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August 14, 2012

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Re: Comments of Sierra Pacific Industries on Draft Resolution E-4520

Dear Energy Division,

Sierra Pacific Industries ("SPI") respectfully submits these brief comments on the Energy Division's draft Resolution E-4250 ("draft Resolution") issued in response, in part, to Pacific Gas and Electric Company ("PG&E") Advice Letter ("AL") 3854-E filed on June 2, 2011 requesting Commission approval to purchase renewable energy credits ("REC") from four SPI owned California biomass facilities.[1] The draft Resolution denies the AL on a ground that, for reasons more fully discussed below, is both specious and contrary to state and Commission policy with regard to the SPI RECs; the draft Resolution should therefore be reversed on that conclusion as recommended in the attached Appendix.[2]

I. SIERRA PACIFIC INDUSTRIES' IN-STATE PRODUCTION OF RECs

Sierra Pacific Industries is a California company that was founded in 1949. SPI's primary business purpose and activity is as a forest product and services company and currently operates five sawmills in the rural California counties of Placer, Plumas, Shasta, and Tuolumne. The four facilities that are to provide RECs pursuant to the AL are located in Anderson, Lincoln, Quincy and Burney, California. SPI employs more than 3000 Californians. SPI powers these operations using biomass-fueled cogeneration. The facilities rely on sawmill residue and do not co-fire with fossil fuel other than necessary for start-up of the steam boilers. Steam from the boilers is used in the lumber drying kilns and to produce electricity. Some of the renewable energy produced at these facilities is used on-site by the sawmills (and is the source of the RECs

[1] The SPI AL was not protested by any party.
[2] For reasons neither explained nor otherwise known to SPI, the draft Resolution addresses several Advice Letters in addition to AL 3854-E applicable to the SPI-PG&E transaction. SPI has no information about these other arrangements other than as indicated in the draft Resolution they apparently are for RECs produced out of state or internationally.

associated with the pending agreement) and surplus renewable energy is sold to PG&E under long term agreements; a relationship between SPI and PG&E that has existed for over 25 years. The RECs involved in the purchase and sale agreement that is the subject of the AL are all associated with California in-state renewable energy operations.

In order to prepare for the transaction, and at substantial expense and effort, SPI was required to and has arranged for and installed new metering to ensure accurate accounting of the on-site load RECs. SPI has undertaken efforts to ensure the character of the RECs is qualified under CEC guidelines and has established requisite WREGIS registration and accounting. RECs being produced today and from the beginning of 2011 are valid and are or will be ready to transfer to PG&E upon approval of the AL.

II. HISTORY OF ADVICE LETTER 3854-E

PG&E originally sought approval to purchase RECs from SPI in Application 09-10-035, filed October 29, 2009 "in response to the Legislature's and Commission's repeatedly expressed interest in the use of REC transactions for RPS compliance purposes."[3] The underlying REC agreement dated September 23, 2009 was the result of bilateral negotiations between SPI and PG&E reflecting tremendous initiative on both parties to perfect an arrangement responsive to the clear policy favoring transactions like this. Approval of the Application, it was understood, required what was then an "imminent" formal Commission implementation of that policy and approval of such "REC-only" arrangements.

The "imminent" formal Commission implementation approval did not happen for several months. That decision, Decision ("D.") 10-03-021, authorized the use of RECs and the processing of REC-only transactions using the advice letter process. That determination rendered the work on the pending Application unusable; PG&E was required by the ALJ in A.09-10-035 to seek approval of the SPI REC agreement using a Tier 3 advice letter and, on top of that machination, the implementation decision 10-03-021 was stayed; so the transaction found itself in limbo again. Nine months after the initial approval of Decision 10-03-021, the decision was modified and the stay was lifted on January 14, 2011 in D.11-01-025.

D. 11-01-025 required minor adjustments to the SPI agreement, basically consisting of new wording for standard terms and conditions, which were quickly made. The agreement was also adjusted to account for the unexpected and substantial delay between execution of the original agreement and D.11-01-025 lifting the stay.

PG&E submitted AL 3854-E on June 2, 2011. As this advice letter was filed after passage of SB 2 (1X), it provides an analysis explaining that the SPI RECs are consistent with SB 2 (1X). The Independent Evaluator confirms the consistency of the AL and the SPI transaction with all requirements and recommends approval, with no small amount of enthusiasm.

[3] AL 3854-E at 2.

Nearly 14 months after the AL was submitted the draft Resolution now the subject of these comments was issued, on July 24, 2012. In between the time PG&E filed AL 3854-E and the draft resolution, the Commission has issued decisions implementing SB 2 (1X), including D.12-06-038, which sets rules for the treatment of RECs from grandfathered contracts—those signed prior to June 1, 2010—such as the SPI agreement.

III. COMMENTS ON THE DRAFT RESOLUTION

While determining correctly that the AL resulted from a proper adherence to the Bilateral Contracting Rules AND is consistent with Least-Cost, Best-Fit requirements, the draft Resolution veers into an inexplicable ultimate determination to deny the AL on the basis that, "[t]he near-term nature of these REC agreements is inconsistent with PG&E's demonstrated compliance need through the first and second compliance periods."[4] As discussed below, not only is this factually incorrect, it misapprehends the flexible nature of the SPI RECs and presents terrible public policy if, by implication, it suggests an intention to forego certain beneficial RECs purchase opportunities in favor of total reliance on the assumed availability of substitute, but less flexible, REC products in an unknown future.

The Draft Resolution, incorrectly bases its denial of AL 3854-E on a finding that PG&E has failed to demonstrate a need for these RECs based on PG&E's 2012 Renewable Energy Procurement Plan, which according to the draft Resolution apparently shows that the "near-term nature of these REC Agreements is inconsistent with PG&E's demonstrated compliance need throughout the first and second compliance periods."[5] SPI obviously does not have access to the same level of information as the authors; on the other hand, PG&E surely does and apparently disagrees with the draft Resolution's conclusion as PG&E continues to seek approval of the subject transaction. In any event, the draft Resolution's observation, even if true, is completely inapposite because the SPI RECs are from contracts prior to June 1, 2010; their application is not restricted to the first and second compliance periods as these RECs may qualify as excess procurement and therefore may be used to reduce PG&E's RPS obligations in any current or later period.[6]

Indeed, the special nature of the SPI RECs is what provides extraordinary flexibility to PG&E and its customers. As the Independent Evaluator concluded (after considering every point of interest just as in the draft Resolution): by virtue of its grandfathered nature, the SPI RECs transaction "…therefore is likely to be **more valuable** than current or future REC offers that are affected by the SB 2 (1X) restrictions."[7]

The draft Resolution is apparently employing a vision that combines hindsight only made possible by the intractable and protracted approval process, on the one hand, and prescience on future events. Because the SPI RECs are grandfathered RECs under 399.16(d) and produced

[4] Draft Resolution at 14; see also Finding and Conclusion No. 8 and 13; Ordering paragraph No. 3.
[5] Draft Resolution at 14.
[6] See D.12-06-038 at 66-69; *id.* at 69 ("[O]nce RECs qualify as excess procurement, those RECs may be applied to any subsequent compliance period, including 2021 and later years").
[7] AL, Appendix J at 1.

from an in-state renewable facility, they are a rare and limited commodity.

The draft Resolution should be reversed as to SPI and the transaction approved.

First and foremost, the draft Resolution reflects a lack of understanding of the practical realities of ordinary business in concluding after almost 3 years from the date of the arrangement that current conditions as perceived by the authors undermine a bilateral, good faith, high initiative, forward thinking, progressive—and according to the parties and the Independent Evaluator—highly valuable and customer beneficial arrangement. Any failure, as here, to act timely with regard to any proposal offers up an opportunity belatedly second guess current and future conditions, but it is bad policy if for no other reason than that the sword has two edges. Failure to capitalize on the unique benefits of the SPI agreement could as easily backfire.

Second, the draft Resolution fails to properly recognize the benefits of the SPI REC-only agreement and is incompatible with policies and protocols detailed in D.12-06-038. The SPI RECs are from a contract signed prior to June 1, 2010 but are not associated with generation prior to January 1, 2011, and thus are governed by Commission D.11-12-052 (*Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program 11*) and D.12-06-038 (*Decision Setting Compliance Rules for the Renewables Portfolio Standard Program 22*). The SPI RECs fall under the SB 2 (1X) grandfathering clause in 399.16(d). According to D.12-06-038, RECs procured under 399.16(d) are outside the "portfolio balance requirements" and do not count in any particular portfolio content category. These 399.16(d) RECs are considered to "count in full,"[8] and as such the SPI RECs are not subject to the new limitations on the use of short-term contracts made by SB 2 (1X)[9] or to the new excess procurement rules.[10] Therefore, to the extent that procurement from contracts signed prior to June 1, 2010 is excess procurement that is applied to a later compliance period, it will count in full toward the procurement quantity requirement.[11] Banked procurement from contracts signed prior to June 1, 2010 may count for RPS compliance after January 1, 2011.[12] The SPI RECs may therefore qualify as excess procurement and "applied to any subsequent compliance period, including 2021 and later years."[13]

The special character of the grandfathered SPI RECs means that they effectively reduce PG&E's overall compliance obligation, provide maximum flexibility to PG&E as to the best timing of their use and, therefore, have no market substitute as the draft Resolution implicitly and erroneously is treating as equivalent.

It is also no small matter that because the SPI facilities generating these RECs are operational (and as noted above, have proper metering and WREGIS qualification in place), there is no production risk, unlike perhaps any other REC or bundled RPS contracts as may be

[8] D.12-06-038 at 29, 32.
[9] *Id.* at 31.
[10] *Id.* at 67-68.
[11] *Id.* at 32, 68.
[12] *Id.* at 33.
[13] *Id.* at 69.

proposed or pending.

SPI urges the Commission to modify Draft Resolution E-4520 to approve the REC Agreements. SPI recommends the modifications to Draft Resolution E-4520 described in Appendix A.

SPI thanks the Energy Division and Commission Staff for taking the time to consider SPI's comments on Draft Resolution E-4520. SPI urges the Commission to reject the Draft Resolution and adopt a modified version which integrates SPI's suggestions outlined above.

Very truly yours,

/s/
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APPENDIX A

SPI recommends the following modifications to Draft Resolution E-4520:

1. Segregate the resolution for the SPI REC agreement (AL 3854-E) from the resolutions for the REC agreements with Barclays Bank and TransAlta Corporation. Accordingly, discussions, references, and findings relevant only to the Barclays Bank and TransAlta Corporation REC agreements would be deleted. The passages below (numbered 2 through 7) would be retained in an SPI-specific resolution, and should be modified as indicated.

2. Modify the last paragraph of the Summary section (p. 2) as follows:

   The agreement~~s~~ with ~~Barclays,~~ SPI~~, and TransAlta~~ (the "REC Agreement~~s~~") qualif~~y~~ies as a REC-only contract~~s~~ as defined by Decision (D.) 10-03-021, as modified by D.11-01-025, based on the delivery structure~~s~~ proposed by PG&E. This resolution ~~denies~~ approves the REC Agreement~~s~~ ~~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~~.

3. Modify the Determination of Need section (p. 14) as follows:

   In light of recent information 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~~ this REC Agreement~~s~~ is inconsistent with PG&E's demonstrated compliance need through the first and second compliance periods. **However, because the SPI RECs are procurement from contracts prior to June 1, 2010, they may be carried over as excess into later periods. Therefore, this resolution finds that PG&E has demonstrated a need for the SPI REC Agreement.**

4. Modify Finding and Conclusion number 8 as follows:

   The near-term nature of the~~se~~ SPI REC Agreement~~s~~ is inconsistent with PG&E's demonstrated compliance need through the first, and second compliance periods. **However, because the SPI RECs are procurement from contracts prior to June 1, 2010, they may be carried over as excess into later periods. Therefore, this resolution finds that PG&E has demonstrated a need for the SPI REC Agreement.**

5. Modify Finding and Conclusion number 13 as follows:

Advice Letter 3854-E should be ~~denied~~ approved.

6. Modify ordering paragraph 3 as follows:

Pacific Gas and Electric Company's purchase and sale agreement with Sierra Pacific Industries filed in Advice Letter 3854-E is ~~denied~~ approved.