Version, p. 15.

the portfolio content of paragraph (3) of subdivision (b) of Section 399.16 to be counted as excess procurement.

Since the Amended PPA term is for 21 months and thus well under the 10 year minimum requirement to qualify as a long-term contract, [REDACTED]

[REDACTED] PG&E's latest RPS compliance report filed on March 1, 2012, [REDACTED]

PG&E argues that as an existing, online facility the SPC contract [REDACTED] warrants Commission approval. However at 6 MW, the SPC contract does not significantly impact PG&E's renewable portfolio. [REDACTED]

[REDACTED] This project's value to PG&E's ratepayers will be diminished unless the contract is considered long-term, or is otherwise bankable under the forthcoming Commission decision on banking rules

RECOMMENDATION

DRA recommends the Commission approve Advice Letter 4007-E only if the Amended PPA qualifies as a long term, bankable RPS contract. [REDACTED]

/s/ Cynthia Walker

Cynthia Walker, Program Manager
Energy Planning and Policy Branch
Division of Ratepayer Advocates

cc:

Service List for R.11-05-005

Service List for R.10-05-006

Brian Cherry, PG&E

mas@cpuc.ca.gov

jnj@cpuc.ca.gov

Paul Douglas, Energy Division

Jason Simon, Energy Division

Adam Schultz, Energy Division

Joseph Abhulimen, DRA

577868