



DRA

*Division of Ratepayer Advocates
California Public Utilities Commission*

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CPUC, Energy Division
Attention: Tariff Unit, 4th Floor
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Subject: **Public Protest of the Division of Ratepayer Advocates of Pacific Gas & Electric Company's (PG&E) Advice Letter 4048-E (Amended and Restated Power Purchase Agreement) for Procurement of an Eligible Renewable Energy Resource Between Bottle Rock Power LLC and PG&E**

INTRODUCTION

The Division of Ratepayer Advocates (DRA) recommends the Commission deny PG&E's AL 4048-E (Fourth PPA Amendment). PG&E submitted an Amended and Restated Power Purchase Agreement ("A&R PPA" or "contract") that would replace the original Power and Sales Agreement¹ and subsequent amendments. This fourth amendment provides significant changes that appear to constitute an entirely new contract. This A&R PPA has a 20-year contract term starting upon Commission approval of the amended and restated PPA. The A&R PPA also proposes to [REDACTED] provided for in the approved original PPA.

SUMMARY of RECOMMENDATION

DRA protests and recommends the Commission reject AL 4048-E for the following reasons:

¹ The original PPA resulted from the PG&E's 2005 solicitation for renewable bids and received approval in October 2006 by Resolution E-4021.

² [REDACTED] February 2012, which is PG&E's anticipated Commission contract approval date.

- The price of the Amended and Restated PPA (A&R PPA) is significantly higher compared to the current market alternatives
- The A&R PPA proposes to [REDACTED]
- The price is significantly higher compared to the 2011 MPR.
- PG&E does not need this project to meet its RPS goals.
- The long-term viability of the project is highly uncertain.
- After extensive review of the cash flow model represented by Bottle Rock, the IE has a concern that the project will return to PG&E for another price increase.
- The sole grounds upon which the IE recommends approval are to support economic development of a depressed area and provide employment benefits. It is inappropriate for PG&E's ratepayers to shoulder the burden of a high-priced and unnecessary contract for the sole benefits of supporting economic development and providing jobs for [REDACTED] persons.

BACKGROUND

The Bottle Rock project, located in Lake County, California, is an existing 55 MW geothermal plant. It began commercial operation in February 1985 and was operated by California Department of Water Resources (DWR). By November 1990, DWR suspended plant operations due to lower than expected generation. DWR sold the facility to Bottle Rock Power Corporation in 2001. In 2005, US Renewable Group (USRG) bought the facility with the intention of repowering the plant. In June 2006, Riverstone and Carlyle Group acquired a 50% stake in Bottle Rock from USRG.

The original power purchase agreement (PPA) executed in May 2006 between Bottle Rock and PG&E resulted from PG&E's 2005 RPS solicitation for renewable energy.³ The original PPA is for firm baseload energy for a ten-year term with an option for PG&E to extend the term by an additional 5 years. The project was guaranteed to commence commercial operation by July 31, 2007. The average contract price varies by the period of operation. The contract capacity is 17 MW or the net rated output capacity of 14.45 MW with expected deliveries of 119,000 MWh the first year of operation. The project capacity is expandable at Bottle Rock's discretion up to 55 MW with expected deliveries of up to 385,000 MWh/year. The project capacity can never be reduced during the contract period. To protect ratepayers, the contract appropriately provides for liquidated damages if the project fails to generate the contracted capacity.

³ The original PPA was approved on October 5, 2006 in Resolution E-4021 by PG&E AL 2827-E filed on May 15, 2006.

In September 2007, less than one year after the original PPA was approved, PG&E and Bottle Rock executed the first amendment to the original PPA (2007 PPA)⁴ when the project was unable to achieve the guaranteed commercial operation date (July 31, 2007). The first amendment implemented the following changes in the original contract:

- Revised guaranteed commercial on-line date from July 31, 2007 to October 1, 2007;
- Reduced the initial minimum capacity from 14.45 MW to 10 MW;
- Established fixed levels of daily delay damages and security levels;
- Reduced delivery term security if output exceeds 17 MW; and
- Established a reduced contract price for each MWh of scheduled energy for the period prior to the date the project achieves a net capacity of 14.45 MW.

The project then declared commercial operation in October 2007.⁵

On April 2009, PG&E and Bottle Rock executed the second amendment to the PPA in order to conform to the restructured CAISO Market. However, in 2008, prior to this second amendment, Bottle Rock approached PG&E and negotiated to amend the 2007 PPA because the project was faced with high cost increases and geothermal well losses. The 2007 PPA did not allow for future geothermal well development. The negotiations resulted in an Amended and Restated PPA in 2010 (2010 PPA) executed on April 6, 2010.⁶ The 2010 PPA amended, restated, replaced and superseded the original PPA and subsequent amendments. The 2010 amended PPA provided for the following:

- Increased contract price for deliveries above the required minimum deliveries
- Increased project development security and delivery term security
- Reduced the minimum contract capacity from 17 MW to 16 MW
- Increased delivery term from 10 to 15 years.

Pursuant to the 2010 PPA, the project was expected to increase energy deliveries from 100 GWh/year to a minimum of 125 GWh/year and maximum of 420 GWh/year. After the approval of the 2010 PPA, Bottle Rock was unable to raise capital necessary to expand the steam field and it was correspondingly unable to increase the required generation. As a consequence, Bottle Rock failed to achieve the production level for it to receive higher payments under the 2010 amended PPA. The project is currently only able to deliver an average of 6.4 GWh per month (77 GWh/year). It is important to note that since the project declared commercial operation in 2007, the project has produced

⁴ The 2007 PPA was presented by PG&E in AL 3131-E filed on October 9, 2007 and approved by letter by Energy Division on December 18, 2007.

⁵ AL 4048-E, page 2.

⁶ The 2010 PPA was approved on January 27, 2011 in Resolution E-4384 by PG&E AL 3668-E filed on May 20, 2010. It also important to note that the 2010 PPA is only partially effective due to a condition precedent in the 2010 PPA that has not yet been satisfied or waived, and as such, the project's current generation is subject mainly to the terms and conditions of the 2007 PPA.

lower than expected generation. The failure of the project to produce the expected generation was the main reason DWR suspended the operation of the plant in 1990. To this date, the project continues to deliver lower than expected generation.

In June 2011, Bottle Rock approached PG&E again to discuss alternate contract terms to improve Bottle Rock's chances of obtaining financing for steam field expansion in order to support the facility's continued operation. On March 28, 2012, PG&E and Bottle Rock executed yet another Amended and Restated Power Purchase Agreement (A&R PPA) which is the subject of this protest. The A&R PPA proposes the following amendments:

- Increases the contract price
- Requires increased minimum production from 10 to 15 MW over a period of six years
- Increase contract term from 10 to 20 years. (The term commences upon Commission's approval of A&R PPA.)
- Reduces the maximum contract capacity from 55 MW to 25 MW with the requirement to reach 15 MW by 2018.
- Increases delivery term security
- [REDACTED]
- [REDACTED] provided for in the original PPA.
- Includes an obligation by Bottle Rock to retain [REDACTED] employees
- Includes an obligation by Bottle Rock to invest a minimum amount in steam field expansion and improvement of the project.

DRA RECOMMENDS REJECTION OF THIS ADVICE LETTER FOR THE FOLLOWING REASONS

The A&R PPA Price is Substantially Higher than Other Market Alternatives

PG&E does not need this contract in order to meet its RPS goals because there are lower-cost alternatives. The price of the Amended PPA is substantially above the 2011 Market Price Referent (MPR). Given the growing maturity of the renewables market and the consistently lower prices of renewable contracts, especially in response to the 2011 Requests for Offers (RFOs), there is no reason to approve contracts priced above the MPR. The IE opined that, based on PG&E's least-cost best fit (LCBF) valuation of recent bids received in the 2011 RFO, the A&R PPA is no longer competitive with market alternatives.⁷ The IE compared and evaluated the Portfolio Adjusted Value (PAV) of Bottle Rock project to the PAV values of the shortlisted projects in PG&E's 2011 solicitation. The IE concluded that the PAV of the project is outside the range of the short listed projects and therefore is classified as a high cost contract.⁸ The IE also

⁷ IE Report, Confidential Appendix C, page 34.

⁸ IE Report, Confidential Appendix C, page 34.

found that the Bottle Rock project ranked significantly below the lowest ranked project among the shortlisted projects and that it would not have been selected for the short list in the 2011 solicitation.⁹ PG&E even indicated that the economics of the A&R PPA compare unfavorably to PG&E's 2011 RPS Solicitation shortlist.¹⁰ Clearly, PG&E could procure the same amount of RPS energy from a more economical source. The high price of this contract was one of the reasons the IE recommended to deny the project.¹¹ DRA concurs that this uncompetitive contract does not merit Commission's approval.

The A&R PPA [REDACTED] Which Disregards the Core Goal of Protecting Ratepayers

One of the contract terms in the original PPA to protect ratepayer interest requires Bottle Rock [REDACTED] PG&E stated at the December 13, 2011 PRG Meeting, that the [REDACTED]

[REDACTED] The financial proforma presented by Bottle Rock justifies the price increase requested in the A&R PPA; however, the IE opined that without increase in price, combined with PG&E [REDACTED], the project would likely fail.¹³ PG&E has performed its contract administration duties in an unreasonable manner by [REDACTED]. DRA is concerned that PG&E is disregarding the core goal of protecting its ratepayers. If PG&E is requesting approval of this high priced and poorly fit contract to improve its goodwill, then PG&E shareholders should fund it, not its ratepayers.

PG&E Does Not Need this High Cost, Poor Fit Contract to Meet its RPS Goals

As noted above, the A&R PPA price is significantly higher than 2011 MPR. In its Advice Letter, PG&E pointed out that energy deliveries under the A&R PPA would contribute toward PG&E's long-term RPS procurement requirement when PG&E has a need for incremental RPS energy. However, the evidence shows that PG&E does not need the RPS energy from this project.

The 33% RPS program establishes three compliance periods: compliance period 1 (2011-2013), compliance period 2 (2014-2016), and compliance period 3 (2017-2030). PG&E's RPS Compliance Report indicates that PG&E [REDACTED]

[REDACTED]¹⁴ In addition, the IE indicated that the portfolio fit of the project is

⁹ IE Report, Confidential Appendix C, page 27.

¹⁰ AL 4048-E, page 8.

¹¹ IE Report, Confidential Appendix C, page 35.

¹² IE Report, Confidential Appendix C, footnote 8 on page 5.

¹³ IE Report, Confidential Appendix C, page 34.

¹⁴ Confidential PG&E RPS Compliance Report, March 2012.

moderate to poor during the 2012-2018 period based on PG&E's existing portfolio.¹⁵ PG&E does not need this high cost and project that adds no value to PG&E's RPS portfolio. PG&E does not need this project to meet its RPS goals and the Commission should reject this advice letter.

The Long-term Viability of the Bottle Rock Project is Highly Uncertain

As discussed above, DWR suspended Bottle Rock's operations due to lower than expected generation that occurred in 1990. The project underwent a comprehensive refurbishment, contracting and permitting process in 2006 and achieved commercial operations in October 2007 under the original RPS PPA agreement with PG&E. Since 2007, the project has failed to meet the contractual generation requirement and the PPA has been amended several times within four and a half years to reduce generation at a higher price and for longer terms. Despite these modifications, the project still fails to meet the generation requirement. The IE indicated that the project had a long history of operational issues and failures to meet output expectations, which raises questions about the long term viability of the project even with the price increases.¹⁶ Furthermore, the IE noted that [REDACTED]

Resolution E-4199 requires developers to submit a cash flow model to justify price amendment proposals. Both PG&E and the IE reviewed Bottle Rock's cash flow model and concluded that the increase in project cost justifies the price increase to keep the plant operational and to improve production. However, the IE also concluded that [REDACTED]

[REDACTED] As a result, the IE notes that it is possible that Bottle Rock could be back again looking for another amendment to the contract and a further price increase.¹⁹ DRA concurs with the IE's assessment and recommends that the Commission deny the request to amend the contract.

It is Inappropriate For PG&E's Ratepayers To Shoulder The Burden Of A High-Priced And Unnecessary Contract For The Sole Benefit Of Providing Economic Development

¹⁵ IE Report, Confidential Appendix C, page 34.

¹⁶ IE Report, Confidential Appendix C, page 34.

¹⁷ IE Report, Confidential Appendix C, page 35.

¹⁸ IE Report, Confidential Appendix C, page 34.

¹⁹ IE Report, Confidential Appendix C, page 35.

As mentioned above, one of the reasons the IE gave for recommending approval of this project is to support an economically-disadvantaged community. The IE further stated that though PG&E has included a number of contract terms to protect customer interest, there is still a risk that customers will not receive the value of the renewable generation from this project.²⁰ Therefore, DRA believes it is entirely inappropriate for PG&E to ask its ratepayers to bear the burden of an expensive, unviable, and unnecessary contract for the sole purpose of supporting an economically-disadvantaged community. If PG&E is requesting approval of this high priced and poorly fit contract to improve its goodwill, then PG&E's shareholders should fund it, not its ratepayers.

CONCLUSION

For the reasons given above, DRA recommends that the Commission reject AL 4048-E. Please contact Teresa Hortinela at 415-703-1784 or at mth@cpuc.ca.gov with any questions about this protest.

/s/ Cynthia Walker

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²⁰ IE Report, Confidential Appendix C, page 35.

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