

August 14, 2012

Honesto Gatchalian
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Comments of the Independent Energy Producers Association on Draft Resolution E-4520

Dear Mr. Gatchalian:

Draft Resolution E-4520 proposes to deny Pacific Gas and Electric Company (PG&E) recovery for the costs it would incur under its agreement to purchase renewable energy credits (RECs) from Sierra Pacific Industries (SPI). PG&E presented its request for cost recovery in Advice Letter (AL) 3854-E on June 2, 2011. The Draft Resolution improperly second-guesses PG&E's strategy for meeting its obligations under the Renewable Portfolio Standard (RPS) statute, as implemented by the Commission, and in the process highlights the procedural flaws in the Commission's processing of Advice Letters.

In October 2009, PG&E submitted Application 09-10-035, seeking the Commission's approval to buy RECs from SPI, an eligible renewable facility located within California. In March 2010, the Commission issued Decision (D.) 10-03-021, which authorized transactions like the SPI agreement. On May 12, 2010, the Commission issued D.10-05-018, which stayed D.10-03-021 pending resolution of outstanding issues. On January 14, 2011, the Commission issued D.11-01-025 lifting the stay imposed by D.10-05-018. Throughout this entire process, PG&E and SPI amended their agreement to be consistent with this changing regulatory environment. What the Commission has before it now is AL 3854-E, submitted on June 2, 2011, that is the outcome of these changes and delays in decision-making. On July 24, 2012, nearly 14 months after AL 3854-E was filed with the Commission, Draft Resolution E-4520 was issued denying cost recovery.

The Draft Resolution recognizes that the SPI transaction is consistent with the Commission's bilateral contracting rules and guidelines. The Draft Resolution acknowledges that the transaction with SPI was adequately vetted through the Commission-approved, PG&E-administered Least-Cost/Best-Fit (LCBF) methodology for evaluating proposals, and that the transaction on its face is reasonable and consistent with the goal of acquiring resources in a least-cost, best-fit manner. In spite of these determinations, the Draft Resolution concludes that

PG&E has already procured the RECs it will need to meet the goals of the RPS for the first and second compliance periods, through the end of 2016. The Draft Resolution reasons that PG&E does not need to procure RECs associated with pre-2011 generation and rejects the SPI agreement on the ground that “the near-term nature of [this] REC Agreement[] is inconsistent with PG&E’s demonstrated compliance need through the first and second compliance periods.”

IEP is concerned that the Draft Resolution relies on a misreading of the Commission’s decisions to foreclose an opportunity for ratepayers to benefit from the flexibility offered by the RECs associated with the SPI agreement. Essentially, the Draft Resolution’s recommendation to deny cost recovery of the SPI agreement is premised solely on the faulty assumptions that (a) PG&E may use the RECs associated with this agreement only for RPS compliance during the first and second compliance periods, and (b) PG&E has no need for RECs until after 2016. However, in D.12-06-038, the Commission determined that the utilities may use RECs associated with transactions entered into prior to June 1, 2010 (like the SPI agreement) for RPS compliance at any time, *i.e.*, use of these RECs is not restricted to the first or second RPS compliance period, even if the Commission’s approval of the contract occurred after June 1, 2010.¹ Moreover, use of these grandfathered RECs is not restricted in terms of either the portfolio content category limitations or the minimum or maximum quantity requirements.²

Furthermore, the Draft Resolution’s conclusion that PG&E has not demonstrated an immediate near-term compliance needs appears inconsistent with the results of PG&E’s application of the Commission-approved LCBF project evaluation methodology. Moreover, the Draft Resolution’s conclusions appear to be premised on the assumption that all the resources PG&E has projected to use for compliance in the first and second RPS compliance periods will in fact be available and deliverable at that time (*i.e.*, there will be no delays or contract failures for these resources). Similarly, the Draft Resolution assumes that the demand for RECs will not increase above current estimates due to economic growth or other factors. Both of these assumptions underestimate and undervalue the flexibility that the SPI’s RECs provide PG&E in meeting its compliance obligations. If these assumptions turn out to be incorrect, then ratepayers may be faced with higher costs for last-minute replacement RECs than if the Commission

¹ Public Utilities Code Section 399.16(d) provides in full:

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.

The SPI contract meets all of these conditions. See also D.12-06-038, pp. 32, 96 (Ordering Paragraph 6). Although Public Utilities Code section 399.21(a)(6) requires RECS to be retired within 36 months of the time they were created, the SPI contract runs to 2015, and some of the RECs could be retired during the third compliance period.

² D.11-12-052, pp. 82-83 (Ordering Paragraph 17).

authorized PG&E to retain the flexibility and reasonable price offered by the RECs from the SPI contract.

This process has taken nearly three full years, in spite of the fact that parties agree that the agreement is consistent with LCBF principles, was properly vetted by an Independent Evaluator, is consistent with the Commission's guidelines on bilateral transactions, and provides RECs that may be used flexibly by PG&E to meet its RPS obligations. IEP respectfully urges the Commission to reject the recommendation of the Draft Resolution and approve AL 3854-E.

Very truly yours,

GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP

By



Brian T. Cragg

cc: President Michael Peevey
Commissioner Mark Ferron
Commissioner Michel Florio
Commissioner Catherine Sandoval
Commissioner Timothy Simon
Ed Randolph, Director, Energy Division
Karen Clopton, Chief Administrative Law Judge
Frank Lindh, General Counsel
Adam Schultz, Energy Division (via email)
Service List

CERTIFICATE OF SERVICE

I, Wendy Pena, certify that I have on this 14th day of August 2012 caused a copy of the foregoing

**COMMENTS OF THE INDEPENDENT ENERGY
PRODUCERS ASSOCIATION ON DRAFT RESOLUTION
E-4520**

to be served on all known parties to R.11-05-005 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of August 2012 at San Francisco, California.

By WPeña
Wendy Pena