Pacific Gas and Electric Company

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Edward Randolph, Director
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California Public Utilities Commission
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Re: PG&E's Comments on Draft Resolution E-4520

Dear Mr. Randolph:

Pacific Gas and Electric Company ("PG&E") submits the following comments on Draft Resolution E-4520 (the "Draft Resolution"), which was circulated on July 24, 2012 for public review and comment in advance of the California Public Utilities Commission's ("Commission") consideration and potential vote on August 23, 2012. For the reasons set forth below, PG&E requests that the Commission approve cost recovery of the agreements at issue in the Draft Resolution and make the changes to the Draft Resolution's Findings, Conclusions, and Orders shown in Appendix 1 to this letter.

I. Summary of the Advice Letter Filings

On January 26, 2010, PG&E filed Advice Letter (AL) 3600-E, which was subsequently amended in Supplemental Advice Letters 3600-E-A and 3600-E-B. These advice letters requested Commission approval of an agreement with Barclays Bank PLC ("Barclays") to purchase delivered wind energy and the associated Renewable Energy Credits ("RECs") from the 100 megawatt (MW) Hay Canyon wind facility in Oregon. Upon Commission Approval, Barclays would transfer the RECs associated with the agreement to PG&E.[1/]

On March 12, 2010, PG&E filed for approval of another agreement with Barclays in AL 3632-E, as later modified by AL 3632-E-A and AL 3632-E-B. These advice letters requested Commission approval for procurement of wind energy and the associated RECs from the 32 MW Nine Canyon Wind Phase III facility in Washington. As with the first Barclays agreement, Barclays would transfer the RECs associated with the agreement to PG&E upon Commission approval.

1/ Pursuant to the terms of both Barclays agreement at issue in the Draft Resolution, PG&E began taking short-term deliveries of energy from Barclays beginning in Fall 2010. PG&E's short-term procurement of energy from Barclays prior to Commission approval of procurement of the associated RECs is authorized by PG&E's 2006 Conformed Long-Term Procurement Plan (LTPP), and cost recovery for those energy purchases is not at issue in the Draft Resolution. *See* Draft Resolution at 2.

On June 2, 2011, PG&E filed AL 3854-E requesting Commission approval of an agreement with Sierra Pacific Industries ("SPI") to purchase RECs associated with energy produced and consumed on-site at four existing biomass facilities in California.[2/] Upon Commission Approval, the agreement would require SPI to transfer to PG&E 100 gigawatt-hours (GWh) per year of RECs with vintages from 2011 through 2015.

Finally, on June 16, 2011, PG&E filed AL 3862-E requesting Commission approval of an agreement with TransAlta Corporation ("TransAlta") to purchase RECs associated with energy produced by the 66 MW Summerview #2 wind facility located in Alberta, Canada. Upon Commission Approval, the agreement would require TransAlta to transfer to PG&E 175-210 GWh per year of RECs with vintages from 2011 through 2014.

II. Draft Resolution E-4520

The Draft Resolution denies cost recovery for each of the agreements summarized above. Although the Draft Resolution denies DRA's protests of the Barclays agreements[3/] and finds that PG&E adequately examined the reasonableness of the agreements under its least-cost, best-fit methodology at the time the agreements were negotiated and executed,[4/] the Draft Resolution finds that the agreements are "inconsistent with PG&E's demonstrated compliance need through the first and second compliance periods"[5/] and rejects the agreements on that basis.

III. PG&E Comments on the Draft Resolution

PG&E submits that the Draft Resolution should be amended to approve cost recovery for each of the agreements for the following reasons: (1) PG&E acted prudently and reasonably in executing each of the agreements based upon its RPS need and net short at the time of execution; (2) the intervening change in PG&E's RPS net short position was driven by statutory changes unrelated to these contracts and outside the control of the parties; and (3) the agreements help to meet PG&E's current long-term RPS need under the new 33% RPS legislation and the Commission's recent decision on RPS compliance issues.

A. The Agreements Were Consistent with PG&E's Need at the Time of Execution

Each of the four agreements at issue was originally executed in the period between September 2009 and February 2010.[6/] Thus, the original negotiation and execution of these agreements

2/ PG&E originally sought approval of the SPI and TransAlta transactions in Application ("A.")09-10-035, filed on October 29, 2009. Administrative Law Judge Simon issued a Ruling in that proceeding on April 22, 2010 requiring that PG&E seek approval of the SPI and TransAlta transactions through Tier 3 advice letters.

3/ Draft Resolution at 15 (Finding 3).

4/ *Id.* (Finding 6).

5/ *Id.* (Finding 8).

6/ As noted above, PG&E filed the original SPI and TransAlta agreements in an Application because the Commission had not yet issued guidance on the approval process for REC-only transactions. In March 2010, the Commission issued a D.10-03-021, which provided procedural and substantive guidelines for the review and approval of REC-only transactions. An ALJ Ruling in the original SPI/TransAlta proceeding subsequently ordered the agreements to be re-filed as advice letters, in accordance with D.10-03-021. However, on May 12, 2010, shortly after PG&E received the ALJ's Ruling, the Commission issued D.10-

preceded enactment of Senate Bill (SB) 2 (1X), the 33% RPS legislation, in April 2011. At the time that PG&E originally executed these agreements, PG&E was required to comply with the 20% RPS Program rules, which mandated that PG&E deliver 20% of its retail sales as RPS-eligible electricity by 2010, subject to certain compliance flexibility mechanisms.

As the Draft Resolution notes, PG&E reasonably determined that it needed the agreements under its least-cost, best-fit methodology based upon the circumstances in place in 2009 and 2010 when the agreements were executed.[7/] At that time, very few new RPS-eligible projects had succeeded in coming online and the industry as a whole was facing significant challenges in the permitting, financing, and interconnection processes. PG&E's reasonable expectation of near-term project failures were higher than they are today. Given PG&E's projections of RPS-deliveries and the compliance requirements in effect at the time of execution, PG&E acted prudently and reasonably in signing the agreements.

Furthermore, the Commission should base its review of RPS contracts on the circumstances in place at the time of execution. It is inappropriate to judge the reasonableness of an agreement against circumstances as they appear years after execution, especially in a market as dynamic as that for renewable power.

B. Revisions to the RPS Statute Occurred after the Agreements Were Executed.

PG&E acknowledges that its first and second compliance period needs have changed since the original 2009-2010 execution dates. The primary factor driving that change is the enactment of SB 2 (1X) in April 2011 and the initial implementation of that legislation by the Commission beginning in December 2011. As the Draft Resolution notes, SB 2 (1X) made many important changes to the RPS program, including the creation of a series of multi-year compliance periods between 2011 and 2020 and the elimination of cumulative deficits from the 20% RPS Program if a retail seller delivered, as PG&E expects to show, 14% or greater of its retail sales as RPS-eligible products in 2010.[8/]

The sum effect of these changes was to effectively reduce PG&E's immediate RPS compliance need while setting very aggressive goals in the long-term. Importantly, new procurement executed after June 1, 2010 to help meet those higher long-term goals will primarily and increasingly come from bundled, functionally in-state RPS purchases in accordance with SB 2 (1X)'s portfolio content requirements.[9/]

05-018, which stayed D.10-03-021 and imposed a moratorium on Commission approval of REC-only RPS contracts until issues in petitions for modification of D.10-03-021 could be resolved. On January 14, 2011, the Commission issued D.11-01-025, which modified and lifted the stay of D.10-03-021. PG&E then amended its original agreements with SPI and TransAlta to comply with all requirements in D.10-03-021 as amended by D.11-01-025 (e.g., incorporating updated non-modifiable terms), and to make necessary modifications to certain terms (e.g., delivery dates, deadlines to seek CPUC approval) to accommodate the passage of time between the execution of the original agreement and the re-submission of the agreements through Tier 3 advice letters.

7/ *See* Draft Resolution at 12.

8/ *See id.* at 12-13.

9/ *See* Cal. Pub. Util. Code § 399.16(c).

C. The Agreements Should Be Approved Even if They Are Judged under Today's Compliance Rules.

Even if the Commission adopts the Draft Resolution's reasoning that the agreements should be judged against today's circumstances, the Draft Resolution errs in finding that the agreements are inconsistent with PG&E's RPS need. Although PG&E may not need these transactions for near-term compliance, each of the agreements would contribute RPS-eligible products that would be fully bankable and eligible to meet PG&E's long-term, demonstrated RPS net short position.

When PG&E re-submitted the SPI and TransAlta agreements as advice letters in 2011, it explained that the deliveries would be "grandfathered" under SB 2 (1X), meaning that they would be eligible to be used at any time in the future for RPS compliance notwithstanding restrictions in the statute on the banking of unbundled RECs and short-term procurement.[10/] PG&E's position regarding this category of procurement was later adopted by the Commission in its decisions implementing SB 2 (1X); specifically, RECs from grandfathered contracts count for RPS compliance without regard to portfolio content category minimum or maximum quantity requirements and are not subject to banking restrictions.[11/]

The Barclays agreements, like the SPI and TransAlta agreements, were executed before June 1, 2010 and meet all other requirements in the 33% legislation for grandfathering.[12/] Accordingly, each of the agreements at issue in this advice letter are in the special position of offering unbundled RECs or Tradable RECs that have compliance value for PG&E (and only PG&E under California RPS rules) comparable to a long-term, fully bankable in-state (Portfolio Content Category 1) transaction. The Draft Resolution fails to acknowledge the grandfathered nature of these agreements.

The failure to acknowledge the grandfathered status of the agreements leads the Draft Resolution to erroneously rely on the finding that the agreements are inconsistent with PG&E's demonstrated compliance need in the first and second compliance periods (2011-2013 and 2014-2016).[13/] While PG&E does not dispute that it will probably not need the RECs from these agreements to meet the current near-term RPS compliance requirements, PG&E's draft RPS Procurement Plan demonstrates a significant and ongoing long-term need for additional RPS-eligible products.[14/] This need is particularly focused on products, like those generated by the

10/ *See* AL 3854-E at 12-14; AL 3862-E at 12-14.
11/ D.12-06-038 at 29, 32. *See also* Cal. Pub. Util. Code § 399.16(d).
12/ The two Barclays agreements would include RECs associated with generation that occurred in 2010. While these agreements meet the statutory grandfathering criteria, the Commission has ordered retail sellers to retire all RECs associated with generation in 2010 for compliance use in that same year. *See* D.12-06-038 at 17-18. Under the same Commission Decision, PG&E would not be able to carry forward the 2010 RECs from the Barclays agreements into the 33% RPS Program since PG&E does not expect to show a cumulative net surplus at the end of the 20% RPS Program. *Id.* at 23-24, 32-33. The Barclays RECs associated with generation that occurred after 2010 would be eligible for banking and use in the 33% RPS Program.
13/ Draft Resolution at 14.
14/ *See* PG&E Draft 2012 RPS Procurement Plan, filed in R.11-05-005 on May 23, 2012, Appendix 1.

agreements at issue in this Draft Resolution, that are either grandfathered or meet the strict eligibility requirements for the first Portfolio Content Category.[15/]

Contrary to the finding of the Draft Resolution, the agreements that the Commission would deny actually provide products that match well with PG&E's demonstrated, long-term RPS need. They will count the same as the highest-value portfolio content category, and the RECs generated after 2010 will be eligible to be banked indefinitely to help cover PG&E's long-term net short and unexpected variations in load or supply.

IV. Conclusion

The Draft Resolution errs in three significant respects and should be amended. First, it assesses the need for the agreements against criteria that could not be reasonably foreseen at the time of execution. The Draft Resolution should instead approve the agreements as reasonably and prudently executed based upon the facts known to PG&E at the time of execution. Second, the Draft Resolution fails to acknowledge the unique value of these grandfathered agreements. Each of the agreements produces RECs that have equivalent value to long-term, Portfolio Content Category 1 products and that would not count against the Portfolio Content Category 3 limitations going forward. Finally, the agreements fit well with the long-term procurement need identified by PG&E in its draft 2012 RPS Procurement Plan.

For each of these reasons, the Commission should approve the agreements and amend the Draft Resolution as shown in Appendix 1 to this letter.

Sincerely,

Brian Cherry /slw

Vice President - Regulatory Relations

cc: Commissioners Michael Peevey, Mark Ferron, Mike Florio, Catherine Sandoval, and Timothy Simon
Edward Randolph – Director, Energy Division
Karen Clopton – Chief Administrative Law Judge
Frank Lindh – General Counsel
Energy Division Tariff Unit
Paul Douglas – Energy Division
Adam Schultz – Energy Division
Mark Pocta – Division of Ratepayer Advocates
Service List R.11-05-005

15/ *See* Cal. Pub. Util. Code § 399.16(c) (limiting the ability of other product content category products to be used for RPS compliance over time).

APPENDIX 1:
Recommended Modifications to Draft Resolution E-4520 Findings and Ordering Paragraphs

Finding No. 8	The ~~near-term~~ grandfathered and fully bankable nature of the post-2010 generation from these REC Agreements is ~~in~~consistent with PG&E's demonstrated long-term RPS compliance need ~~through the first and second compliance periods~~.
Finding No. 11	Advice Letter 3600-E, and Supplemental Advice Letters 3600-E-A and 3600-E-B, should be ~~denied~~approved.
Finding No. 12	Advice Letter 3632-E, and Supplemental Advice Letters 3632-E-A and 3632-E-B, should be ~~denied~~approved.
Finding No. 13	Advice Letter 3854-E should be ~~denied~~approved.
Finding No. 14	Advice Letter 3862-E should be ~~denied~~approved.
Finding No. 15	Consistent with Section 399.16(d) of the Public Utilities Code, the post-2010 RECs associated with these REC Agreements shall count in full for RPS compliance, notwithstanding the limitations on use of excess procurement or the portfolio content category requirements in Sections 399.13(a)(4)(B) and 399.16(c) of the Public Utilities Code, respectively.
Finding No. 16	The Commission should approve payments to be made by PG&E pursuant to the REC Agreements, subject to the Commission's review of PG&E's administration of the Agreements.
Finding No. 17	Any procurement pursuant to the REC 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.
Finding No. 18	All procurement and administrative costs, as provided by Public Utilities Code section 399.14(g), associated with the Agreements shall be recovered in rates through PG&E's Energy Resource Recovery Account.

Finding No. 19	Any stranded costs that may arise from these REC 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.
Finding No. 20	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.
Finding No. 21	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.
Ordering Paragraph 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~~approved.
Ordering Paragraph 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~~approved.
Ordering Paragraph 3	Pacific Gas and Electric Company's purchase and sale agreement with Sierra Pacific Industries filed in Advice Letter 3854-E is ~~denied~~approved.
Ordering Paragraph 4	Pacific Gas and Electric Company's purchase and sale agreement with TransAlta Corporation filed in Advice Letter 3862-E is ~~denied~~approved.