

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Draft Resolution E-4520 of the Energy Division addressing Pacific Gas and Electric Company's Advice Letter (AL) 3600-E, as amended by AL 3600-E-A and AL 3600-E-B; AL 3632-E, as amended by AL 3632-E-A and AL 3632-E-B; AL 3854-E; and AL 3862-E.

Draft Resolution E-4520

**COMMENTS OF
PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON
ON DRAFT RESOLUTION E-4520**

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AL 3600-E-B; AL 3632-E, as amended by AL 3632-E-A
and AL 3632-E-B; AL 3854-E; and AL 3862-E.

Resolution E-4520
(Filed August 13, 2013)

**COMMENTS OF PUBLIC UTILITY DISTRICT NO. 1 OF
SNOHOMISH COUNTY, WASHINGTON ON DRAFT RESOLUTION E-4520**

I. INTRODUCTION

The Public Utility District No. 1 of Snohomish County, Washington ("Snohomish"), respectfully submits these comments to Draft Resolution E-4520 (ID#11496) ("DR E-4520") pursuant to the California Public Utilities Commission's ("Commission") July 24, 2012 notice in this proceeding. The Commission should revise DR E-4520 with respect to Advice Letter ("AL") 3600-E, as supplemented by AL 3600-E-A and AL 3600-E-B (collectively, "*AL 3600-E*"), and approve cost recovery for the renewable energy credits ("RECs") of the bundled energy agreement between Pacific Gas & Electric ("PG&E") and Barclays Bank PLC ("Barclays") involving the Hay Canyon Wind Project in Oregon ("Hay Canyon").

II. BACKGROUND AND STATEMENT OF INTEREST

On January 26, 2010, PG&E filed Initial AL 3600-E seeking approval of a contract between Barclays and PG&E ("Agreement") for the purchase of 250 gigawatt hours per year of firm energy and associated green attributes from Hay Canyon, an eligible renewable resource as certified by the California Energy Commission ("CEC") beginning in January 2010 through December 31, 2011. AL 3600-E sought a Commission ruling by June 24, 2010. PG&E subsequently supplemented its initial filing on October 20, 2010 (AL 3600-E-A) and February 9, 2011 (AL 3600-E-B) amending certain terms in the Agreement and for the purpose of conforming the Agreement to the Commission's "non modifiable terms" set forth in subsequent Commission decisions. PG&E requested that both supplemental filings become effective concurrently with AL 3600-E.

Snohomish is a public utility district and a municipal corporation of the State of Washington. Snohomish is the second largest publicly owned utility in Washington, serving 320,000 electric customers and 20,000 water customers. Snohomish was one of the first utilities in the region to adopt an official climate change policy as well as supporting principles and strategies to use natural resources more efficiently.

Snohomish is the direct purchaser, via a long-term power purchase agreement of the firm energy and green attributes from Hay Canyon. Snohomish sold the firm energy and green attributes from Hay Canyon to Barclays under a power purchase and sale agreement. The contract between Snohomish and Barclays requires Commission approval of *AL 3600-E* for Snohomish to receive compensation from Barclays. As the upstream seller of the green attributes

covered by *AL 3600-E*, Snohomish has a direct and substantial interest in this proceeding that cannot be adequately represented by any other party. Snohomish will become a party for purposes of seeking rehearing by filing and serving these comments on the required parties pursuant to Commission Rule 14.5. *See* Rule 16.2(b). Further, Snohomish preserves all party rights.

III. COMMENTS

A. The RECs Covered by *AL 3600-E* for Deliveries Prior to January 1, 2011 Should be Included in PG&E's Pre-2011 RPS Compliance Obligations.

It is error to conclude that because PG&E may have met a pre-2011 RPS procurement safe harbor of 14 percent, PG&E does not have a need to procure RECs associated with pre-2011 generation. (DR E-4520 at 13-14). Whether PG&E attained a 14 percent RPS procurement by 2010 is not dispositive of the proper treatment of the RECs covered by *AL 3600-E* for deliveries prior to January 1, 2011. All such RECs should be considered bundled deliveries and included in PG&E's pre-2011 compliance obligations.

In accordance with Table 2 in DR E-4520, the controlling Commission decision is D.10-03-021, as modified by D.11-01-025. (DR E-4520 at 13). Decision D.11-01-025 states that "[a]ll deliveries from transactions...made prior to the effective date of this decision will be counted as bundled deliveries of both renewable energy credits and energy for purposes of compliance with the California renewables portfolio standard." (D.11-01-025 at Ordering Paragraph ("OP") 6). Consistent with D.11-01-025, RECs for deliveries prior to January 1, 2011, should be included in PG&E's RPS requirement for 2010, which was 20 percent. According to the Commission's own reports, PG&E "served 15.9% of its load with RPS-eligible generation in 2010."¹ Thus, PG&E has a need for RECs from pre-2011 generation to meet the 2010 RPS target of 20 percent.

The 2010 RPS target of 20 percent was established in state legislation enacted in 2002 and 2006. Although SB 2 (1X) established the 14 percent RPS procurement safe harbor threshold it did not change the 2010 target of 20 percent. Section 20 of SB2 (1X), provides that "for any retail seller procuring at least 14 percent of retail sales from eligible renewable energy resources in 2010, the deficits associated with any previous renewable portfolio standard shall not be added to any procurement requirement." This safe harbor is also iterated in D.12-06-038 at OP 10, which states that the Commission will waive a utility's pre-2011 RPS compliance deficit as long as the utility attained a 14 percent RPS procurement by 2010. Neither the statute nor the implementing decision changed the 2010 RPS target of 20 percent. The Commission itself has confirmed this. In D.12-06-038, the Commission disagreed with a party that claimed the 2010 annual percentage target has been reset to 14 percent. (D.12-06-038, fn. 40 at 23). The Commission also reiterated that 20 percent was the target for 2010 in its RPS Quarterly Reports

¹ *See* CPUC, Renewables Portfolio Standard, Quarterly Report, "4th Quarter 2011: Cost Reporting in Compliance with SB 836," ("4th Quarter RPS Report"), <http://www.cpuc.ca.gov/NR/rdonlyres/3B3FE98B-D833-428A-B606-47C9B64B7A89/0/Q4RPSReporttotheLegislatureFINAL3.pdf>, at p. 2; CPUC, "3rd Quarter 2011," *see also* <http://www.cpuc.ca.gov/NR/rdonlyres/2A2D457A-CD21-46B3-A2D7-757A36CA20B3/0/Q3RPSReporttotheLegislatureFINAL.pdf>, at p. 2.

up to and including the report for the fourth quarter 2011.² In addition, in September 2010, the Commission stated that "[a]ll California retail energy sellers must procure 20% renewable energy by 2010" and that California has a "further goal of 33% by 2020."³

For the Commission to treat the 14 percent safe harbor as a cap would penalize utilities that exceeded the 14 percent as well as those entities that made the energy and RECs from renewable energy projects available to the utilities. Moreover, treating the 14 percent as a cap is inconsistent with California's self-proclaimed "ambitious" and "aggressive" RPS goals and SB 2 (1X), which increased the State's RPS requirements from 20 percent in 2010 to an average of 25 percent by 2016 and 33 percent by 2020. Denying approval of the contracts covered by *AL-3600 E* as recommended in DR E-4520 would not only constitute error but would represent a huge step backward in California's efforts to meet its RPS goals.

B. But for the Commission's Unreasonable Delay in Acting on *AL 3600-E*, the RECs Covered by the Agreement Would be Consistent with PG&E's RPS Requirement for the First and Second Compliance Periods.

The Administrative Procedure Act requires an agency to act "within a reasonable time," 5 U.S.C. § 555(b). Courts have concluded that they "need not find any impropriety . . . in order to hold that agency action is unreasonably delayed." *In re United Mine Workers of Am. Intl. Union*, 190 F.3d 545, 549 (D.C. Cir. 1999). The Commission has taken **over 30 months** to review *AL 3600-E*, which was timely filed. As a result, the Commission now proposes to reject the Agreement because the "near-term nature of these REC Agreements is inconsistent with PG&E's demonstrated compliance need through the first and second compliance periods." (DR E-4520 at 14). Yet, the Commission finds that the RECs covered by *AL 3600-E* generated after January 1, 2011 will "count in full" towards PG&E's RPS compliance obligations for periods one and two. (*Id.*). Thus, the Agreement qualifies for the California RPS program and would have counted towards PG&E's REC compliance obligations for periods one and two if the Commission had acted on *AL 3600-E* within a reasonable period of time.

According to D. 12-06-038, SB 2 (1X) created a special rule for RPS procurement contracts signed prior to June 1, 2010. These contracts "count in full" toward the REC procurement requirements established in Section 399.16(d) of SB 2 (1X) so long as: (i) the renewable resource was eligible under the rules in place at the time the contract was signed; (ii) the contract is approved by the Commission (even if approval occurs after June 1, 2010); and (iii) there are no contract amendments or modifications after June 1, 2010 that increase the capacity or expected quantities of annual generation, or substitute a different renewable energy resource. The Commission found further that

² 4th Quarter RPS Report at p. 1. *See also*, 3rd Quarter Report at p.1. The RPS Quarterly Report for 1st and 2nd Quarters 2012 does not mention the requirements for years prior to 2011.

³ *See* Sara Kamins, "California's Renewable Energy Programs for Utility-scale Projects" (Sept. 16, 2010), <http://www.cpuc.ca.gov/NR/rdonlyres/D86967F8-4659-4434-A791-8F6E4091E084/0/UtilityScaleRenewablesKaminsv2.ppt>, at pp. 3, 7; *see also* Testimony of Julie Fitch before Senate Oversight Committee Hearing, "Progress Towards California's Renewables Portfolio Standard Goals (Feb. 1, 2011), <http://www.cpuc.ca.gov/NR/rdonlyres/B5320B26-82A8-45EB-AD27-266FD4C09FF2/0/PresentationforOversightHearingsRPS2111CPUC.pdf>, at p. 8.

procurement from contracts signed prior to June 1, 2010 is "limited only by the three conditions..." and is not subject to short term contract rules established by SB 2 (1X).⁴ Consistent with D.12-06-038, DR E-4520 finds that the Agreement meets these conditions to "count in full." There is nothing about the Agreement, the unexplained "near term nature" or otherwise that makes the Agreement ineligible to fulfill PG&E's RPS obligations.

The Commission's denial of the Agreement would be patently inequitable because the Agreement was timely submitted to the Commission for approval in January 2010, over 30 months ago. SB 2 (1X) clearly contemplated that Commission approval could occur at a later date since it explicitly states "even if that approval occurs after June 1, 2010." More importantly, the Commission has approved a number of Advice Letters for REC contracts that were submitted for approval after *AL 3600-E* for compliance periods one and two. The following Advice Letters were approved within a shorter timeframe and some were for contracts to meet PG&E's RPS obligations for compliance periods one and two: (i) AL 2449-E approved within 5 months;⁵ (ii) AL 3620-E approved within 11 months for PG&E contract;⁶ (iii) AL 3741-E approved within 6 months for PG&E contract;⁷ (iv) AL 2273-E approved within 3 months;⁸ (v) AL 3884-E approved within 4 months for PG&E contract;⁹ (vi) AL 2547-E approved within 11 months;¹⁰ (vii) AL 2291-E approved within 5 months;¹¹ and (viii) AL 2641-E approved within 4 months.¹²

Based on the Commission's track record of timely approvals of Advice Letters for REC contracts and the prior RPS rules, Snohomish had a reasonable commercial expectation that the Agreement would be approved. The Commission set the standards for the RPS program upon which parties relied. Now, the Commission has changed those standards, and DR E-4520 would effectively void the REC portion of the Agreement without providing parties a safe harbor. Changing the rules without protections for those who relied upon them is inconsistent with the commercial expectations of market participants and results in uncertainty in the market.

In the past, the Commission has taken precautions to ensure parties that enter into legitimate commercial transactions consistent with then-existing RPS requirements, are not harmed by changes to the RPS program. Recognizing the potential for inequities, in decisions revising the RPS program, the Commission added safe harbor provisions to ensure contracts executed before the effective date of the decisions were not adversely affected, stating that "[a]ll deliveries from transactions... made prior to the effective date of this decision will be counted as bundled deliveries... for purposes of compliance with the California renewables portfolio standard," (D. 10-03-021 and D.11-01-025 at OP 6), and that the temporary limit on REC-only contracts would not apply to "... contracts that are

⁴ D. 12-06-038 at p. 28; *see also* discussion explaining that other limitations established in SB 2 (1X) do not apply to contracts executed before June 1, 2010 at pp. 28-34.

⁵ *See* CPUC Res. E-4341 (Southern California Edison ("SCE") and Coso Clean Power, LLC- 83 MW RECs).

⁶ *See* CPUC Res. E-4390 (PG&E and Halkirk I Wind Project LP, et al.- 450 MW RECs).

⁷ *See* CPUC Res E-4393 (PG&E and SGS-1, LLC- 150 MW RECs).

⁸ *See* CPUC Res. E-4425 (San Diego Gas & Electric ("SDG&E") and Arlington Valley Solar- 150 MW RECs).

⁹ *See* CPUC Res. E-4447 (PG&E and Copper Mountain II, LLC- 150 MW RECs).

¹⁰ *See* CPUC Res. E-4445 (SCE and multiple entities- 144 MW RECs).

¹¹ *See* CPUC Res.E-4448 (SDG&E and SCE and SDG&E and Calpine- 270 MW RECs).

¹² *See* CPUC Res.E-4449 (SCE and SDG&E- 193 MW RECs).

classified by this decision as contracts for renewable energy credits only, but were approved by the Commission prior to the effective date of this decision." (D.10-03-021 and D.11-01-025 at OP 6.) The contracts covered by AL 3600-E were bundled contracts when executed and PG&E and Barclays did nothing to change their bundled status. The Commission should avoid any inequity that could result due to its delay in approving the Agreement and revise DR 4520-E to provide cost recovery for the RECs covered by *AL 3600-E*.

C. Snohomish will Suffer Financial Harm if DR E-4520 is Adopted as Proposed.

Snohomish is the upstream seller of the bundled energy covered by *AL 3600-E* and will not receive compensation from Barclays for this sale unless the Commission provides cost recovery for the renewable attributes. The Commission's delay has created a situation in which adopting DR E-4520 would result in significant financial harm to Snohomish. The bundled renewable attribute prices in 2009 were significantly higher than they are now – \$30-\$43 vs. \$2-\$4 per REC. The demand for bundled renewable energy deals, such as those covered by *AL 3600-E*, was also higher because deliverability rules in place in California at least through December 10, 2011, dictated that an equal amount of shaped and firmed energy must be brought into California with the renewable attributes within the same calendar year. (D. 11-12-052 at 15). There were few suppliers (Snohomish being one) that could fulfill the hourly scheduling necessary to accomplish this type of deliverable. However, now that the energy has already been delivered, the renewable attributes can only be used in REC-only deals and given the RPS banking rules which differ in each WECC-state, the renewable attributes have a significantly lower price of \$1 to \$3. The Commission can avoid subjecting Snohomish to such financial harm by revising the proposed outcome in DR E-4520 with regard to *AL 3600-E* and approving cost recovery for the Agreement.

IV. REQUEST FOR CONFIDENTIAL APPENDICES

Snohomish requests that subject to a confidentiality agreement, the Commission release to it the confidential appendices relied upon in DR E-4520. These documents include: (i) Confidential Appendix A, PG&E's RPS Energy Forecast and (ii) Confidential Appendix B, Summary of Barclays' Hay Canyon Contract Terms and Conditions. The information provided in these appendices goes to the heart of the Commission's Draft Resolution, and PG&E's overall need for REC generation. As a party substantially affected by the Commission's decision, Snohomish has a right to see the confidential information.

V. CONCLUSION

For the foregoing reasons, Snohomish respectfully requests that the Commission revise DR E-4520 with regard to AL 3600-E filed on January 6, 2010, as modified by AL 3600-E-A on October 20, 2010 and by AL 3600-E-B on February 9, 2011, and approve cost recovery for the contracts covered therein.

Respectfully submitted,

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APPENDIX A

RECOMMENDED CHANGES TO DRAFT RESOLUTION E-4520

The Public Utility District No. 1 of Snohomish County, Washington offers the following recommended changes to Draft Resolution E-4520. The recommended changes are shown in redline and indexed by page number as directed in the July 24, 2012 notice.

Page Number	Recommended Changes in Redline
Page 1	<p>PROPOSED OUTCOME: This Resolution <u>approves</u> 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.</p>
Page 1	<p><u>SUMMARY</u></p> <p>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 <u>approved</u>.</p>
Page 3	<p>The agreements with Barclays, SPI and TransAlta (the "REC Agreements") <u>qualify to "count in full" toward PG&E's RPS compliance obligations; some would count towards PG&E's pre-2011 RPS compliance deficit consistent with D. 12-06-038 and some would be generated within and count toward PG&E's RPS compliance obligations in the first and second compliance periods.</u> 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 <u>approves</u>denies the REC Agreements forbecause PG&E <u>to use to meet its pre-2011 and its first and second</u>has not demonstrated an immediate near-term compliance period needs 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.</p>
Page 13	<p>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. <u>This waiver applies as a threshold and not a cap. Thus, the Commission will approve REC agreements for those utilities that were able to exceed the 14% waiver and either meet or get closer to the requisite 20% RPS standard.</u> The Commission</p>

	<p>currently expects that PG&E will demonstrate that it achieved <u>the 14% criterion but did not meet the 20% RPS standard.</u>¹³ As such, the Commission does not expect PG&E to have an incremental need for RECs to meet its pre-2011 RPS compliance obligations.</p>
Page 14	<p>For these reasons, the Commission finds that <u>PG&E does not have has a need to procure RECs associated with pre-2011 generation.</u></p> <p>The remaining RECs procured pursuant to the <u>PG&E/Barclays Hay Canyon Agreements "count in full" toward PG&E's compliance obligations. I, in addition, to the RECs procured pursuant to the other Barclays Agreement and the SPI and TransAlta Agreements, some of which 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).</u></p> <p>In light of recent information¹⁴ 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 <u>the near-term nature of these REC Agreements is inconsistent with PG&E's demonstrated compliance need through the first and second compliance periods. Nonetheless the Commission will approve the remaining RECs covered by Advice Letter 3600-E as amended by Advice Letter 3600-E A and Advice Letter 3600-E B in light of extended delay in approving the Advice Letter. PG&E filed its initial Advice Letter 3600-E on January 26, 2010. The Commission recognizes that but for the delay in acting on the Advice Letters the agreements would have been approved, and the RECs would count in full toward PG&E's demonstrated need through the first and second compliance periods.</u></p>
Page 14	<p><u>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 with the exception of releasing documents to the Public Utility District No. 1 of Snohomish County, Washington pursuant to a confidential agreement.</u></p>

¹³ 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.

¹⁴ 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)

APPENDIX B

PROPOSED FINDINGS AND CONCLUSION AND ORDER

FINDINGS AND CONCLUSIONS:

1. The agreements with Barclays Bank, Plc qualifies as a bundled REC contract; the other Barclays Bank, Plc agreement and the agreements with 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. [Snohomish lacks sufficient information to make representations as to the other PG&E contracts.]
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 will be released to Public Utility District No.1 of Snohomish County pursuant to a confidentially agreement.
11. Advice Letter 3600-E, and Supplemental Advice Letters 3600-E-A and 3600-E-B, should be denied are approved.
12. Advice Letter 3632-E, and Supplemental Advice Letters 3632-E-A and 3632-E-B, should be denied. [Snohomish lacks sufficient information to make representations as to the other PG&E contracts.]

13. Advice Letter 3854-E should be denied. [Snohomish lacks sufficient information to make representations as to the other PG&E contracts.]
14. Advice Letter 3862-E should be denied. [Snohomish lacks sufficient information to make representations as to the other PG&E contracts.]

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~~ approved.
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. [Snohomish lacks sufficient information to make representations as to the other PG&E contracts.]
3. Pacific Gas and Electric Company's purchase and sale agreement with Sierra Pacific Industries filed in Advice Letter 3854-E is denied. [Snohomish lacks sufficient information to make representations as to the other PG&E contracts.]
4. Pacific Gas and Electric Company's purchase and sale agreement with TransAlta Corporation filed in Advice Letter 3862-E is denied. [Snohomish lacks sufficient information to make representations as to the other PG&E contracts.]

This Resolution is effective today.