

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #11496  
RESOLUTION E-4520  
August 23, 2012

REDACTED

R E S O L U T I O N

Resolution E-4520. Pacific Gas and Electric Company requests approval of agreements for the procurement of renewable energy credits, also referred to as green attributes, with Barclays Bank PLC, Sierra Pacific Industries, and TransAlta Corporation.

PROPOSED OUTCOME: This Resolution denies cost recovery for Pacific Gas and Electric Company's agreements for renewable energy credits, also referred to as green attributes, with Barclays Bank PLC, Sierra Pacific Industries, and TransAlta Corporation.

ESTIMATED COST: None.

By Advice Letters (AL) 3600-E filed on January 26, 2010 (as supplemented by AL 3600-E-A filed on October 20, 2010 and by AL 3600-E-B filed on February 9, 2011), AL 3632-E filed on March 12, 2010 (as supplemented by AL 3632-E-A filed on October 29, 2010 and AL 3632-E-B filed on February 9, 2011), AL 3854-E filed on June 2, 2011 and AL 3862-E filed on June 16, 2011.

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**SUMMARY**

**Pacific Gas and Electric Company's (PG&E) agreements for the purchase of renewable energy credits (RECs), also referred to as green attributes, from Barclays Bank PLC, Sierra Pacific Industries, and Transalta Corporation (the REC Agreements) are denied.**

Pursuant to its obligations under California's renewables portfolio standard (RPS) at the time these REC Agreements were executed, PG&E was required to procure 20% of its retail sales from eligible renewable resources by December 31, 2010, subject to various compliance rules. In an effort to meet this compliance obligation, PG&E executed the following REC Agreements in 2009.

Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 3600-E on January 6, 2010, as modified by AL 3600-E-A on October 20, 2010 and AL 3600-E-B on February 9, 2011, requesting the California Public Utilities Commission's (Commission) approval of a purchase of delivered wind energy and the associated RECs from Barclays Bank PLC (Barclays). Under the contract, PG&E would receive energy and RECs from Barclays' existing 100 megawatts (MW) Hay Canyon wind facility in Oregon. PG&E executed this agreement with Barclays through bilateral negotiations. Pursuant to the terms of the agreement, PG&E would accept short-term deliveries of 250 GWh per year of energy from Barclays beginning in October 2010, irrespective of prior CPUC approval. Barclays would then transfer the RECs generated from these energy deliveries to PG&E upon Commission Approval of this agreement.

PG&E filed Advice Letter AL 3632-E on March 12, 2010, as modified by AL 3632-E-A on October 29, 2010 and AL 3632-E-B on February 9, 2011, requesting Commission approval of a purchase of wind energy and the associated RECs from Barclays. Under the contract, PG&E would receive energy and RECs from Barclays' existing 32 MW Nine Canyon Wind Phase III facility in Washington state. PG&E executed this agreement with Barclays through bilateral negotiations. Pursuant to the terms of the agreement, PG&E would accept short-term deliveries of 33 GWh per year of energy from Barclays beginning in November 2010, irrespective of prior CPUC approval. Barclays would then transfer the RECs generated from these energy deliveries to PG&E upon Commission Approval of this agreement.

PG&E contends that its 2006 Conformed Long-Term Procurement Plan (LTPP) provided authorization for it to accept delivery of the energy associated with the Barclays' REC transactions prior to CPUC approval. This resolution does not address this issue, nor does it prejudge whether or not PG&E may successfully seek cost recovery for these energy deliveries pursuant to the authorization cited.

PG&E filed Advice Letter AL 3854-E on June 2, 2011 requesting Commission approval to purchase RECs from four existing biomass facilities in California owned by Sierra Pacific Industries (SPI): SPI Anderson, SPI Lincoln, SPI Quincy, and SPI Burney (the SPI Facilities).<sup>1</sup> The SPI Facilities are sawmills that generate electricity by combusting wood waste products on-site. Under the terms

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<sup>1</sup> PG&E currently purchases bundled energy and RECs from these four SPI Facilities through existing Qualifying Facility (QF) agreements. These existing QF Agreements have no impact on the REC transactions under discussion in this resolution, as these RECs would be generated by the energy currently consumed on-site by these four facilities.

of the agreement, PG&E would purchase the RECs generated by this energy that SPI consumes on-site. PG&E executed this agreement with SPI through bilateral negotiations. Under the terms of the agreement, SPI would transfer the RECs generated by the energy that its facilities consume on-site to PG&E upon CPUC approval. The agreement requires SPI to transfer 100 GWh per year of RECs from 2011 through 2015.

PG&E filed Advice Letter AL 3862-E on June 16, 2011 requesting Commission approval to purchase RECs from TransAlta Corporation (TransAlta). Under the contract, PG&E would receive RECs from TransAlta's newly developed 66 MW Summerview #2 wind facility located in Alberta, Canada. PG&E executed this agreement with TransAlta through bilateral negotiations. The agreement would obligate TransAlta to transfer 175-210 GWh per year of RECs to PG&E beginning in 2011, upon Commission approval, and continuing through 2014.

The agreements with Barclays, SPI, and TransAlta (the "REC Agreements") qualify as REC-only contracts as defined by Decision (D.) 10-03-021, as modified by D.11-01-025, based on the delivery structures proposed by PG&E. This resolution denies the REC Agreements because PG&E has not demonstrated an immediate near-term compliance need for these RECs pursuant to compliance obligations under SB 2 (1X), nor has it demonstrated a need for these RECs to meet its pre-2011 RPS compliance obligations.

## **BACKGROUND**

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

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 399.11-399.31.<sup>3</sup> Under SB 2 (1X), 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.

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at

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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.

<http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and  
<http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

## **NOTICE**

Notice of Advice Letters 3600-E, 3600-E-A, 3600-E-B, 3632-E, 3632-E-A, 3632-E-B, 3854-E, and 3862-E was made by publication in the Commission's Daily Calendar. Pacific Gas and Electric Company states that a copy of each Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

## **PROTESTS**

PG&E's AL 3600-E was timely protested by the Division of Ratepayer Advocates (DRA) on February 16, 2010. PG&E responded to DRA on February 23, 2010. PG&E's AL 3600-E-A was also protested by DRA on November 9, 2010. PG&E responded to DRA on November 16, 2010. Lastly, PG&E's AL 3632-E was timely protested on March 30, 2010 by DRA. PG&E responded to DRA on April 8, 2010.

### **Advice Letter 3600-E**

DRA's protest to AL 3600-E focused on three primary areas of concern: (1) the perceived allocation of risk borne by ratepayers through this agreement, (2) inadequate safeguards to assure project performance, and (3) that deliveries from the agreement are inconsistent with PG&E's demonstrated need for renewable generation.

PG&E responded to DRA's protest by arguing that this agreement presents a low-risk to ratepayers because deliveries would come from an existing, online project backed by a developer with significant assets. PG&E also contends that performance assurances are unnecessary because this agreement concerns deliveries from an existing project. Additionally, PG&E responded that deliveries from this agreement would help it meet its renewable net short position at the time this agreement was signed.

### **Advice Letter 3600-E-A**

DRA's protest to AL 3600-E-A focused primarily on PG&E's acceptance of energy deliveries pursuant to this agreement prior to CPUC approval of this advice letter.

PG&E responded that it was authorized at the time through its CPUC-approved 2006 Conformed Long-Term Procurement Plan to make “short-term and bilateral forward energy purchases through bilateral transactions.” PG&E contends that, in this case, it was authorized to purchase the energy at an indexed price and that it would true up with Barclays for the green attributes and the full contract price only after CPUC approval.

Advice Letter 3632-E

DRA’s protest to AL 3632-E addressed the timing of PG&E’s filing of that Advice Letter. PG&E filed AL 3632-E on March 12, 2010, a matter of days before the Commission issued Decision (D.) 10-03-021 on March 16, 2010 to establish rules for the use of RECs for RPS compliance purposes. DRA contends in its protest that AL 3632-E should have been re-filed to demonstrate consistency with D.10-03-021.

PG&E opposed DRA’s protest on the grounds that the Commission could require the utility to file a supplemental advice letter demonstrating compliance with D.10-03-021 if it deemed necessary. For this reason, PG&E does not believe the issuance of the RECs Decision should impact AL 3632-E.

The Commission rejects these protests from DRA.

The Commission does not agree with DRA that the allocation of risk to ratepayers or the adequacy of safeguards to ensure project performance are sufficient grounds for denial of AL 3600-E. Furthermore, the Commission has evaluated PG&E’s current need for these short-term RECs in light of changed policies in California since 2010. Given this context, DRA’s protest addressing PG&E’s portfolio need in 2010 is no longer on point.

The Commission also denies DRA’s claim that PG&E lacked the authority to accept pre-deliveries of energy pursuant to the Barclays’ Agreements, and that PG&E erred in filing the Barclays’ Agreement before the Commission issued D.10-03-021. On the former, PG&E contends that it was authorized to accept these energy deliveries pursuant to its authority under the 2006 Conformed Long-Term Procurement Plan. This resolution does not address this issue, nor does it prejudge whether PG&E may appropriately seek cost recovery for these energy deliveries. As such, this protest is moot as it has no impact on the merits of the REC transaction under consideration by this resolution. On the latter protest, DRA’s protest is rendered irrelevant by PG&E’s subsequent submission of Supplemental AL 3600-E-A and Supplemental AL 3632-E-A to conform both agreements to D.10-03-021.

PG&E AL 3862-E, 3854-E, 3600-E-A-B, and 3632-E-A-B/AS6

DRA's protests, based on various grounds, seeking rejection of PG&E's REC Agreements with Barclays are denied.

No protests were filed to PG&E's AL 3600-E-B, AL 3632-E-A, AL 3632-E-B, AL 3854-E, or AL 3862-E.

## **DISCUSSION**

**PG&E requests Commission approval of new agreements with Barclays, SPI, and TransAlta for the purchase of renewable energy credits (RECs), also known as green attributes.**

Pursuant to its obligations under California's RPS at the time these REC Agreements were executed, PG&E was required to procure 20% of its retail sales from eligible renewable resources by December 31, 2010, subject to various compliance rules.<sup>4</sup> Retail sellers were permitted to defer an annual compliance deficit for up to three years if certain conditions were met and all compliance deficits needed to be satisfied with actual procurement within the three year time period. In an effort to meet this compliance obligation, PG&E executed the following REC Agreements in 2009.

Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 3600-E on January 6, 2010, as modified by AL 3600-E-A on October 20, 2010 and AL 3600-E-B on February 9, 2011, requesting the California Public Utilities Commission's (Commission) approval of a purchase of delivered wind energy and the associated RECs from Barclays Bank PLC (Barclays). Under the contract, PG&E would receive energy and RECs from Barclays' existing 100 megawatts (MW) Hay Canyon wind facility in Oregon. PG&E executed this agreement with Barclays through bilateral negotiations. Pursuant to the terms of the agreement, PG&E would accept short-term deliveries of 250 GWh per year of energy from Barclays beginning in October 2010, irrespective of prior CPUC approval. Barclays would then transfer the RECs generated from these energy deliveries to PG&E upon Commission Approval of this agreement.

PG&E filed Advice Letter AL 3632-E on March 12, 2010, as modified by AL 3632-E-A on October 29, 2010 and AL 3632-E-B on February 9, 2011, requesting Commission approval of a purchase of wind energy and the associated RECs from Barclays. Under the contract, PG&E would receive energy and RECs from Barclays' existing 32 MW Nine Canyon Wind Phase III facility in Washington state. PG&E executed this agreement with Barclays through bilateral negotiations. Pursuant to the terms of the agreement, PG&E would accept short-

<sup>4</sup> See, SB 107 (Simitian, 2006) and D.06-10-050.

term deliveries of 33 GWh per year of energy from Barclays beginning in November 2010, irrespective of prior CPUC approval. Barclays would then transfer the RECs generated from these energy deliveries to PG&E upon Commission Approval of this agreement.

PG&E filed Advice Letter AL 3854-E on June 2, 2011 requesting Commission approval to purchase RECs from four existing biomass facilities in California owned by Sierra Pacific Industries (SPI): SPI Anderson, SPI Lincoln, SPI Quincy, and SPI Burney (the SPI Facilities).<sup>5</sup> The SPI Facilities are sawmills that generate electricity by combusting wood waste products on-site. Under the terms of the agreement, PG&E would purchase the RECs generated by this energy that SPI consumes on-site. PG&E executed this agreement with SPI through bilateral negotiations. Under the terms of the agreement, SPI would transfer the RECs generated by the energy that its facilities consume on-site to PG&E upon CPUC approval. The agreement requires SPI to transfer 100 GWh per year of RECs from 2011 through 2015.

PG&E filed Advice Letter AL 3862-E on June 16, 2011 requesting Commission approval to purchase RECs from TransAlta Corporation (TransAlta). Under the contract, PG&E would receive RECs from TransAlta's newly developed 66 MW Summerview #2 wind facility located in Alberta, Canada. PG&E executed this agreement with TransAlta through bilateral negotiations. The agreement would obligate TransAlta to transfer 175-210 GWh per year of RECs to PG&E beginning in 2011, upon Commission approval, and continuing through 2014.

PG&E contends that its 2006 Conformed Long-Term Procurement Plan provided authorization for it to accept delivery of the energy associated with the Barclays' REC transactions prior to CPUC approval. This resolution does not address whether PG&E was authorized to accept pre-deliveries of energy pursuant to these agreements, nor does it prejudge whether or not PG&E may successfully seek cost recovery for these energy deliveries pursuant to other Commission orders.

Table 1 below summarizes the project-specific features of these agreements:

**Table 1. Summary of PG&E's REC Agreements**

Counter-	Generating	Resourc	Annual	REC	Expected	Project
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<sup>5</sup> PG&E currently purchases bundled energy and RECs from these four SPI Facilities through existing Qualifying Facility (QF) agreements. These existing QF Agreements have no impact on the REC transactions under discussion in this resolution, as these RECs would be generated by the energy currently consumed on-site by these four facilities.

Party	Facilities	e Type	Transfer s	Generatio n Term <sup>6</sup>	Complianc e Period <sup>7</sup>	Location
Barclays Bank PLC	Hay Canyon	Wind	250 GWh	2010-2011	Pre-2011 and CP1	Moro, Oregon
Barclays Bank PLC	Nine Canyon	Wind	~33 GWh	2010-2011	Pre-2011 and CP1	Kennewick, Washington
Sierra Pacific Industries	Anderson, Lincoln, Quincy, Burney	Biomass	100 GWh	2011-2015	CP1-CP2	Various Locations, California
TransAlta Corporation	Summerview #2	Wind	175-210 GWh	2011-2014	CP1-CP2	Alberta, Canada

**PG&E requested that the Commission issue a resolution for each filed Advice Letter that contains the following findings:**

1. Approves the Agreements in their entirety, including payments to be made by PG&E pursuant to the Agreements, subject to the Commission’s review of PG&E’s administration of the Agreements.
2. Finds that any procurement pursuant to the Agreements 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 Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.) (“RPS”) Decision (“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 Agreements shall be recovered in rates.
4. Finds that pursuant to Public Utilities Code Section 399.16(d), as enacted by the California Renewable Energy Resources Act, Senate Bill X1 2 (“SBX1 2”), the Agreements shall count in full towards RPS procurement

<sup>6</sup> The years in which the RECs would be generated pursuant to each agreement, then to be subsequently transferred to PG&E upon CPUC approval.

<sup>7</sup> D.11-12-020 established three multi-year compliance periods (CP) as directed by SB 2 (1X) (CP1: 2011-13, CP2: 2014-16, CP3: 2017-20).



requirements, and thus are not subject to procurement or compliance limitations and restrictions, including those set forth in or developed pursuant to Sections 399.13(a)(4)(B) or 399.16(c), as enacted by SBX1 2.

5. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:
  - a. The Barclays' Agreements are consistent with PG&E's 2009 RPS procurement plan.
  - b. The Agreements with Sierra Pacific Industries and with TransAlta Corporation are consistent with PG&E's 2011 RPS procurement plan.
  - c. The terms of the Barclays' Agreements, including the price of delivered energy, are reasonable.
  - d. The terms of the Sierra Pacific Industries and TransAlta Corporation Agreements, including the price of delivered TRECs, are reasonable.
6. Adopts the following finding of fact and conclusion of law in support of cost recovery for the Agreements:
  - a. The utility's costs under these Agreements shall be recovered through PG&E's Energy Resource Recovery Account.
  - b. Any stranded costs that may arise from these Agreements 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.
7. Adopts the following finding with respect to resource compliance with the Emissions Performance Standard (EPS) adopted in R.06-04-009:
  - a. The Barclays' Agreements are not long-term financial commitments subject to the EPS under Public Utilities Code section 8340(j) because its contract terms are less than five years.
  - b. The Sierra Pacific Industries and TransAlta Corporation PSAs are not covered procurement subject to the EPS because they do not involve procurement of electric energy.

### **Energy Division Evaluated the REC Agreements on the Following Grounds:**

- Consistency with Bilateral Contracting Rules
- Consistency with PG&E's Least-Cost, Best-Fit Requirements
- Demonstration of Need for the REC Agreements

#### **Consistency with Bilateral Contracting Rules**

PG&E negotiated each of these REC Agreements on a bilateral basis. PG&E entered into bilateral negotiations given its view at the time that the REC Agreements had favorable prices and terms. PG&E believed that delaying procurement of these RECs until its next competitive solicitation could result in the utility failing to attain its 20% RPS procurement obligations.

The Commission developed guidelines pursuant to which utilities may enter into bilateral RPS contracts. In D.03-06-071, the Commission authorized entry into bilateral RPS contracts provided that such contracts did not require Public Goods Charge funds and that they were "prudent." In D.06-10-019, the Commission established additional rules pursuant to which the IOUs could enter into bilateral RPS contracts. PG&E adhered to these bilateral contracting rules because the REC Agreements are for longer than one month in duration, the REC Agreements were filed by advice letter, and the above market costs will not be applied to PG&E's RPS cost limitation and the REC Agreements are reasonably priced.

In D.09-06-050, the Commission also determined that bilateral agreements should be reviewed according to the same processes and standards as projects that come through a solicitation. Accordingly, PG&E attests that each of these REC Agreements was compared to other similar offers received by PG&E from its 2009 RPS RFO; the proposed REC Agreements were reviewed by PG&E's Procurement Review Group; and an independent evaluator oversaw the negotiation of these REC Agreements.

The REC Agreements are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.

#### **Consistency with PG&E's Least-Cost Best-Fit (LCBF) Requirements**

The LCBF decision directs the utilities to use certain criteria in their bid ranking.<sup>8</sup> The decision offers guidance regarding the process by which the utility ranks

<sup>8</sup> See D.04-07-029

bids in order to select or “shortlist” the bids with which it will commence negotiations. PG&E’s bid evaluation includes a quantitative and qualitative analysis, as well as each proposal’s absolute value to PG&E’s customers and relative value in comparison to other proposals.

The basic components of PG&E’s LCBF evaluation and selection criteria and process for RPS contracts were established in the Commission’s LCBF Decisions D.03-06-071 and D.04-07-029. Consistent with these decisions, the three main steps undertaken by PG&E are: (1) initial data gathering and verification; (2) a quantitative assessment of proposals, and; (3) adjustments to selection based on proposals’ qualitative attributes. PG&E applied these criteria to the proposals received in the 2009 solicitation in order to establish a short-list of proposals from bidders with whom PG&E would engage in contract discussions. PG&E’s 2009 RPS solicitation was the most recent solicitation at the time that each of these REC agreements was negotiated and executed.

PG&E examined the reasonableness of each one of the REC Agreements using the same LCBF evaluation methodology that it used for RPS offers received for the 2009 RPS solicitation. Although the REC Agreements were negotiated bilaterally, PG&E determined that the agreements were reasonable and compared favorably to proposals that PG&E received in its 2009 solicitation and to other bilateral offers negotiated around the same time.

The Commission finds that PG&E adequately examined the reasonableness of the REC Agreements utilizing its LCBF methodology during the time the agreements were being negotiated and executed.

### **Demonstration of Need for the REC Agreements**

The California RPS Program was established by Senate Bill (SB) 1078 and has been recently modified by SB 2 (1X), which became effective on December 10, 2011. SB 2 (1X) made significant changes to the RPS Program.<sup>9</sup> SB2 (1X) established new RPS procurement targets such that retail sellers must procure “...from January 1, 2011 to December 31, 2013...an average of 20 percent of retail sales...25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020.”<sup>10</sup>

The rules for counting RECs for RPS compliance have changed since the time that PG&E executed these REC Agreements. Table 2 summarizes the

<sup>9</sup> The Commission opened Rulemaking (R.) 11-05-005 (May 5, 2011) to implement the new RPS law.

<sup>10</sup> See § 399.15(b)(2)(B), SB 2 (1X)

application of these rules dependent on the timing of the individual REC Agreements:

**Table 2. Summary of Application of Commission Rules to REC Agreements**

Was the REC Agreement <b>Executed</b> Before June 1, 2010?	Were the RECs <b>Generated</b> Prior to Jan. 1, 2011?	Controlling Commission Decisions (D.)	Restrictions on Application of RECs Against RPS Compliance Obligations:
Yes	Yes	D.10-03-021, as modified by D.11-01-025, ("the REC Decision").	RECs will be accounted for in the Closing Report process established in D.12-06-038. RECs will count towards pre-2011 RPS compliance obligations.
Yes	No	D.11-12-052 ("the Product Content Category Decision") and D.12-06-038 ("the Compliance Decision").	RECs will "count in full" towards RPS compliance. RECs must be retired for compliance purposes within 36 months from when they are generated.
No	No	D.11-12-052 ("the Product Content Category Decision") and D.12-06-038 ("the Compliance Decision").	RECs will be classified according to the portfolio content categories. RECs must be retired for compliance purposes within 36 months from when they are generated.

Each of the REC Agreements considered in this resolution was executed before June 1, 2010. Approximately half of the RECs generated pursuant to the Barclays' Agreements were generated prior to January 1, 2011 and would count towards PG&E's pre-2011 RPS compliance deficit, consistent with D.12-06-038.

Pursuant to D.12-06-038, the Commission will waive a utility's pre-2011 RPS compliance deficit so long as the IOU attained 14% RPS procurement by 2010. The Commission currently expects that PG&E will demonstrate that it achieved this criterion.<sup>11</sup> As such, the Commission does not expect PG&E to have an incremental need for RECs to meet its pre-2011 RPS compliance obligations.

<sup>11</sup> This expectation is based upon data provided in PG&E's draft 2012 Renewable Energy Procurement Plan (filed May 23, 2012). PG&E will file its pre-2011 compliance Closing Report with the Commission on August 20, 2012 pursuant to D.12-06-038.

For these reasons, the Commission finds that PG&E does not have a need to procure RECs associated with pre-2011 generation.

The remaining RECs procured pursuant to the Barclays Agreements, in addition to the RECs procured pursuant to the SPI and TransAlta Agreements, would be generated after January 1, 2011 and thus could “count in full” toward PG&E’s RPS compliance obligations. These remaining RECs would be generated between January 1, 2011 and 2015 (i.e., within the first and second compliance periods).

In light of recent information<sup>12</sup> provided to the Commission about PG&E’s current risk-adjusted net short position relative to its current RPS targets, the details of which are contained in Confidential Appendix A, the Commission finds that the near-term nature of these REC Agreements is inconsistent with PG&E’s demonstrated compliance need through the first and second compliance periods.

### **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.

<sup>12</sup> See, Pacific Gas and Electric Company’s (U 39-E) 2012 Renewable Energy Procurement Plan, Appendix 1: Quantitative Information, “Current Expected Need Scenario” (May 23, 2012)

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 agreements with Barclays Bank, Plc; Sierra Pacific Industries; and TransAlta Corporation qualify as REC-only contracts as defined by D.10-03-021, as modified by D.11-01-025.
2. SB 2 (1X) imposed significant changes on the RPS Program, including setting new RPS compliance targets through 2020.
3. DRA's protests, based on various grounds, seeking rejection of PG&E's AL 3600-E, AL 3600-E-A, and AL 3632-E are denied.
4. This resolution does not address whether PG&E was authorized to accept pre-deliveries of energy pursuant to these agreements, nor does it prejudge whether or not PG&E may successfully seek cost recovery for these energy deliveries pursuant to other Commission orders.
5. The REC Agreements are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.
6. PG&E adequately examined the reasonableness of the REC Agreements utilizing its LCBF methodology during the time the agreements were being negotiated and executed.
7. PG&E does not have a need to procure RECs associated with pre-2011 generation.
8. The near-term nature of these REC Agreements is inconsistent with PG&E's demonstrated compliance need through the first and second compliance periods.
9. The REC Agreements include 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.
10. 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.
11. Advice Letter 3600-E, and Supplemental Advice Letters 3600-E-A and 3600-E-B, should be denied.

PG&E AL 3862-E, 3854-E, 3600-E-A-B, and 3632-E-A-B/AS6

12. Advice Letter 3632-E, and Supplemental Advice Letters 3632-E-A and 3632-E-B, should be denied.
13. Advice Letter 3854-E should be denied.
14. Advice Letter 3862-E should be denied.

**THEREFORE IT IS ORDERED THAT:**

1. Pacific Gas and Electric Company's contract with Barclays Bank, Plc filed in Advice Letter 3600-E, and Supplemental Advice Letters 3600-E-A and 3600-E-B, is denied.
2. Pacific Gas and Electric Company's contract with Barclays Bank, Plc filed in Advice Letter 3632-E, and Supplemental Advice Letters 3632-E-A and 3632-E-B, is denied.
3. Pacific Gas and Electric Company's purchase and sale agreement with Sierra Pacific Industries filed in Advice Letter 3854-E is denied.
4. Pacific Gas and Electric Company's purchase and sale agreement with TransAlta Corporation filed in Advice Letter 3862-E is denied.

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 August 23, 2012; the following Commissioners voting favorably thereon:

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

## Confidential Appendix A

### Pacific Gas & Electric's RPS Energy Forecast

[REDACTED]



## Confidential Appendix B

### Summary of Barclays' Hay Canyon Contract Terms and Conditions

[REDACTED]

## Confidential Appendix C

### Summary of Barclays' Nine Canyon Contract Terms and Conditions

[REDACTED]

## Confidential Appendix D

Summary of Contract Terms and Conditions with  
SPI's Anderson, Lincoln, Quincy, and Burney

[REDACTED]

## Confidential Appendix E

### Summary of TransAlta's Summerview 2 Contract Terms and Conditions

[REDACTED]