

**DRAFT**

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

**ENERGY DIVISION**

**ID #11161  
RESOLUTION E-4485  
April 19, 2012**

**REDACTED**

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

Resolution E-4485. Pacific Gas and Electric Company ("PG&E") requests approval of an amendment to an existing Qualifying Facility ("QF") contract with Collins Pine Company ("Collins Pine") for delivery of Renewable Portfolio Standard ("RPS")-eligible power. The amendment replaces the current variable short-run avoided cost (SRAC) energy price with a fixed price, and includes additional terms and conditions.

**PROPOSED OUTCOME:** This Resolution approves the Proposed Amendment of the existing QF contract between PG&E and Collins Pine without modification.

**ESTIMATED COST:** Actual costs are confidential at this time.

By Advice Letter 3962-E filed on November 30, 2011.

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**SUMMARY**

**Pacific Gas and Electric Company's ("PG&E's") Proposed Amendment to the existing Qualifying Facility ("QF") contract with Collins Pine Company ("Collins Pine") complies with QF contract amendment provisions, and is approved without modification.**

On November 30, 2011, PG&E filed Advice Letter ("AL") 3962-E requesting Commission approval of a QF contract amendment between PG&E and Collins

Pine, from the date of Commission approval through the remaining term of the existing contract (approximately 4 years). Collins Pine operates a 12 megawatt (nameplate) biomass facility that uses forestry by-products from the Collins Pine sawmill to generate electricity. The Collins Pine facility qualifies as an eligible renewable resource under the Renewables Portfolio Standard (SBX1 2; Ch. 1/2011) (“RPS”); is located in Chester, California; and is interconnected to the California Independent System Operator (“CAISO”) grid.

The Proposed Amendment to the standard offer thirty-year Power Purchase Agreement (“PPA”) will replace the current variable short-run avoided cost (SRAC) energy price term in the PPA with a fixed price and includes additional terms and conditions. If approved, this resolution would take effect upon receipt of Commission approval and satisfaction or waiver of other Conditions Precedent.

The original PPA between PG&E and Collins Pine was executed on July 12, 1984 and commenced with a demonstrated firm capacity date of May 13, 1986. In 2006, the original PPA expired; however, the Independent Energy Producers Association (“IEP”) engaged in a settlement with PG&E, which provided a five-year extension at a fixed energy price until August 2011. After August 2011, the fixed energy price reverts to a variable energy price, calculated using SRAC, for the remaining duration of the PPA. The existing PPA, as amended, expires May 12, 2016.<sup>1</sup>

The Proposed Amendment changes the energy price from a variable price to a fixed price over the term of the contract. The capacity price is unchanged. The fixed energy price provides price stability for Collins Pine and revenue certainty for its procurement of biomass fuel.

The Proposed Amendment is intended to support the continued operation of the Collins Pine facility through the duration of its existing PPA and secure renewable energy deliveries that can contribute toward PG&E’s near-term RPS mandates. Under the Proposed Amendment, the facility is expected to deliver 34 gigawatt-hours (GWh) of RPS-eligible power to PG&E each year of the term of

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<sup>1</sup> The original 30 year ISO2 PPA expires on May 12, 2016.

the Proposed Amendment. As described in more detail in the Confidential Appendix, the price included in the Proposed Amendment appears reasonable relative to the pricing options the facility has access to pursuant to the QF/CHP Settlement as well as when compared to the prices reflected in the PG&E 2011 Renewable Shortlist.

A detailed discussion of the terms of the Proposed Amendment is included in Confidential Appendix A.

## **BACKGROUND**

### *Recent Decisions related to the California QF Program*

On December 16, 2010, the Commission adopted the Qualifying Facilities and Combined Heat and Power (QF/CHP) settlement with the issuance of Decision (D.)10-12-035. The settlement resolves a number of longstanding issues regarding the contractual obligations and procurement options for facilities operating under legacy and new QF contracts.

Among other things, D.10-12-035 updates methodologies and formulas for Short Run Avoided Cost (SRAC) energy price for QFs to be used in standard offer contracts for QFs under 20 megawatts (MW), Transition PPA, amendments to existing QF PPAs, and Optional As-Available PPAs. The SRAC methodology under the QF/CHP settlement includes:

- (1) By January 1, 2015, transitioning SRAC pricing from a formula that is based in part on administratively-determined heat rates to a formula that solely uses market heat rates;
- (2) Investor-owned utility (IOU)-specific time-of-use (TOU) factors to be applied to energy prices to encourage energy deliveries during the times when the energy is most needed by customers;
- (3) A locational adjustment based on California Independent System Operator (CAISO) nodal prices; and,

- (4) Pricing options based on whether a cap-and-trade program or other form of greenhouse gas (GHG) regulation is developed in California or nationally.

Approval for QF contract changes was previously addressed in D.98-12-066, which authorized the advice letter process to be used for restructured QF contracts that are supported by the utility, the QF and the Division of Ratepayer Advocates (DRA), and the application process to be used for controversial QF contract restructurings. More recently, D.04-12-048 stipulated that contracts with greater than a five-year term require an application and D.06-12-009 clarifies that modifications and amendments of QF contracts with terms less than five years may be addressed through the filing of an advice letter (AL).<sup>2</sup>

Pursuant to these stipulations PG&E filed AL 3962-E seeking approval of the Proposed Amendment to an existing QF contract.

### **NOTICE**

Notice of AL 3962-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of these Advice Letters were mailed and distributed in accordance with General Order 96-B.

### **PROTESTS**

Advice Letter 3962-E was not protested.

### **DISCUSSION**

**PG&E requests Commission approval of a Proposed Amendment to the existing QF contract with Collins Pine.**

On November 30, 2011, PG&E filed AL 3962-E which requests approval of a Proposed Amendment to an existing PPA between PG&E and Collins Pine. The amendment will become effective upon receipt of Commission approval and

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<sup>2</sup> See D.06-12-009 p.7.

satisfaction or waiver of other Conditions Precedent. Conditions Precedent require that the settlement agreement is in effect, both PG&E and Collins Pine are parties to an effective QF PPA pursuant to the Public Utilities Regulatory Act of 1978, Collins Pine generation is an eligible renewable energy resource, and the Proposed Amendment has received Commission approval.

PG&E is requesting that the Commission issue a resolution no later than April 1, 2012.<sup>3</sup>

The Proposed Amendment provides the facility with a fixed energy price. The capacity payments remain unchanged.

Specifically, PG&E requests that the Commission:

1. Approve the Proposed Amendment without modification as just and reasonable; and,
2. Determine that all costs associated with the Proposed Amendment, may be recovered through PG&E's Energy Resource Revenue Account ("ERRA").

**Energy Division evaluated the Proposed PPA Amendment based on the following criteria:**

- Consistency with D.06-12-009 and D.07-09-040;
- Consistency with D.10-12-035 (QF/CHP Program Settlement);
- Consistency with RPS standard terms and conditions;
- Consistency with RPS resource eligibility guidelines;
- Consistency with the RPS resource needs identified in PG&E's 2011 RPS Procurement Plan;

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<sup>3</sup> If the Conditions Precedent, including Commission approval, are not satisfied or waived by May 1, 2012 Collins Pine may elect an option under the QF/CHP Settlement.

- Consistency with D.02-08-071, which requires Procurement Review Group (PRG) participation;
- Cost Reasonableness;
- Project viability; and,
- Contract term Reasonableness.

In considering these factors, we also consider the recommendations of the Independent Evaluator, if available. In this case, PG&E was not required to engage an Independent Evaluator<sup>4</sup> and elected not to do so.

**The Proposed Amendment is consistent with Commission decisions D.06-12-009 and D.07-09-040.**

D.06-12-009 clarified that based on D.04-12-048 (adopts IOUs long-term procurement plans), QF contract extensions for less than five years should be authorized through the advice-letter process. This Proposed Amendment does not extend the term of the contract. Instead, it requests the pricing terms to change within the current duration of the existing PPA. The duration of the amendment is just over 4 years (assuming Commission approval by April 19, 2012).

D.07-09-040 states, “We encourage any renewable resources to negotiate and bring before us applications for such five-year, fixed price amendments, wherever possible, and will consider such applications as we have other negotiated agreements in prior decisions, keeping in mind the direction provided by § 390.1”<sup>5</sup> As AL 3962-E is proposing a fixed energy price amendment to an existing QF contract, we find it is consistent with D.07-09-040.

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<sup>4</sup> In D.04-12-048, the Commission authorized the IOUs to use an independent evaluator (IE) to monitor competitive solicitations that involved affiliate transactions, IOU-built or IOU-turnkey bidders. In D.06-07-029 and D.07-09-044, the Commission established the conditions for IE participation in Energy Auctions.

<sup>5</sup> D.07-09-040, *mimeo*, p. 133.

**The Proposed Amendment is consistent with Commission decision D.10-12-035 (QF/CHP Program Settlement).**

On December 16, 2010, the Commission adopted the QF/Combined Heat and Power (CHP) settlement (Settlement) with the issuance of D. 10-12-035. The Settlement became effective as of November 23, 2011. The Settlement resolves a number of longstanding issues regarding the contractual obligations and procurement options for facilities operating under legacy and new QF contracts. Among other things, it establishes methodologies and formulas for calculating SRAC to be used in QF PPAs. Furthermore, the Settlement allows for bilaterally negotiated contracts with QFs to determine alternative energy and capacity payments mutually agreeable by relevant parties and subject to CPUC approval. Finally, it establishes specific CHP procurement targets and greenhouse gas (GHG) reduction targets for each named utility.

Under the Settlement, Collins Pine is considered a “Legacy PPA”. Pricing for Legacy PPAs transitions to SRAC, specifically defaulting to SRAC Option A under the Legacy Amendment pricing options, as formulated in Section 10.2 of the Settlement, unless the pricing is otherwise amended to specify an alternate energy price or pricing methodology. The instant advice letter reflects the decision by Collins Pine and PG&E to specify an alternate energy price or pricing methodology to the SRAC pricing that would otherwise prevail pursuant to the Settlement. As a Legacy PPA, Collins Pine is eligible to take a Legacy PPA Amendment, which includes a number of different pricing options as further detailed in the Settlement.

The Settlement also establishes a number of other contractual terms and conditions that apply to Legacy PPAs that are reflected in the Proposed Amendment. In light of these factors, we find the Proposed Amendment is consistent with the QF/CHP Settlement.

We note that because the Collins Pine Facility is not a CHP resource, it does not count towards PG&E’s megawatt and GHG reduction targets under the Settlement. For reasons explained in more detail in the Confidential section of

this resolution, we also find the pricing and contractual terms under the Proposed Amendment consistent with the QF/CHP Settlement.

**The Proposed Amendment uses RPS standard terms and conditions.**

The Commission adopted a set of standard terms and conditions (“STCs”) that are required to be included in RPS contracts, four of which are considered “non-modifiable.” The STCs were defined in D.08-04-009 and subsequently amended in D.08-08-028. More recently in D.10-03-021, modified by D.11-01-025, the Commission further refined the STCs. The Proposed Amendment includes the Commission-defined STCs.

**The Proposed Amendment is consistent with RPS resource eligibility guidelines.**

Public Utilities Code § 399.25 requires the California Energy Commission (“CEC”) to certify eligible renewable energy resources. Public Resource Code § 25741 defines a “renewable electrical generation facility” as a facility that uses biomass, and other specified resources. Public Resources Code § 25741 also includes a list of additional criteria the CEC must use to designate an eligible renewable facility. This Proposed Amendment amends a contract with a facility that uses biomass to generate electricity and has been designated eligible for RPS compliance by the CEC. As such, it complies with the RPS resource eligibility guidelines.

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>6</sup>

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<sup>6</sup> See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.



The Commission cannot determine whether “any procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.” As such, this finding shall not be implied to allow the generation from a non-RPS-eligible resource to count toward a RPS compliance obligation. This finding does not absolve the seller of its obligation to obtain CEC certification, nor does it absolve 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.

**The Proposed Amendment is consistent with the RPS resource needs identified in PG&E’s 2011 RPS Procurement Plan.**

The RPS requires all retail sellers of electricity to procure at least 33% of electricity delivered to their retail customers from renewable resources by 2020 with the following targets: 20% by December 31, 2013; 25% by December 31, 2016; and, 33% by December 31, 2020 and each year thereafter.

The Commission requires all IOUs to submit annual RPS Procurement Plans for Commission approval, rejection, or modification. To provide incentives to target those eligible renewable resources that will provide reliability and cost-effective energy, the Commission has permitted modifications to the SRAC formula to allow the price of energy to capture the contribution that QF generation will make toward achieving the IOUs’ RPS goals. As such, Energy Division evaluated the Proposed Amendment for consistency with PG&E’s most recently approved RPS procurement plan, which in part, identifies PG&E’s need for RPS-eligible energy.

PG&E expects Collins Pine to deliver 34 gigawatts per year of RPS-eligible electricity during the term of the Amendment. Collins Pine is currently delivering renewable energy under its existing contract. As described in more detail in the Confidential Appendix, the deliveries anticipated under this contract will contribute toward PG&E’s RPS obligations over the next four years. Beyond the terms of the contract, the value of this contribution toward PG&E’s RPS compliance is less certain.

PG&E's 2011 RPS Procurement Plan was approved by D.11-04-030 on April 14, 2011. Pursuant to statute, the RPS Procurement Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources. The RPS Procurement Plan indicated that it was pursuing both short- and long-term contracts to meet the statutory goals of the RPS. This Proposed Amendment amends a contract with an eligible renewable resource, consistent with the 2011 RPS Plan.

We also note that approval of the Proposed Amendment supports California Executive Order S-06-06, which established targets for the use and production of biofuels and biopower and directed state agencies to work together to advance biomass programs in California while providing environmental protection and mitigation.<sup>7</sup>

**The Proposed Amendment filing is consistent with Commission decision D.02-08-071, which requires Procurement Review Group participation.**

D.02-08-071 establishes a procurement review group to review and assess the details of the IOUs' proposed procurement contracts prior to the IOU submitting filings to the Commission. On July 12, 2011, PG&E presented its procurement review group with a description of its existing QF biomass portfolio and strategy for retaining existing QF resources.

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<sup>7</sup> Executive Order S-06-06 by the Governor of the State of California (April 2006).  
<http://www.dot.ca.gov/hq/energy/Exec%20Order%20S-06-06.pdf>

**The prices in the Proposed Amendment are reasonable.**

The Proposed Amendment replaces the variable SRAC energy price with a fixed energy price. The capacity payments are unchanged by the Amendment.

Energy Division reviewed the itemization of obligations Collins Pine must provide in exchange for the fixed energy price. The additional requirements of Collins Pine will provide greater transparency and certainty related to the facility's output and availability.

Consistent with the Commission's reasonableness review of RPS PPAs, Energy Division reviewed the methodology used to calculate the fixed energy price. In addition, Energy Division compared the prices under the Proposed Amendment with other biomass transactions, as well as to bids in the 2011 RPS solicitation.

Using these comparisons and the confidential contract terms provided by PG&E, we find the energy price under the Proposed Amendment reasonable.

**The project is viable.**

Collins Pine is an existing facility. As an existing facility, the project faces minimal project development risk and, with the transition to a fixed price, will be able to operate with greater certainty over the term of the Proposed Amendment.

**The contract term is reasonable.**

The PPA does not change the existing contract term. The existing contract is a 30-year "Interim Standard Offer 2" contract, which expires on May 12, 2016. The Proposed Amendment to the contract will commence upon Commission approval and satisfaction or waiver of other Conditions Precedent, and will terminate the same date the contract terminates, on May 12, 2016.

**CONFIDENTIAL INFORMATION**

The Commission, in implementing Public Utilities 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. Specified 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.

### **FINDINGS AND CONCLUSIONS**

1. Collins Pine Company operates a 12 MW (nameplate) biomass generating facility.
2. Collins Pine Company has been making deliveries to Pacific Gas and Electric Company for renewable power pursuant to a QF Interim Standard Offer 2 Power Purchase Agreement for over 25 years.
3. Under the QF/CHP Settlement, the contract between PG&E and Collins Pine is a "Legacy PPA".

4. On November 30, 2011, Pacific Gas and Electric Company filed an Advice Letter with the Commission requesting to amend the pricing terms of an existing contract for the remaining duration of the existing PPA, which expires on May 12, 2016.
5. Pacific Gas and Electric Company expects Collins Pine Company to deliver 34 gigawatt-hours per year of renewable power to Pacific Gas and Electric Company during the term of the existing contract.
6. Pacific Gas and Electric Company's Proposed Amendment to the existing QF PPA with Collins Pine Company is consistent with D.06-12-009 and D.07-09-040 allowing modifications and amendments for QF contract extensions of less than five years duration.
7. The Proposed Amendment is consistent with the contracting and pricing provisions in D.10-12-035, the QF/CHP Settlement.
8. The Power Purchase Agreement 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.
9. Pacific Gas and Electric Company's Proposed Amendment is consistent with the RPS resource needs identified in PG&E's 2011 RPS Procurement Plan.
10. Pacific Gas and Electric Company's Procurement Review Group was notified of the Proposed Amendment to the existing QF PPA with Collins Pine Company on July 12, 2011.
11. The costs in Pacific Gas and Electric Company's Proposed Amendment are reasonable.
12. The Collins Pine Company facility is viable.
13. Deliveries from the Collins Pine facility will help fulfill PG&E's near-term RPS obligations.

**THEREFORE IT IS ORDERED THAT:**

1. Pacific Gas and Electric Company's Advice Letter 3962-E requesting Commission approval of a change in energy price from a variable price to a fixed price, is approved without modification.
2. 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 April 19, 2012; the following Commissioners voting favorably thereon:

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PAUL CLANON  
Executive Director

## Confidential Appendix A

### Summary and Analysis of Proposed Amendment

[REDACTED]