

August 14, 2012

Energy Division
California Public Utilities Commission
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Re: Draft Resolution E-4520; Comments of TransAlta Corporation

Dear Energy Division:

Pursuant to the comment letter issued July 24, 2012, by Paul Douglas, Project and Program Supervisor and Draft Resolution E-4520 ("Draft Resolution") issued by the Energy Division Staff ("Energy Division"), TransAlta Corporation ("TransAlta") hereby submits its comments on the Draft Resolution. TransAlta is the seller to Pacific Gas and Electric Company ("PG&E") under the Renewable Energy Certificate Purchase and Sale Agreement, executed September 15, 2009, as amended February 12, 2010, May 20, 2010 and September 30, 2010 (TransAlta REC Agreement).

The Draft Resolution proposes to deny approval of the TransAlta REC Agreement based on an alleged lack of demonstrated need for purposes of PG&E's compliance with California's Renewable Portfolio Standard ("RPS"). As discussed below, the Draft Resolution errs in concluding that the subject contract is not needed for RPS compliance, and the agreement should be approved as PG&E itself has requested in Comments filed on August 13, 2012.

I. BACKGROUND

TransAlta is a multinational energy corporation headquartered in Calgary, Alberta, Canada, and an active developer of efficient, clean renewable energy resources within the Western Electricity Coordinating Council ("WECC"). The TransAlta REC Agreement, if approved, supplies PG&E and its customers access to the renewable attributes produced by economical, renewable wind energy from TransAlta's Summerview 2 wind facility, an approximately 67-MW wind facility located in Alberta, Canada. The Summerview 2 wind facility is fully operational and therefore is a high quality resource that does not represent any risk of development failure. As noted in the Draft Resolution, the contract would provide 175-210 GWh per year of RECs to PG&E for the years 2011-2014.

Since the initiation of discussions with PG&E regarding the TransAlta REC Agreement – now almost four years ago – TransAlta has expended considerable resources ensuring that the renewable attributes associated with its Summerview facility would be available and appropriately qualified for compliance with California's aggressive RPS targets. TransAlta participated in an extensive process before the California Energy Commission ("CEC") to certify one of the first Canadian facilities as meeting applicable RPS requirements. Once negotiated with PG&E, the initial TransAlta REC Agreement was initially placed before the Commission for its review on October 29, 2009 in Application 09-10-35.

At the time, TransAlta understood that PG&E was constrained to utilize a full Commission application procedure to seek approval of the agreement because the Commission had not yet issued approval guidelines associated with "unbundled" RECs or "TRECs." As PG&E explained in its October, 2009 application in A.09-10-035, the TransAlta REC Agreement reflected a competitively negotiated contract for the sale of RECs that complied with all applicable California Energy Commission ("CEC") requirements, including CEC certification of the Summerview 2 facility and compliance with WREGIS accounting requirements.¹

The proceedings in A.09-10-035 were ultimately dismissed in the wake of the Commission's rulemaking addressing generic adoption of policies for use of TRECs (with certain limitations) for purposes meeting RPS targets.² The decision providing guidance for use of TRECs was stayed pending resolution of certain petitions for modification but eventually resulted in a decision affirming the guidelines for California's utilities to meet a portion of their RPS procurement with TRECs and lifting the stay.³ Unfortunately, the effect of delaying action on the TransAlta REC Agreement in A.09-10-035 while the TRECs rulemaking was under review was that it was not until two years later – the fall of 2011 – that it was determined that PG&E should re-file the agreement via an Advice Letter process, and the proceedings in A.09-10-035 were dismissed.⁴

TransAlta worked with PG&E to conform the TransAlta REC Agreement to the procedural requirements of evolving Commission policy and the agreement was ultimately filed by Advice Letter on June 16, 2011. In the interim, during the approval process that has stretched nearly four years, California has expanded its renewable

¹ See A.09-10-35, *Application of PG&E for Approval of Renewable Energy Credit Purchase Agreements and for Authority to Recover Costs in Rates* at 2-3, 6, 8-9 (filed Oct. 29, 2009).

² See D.10-03-21, *Decision Authorizing Use of Renewable Energy Credits for Compliance with the California RPS* (Mar. 11, 2010).

³ See D.11-01-025, (Jan. 14, 2011).

⁴ See D.11-09-004, *Decision Dismissing Application* (Sept. 12, 2011).

procurement targets, with the State now requiring utilities including PG&E to procure 33% of their resources from qualifying renewable sources by 2020. SB 2 (1X) represented a major shift in California renewables policy, as the Draft Resolution correctly acknowledges in Paragraph 2 of the Findings and Conclusions.

Significantly, Section 399.16(d) of SB 2 (1X) specifically addressed contracts for renewables executed prior to June 1, 2010, and specified that such agreements “shall count in full towards the procurement requirements established pursuant to this article” if certain conditions were met. Those conditions are (i) the renewable resource was eligible under rules in place when the contract was executed, (ii) for an electrical corporation such as PG&E, the contract was approved by the Commission (even if approval occurs after June 1, 2010), and (iii) any contract amendments occurring after June 1, 2010 do not increase nameplate capacity or expected quantities of annual generation, or substitute a different renewable resource.⁵ The TransAlta REC Agreement meets all of these conditions.

At the outset of this lengthy approval process, TransAlta negotiated and worked with PG&E in good faith on the understanding that it was providing valuable and needed renewable attributes based on PG&E’s need analysis at the time. TransAlta also cooperated and endeavored to ensure that the agreement would satisfy the evolving regulatory and legislative policies that substantially delayed the review and approval process. The Draft Resolution errs in determining that, at this juncture, approval should be denied.

II. COMMENTS

As noted above, the TransAlta REC Agreement reflects a competitive, arms-length negotiated agreement. The Draft Resolution correctly finds that the agreement is “reasonably priced”.⁶ The Draft Resolution additionally finds that the TransAlta REC Agreement is consistent with, and reflects PG&E’s application of, bilateral contracting guidelines.⁷ TransAlta agrees with these findings and urges the Commission to affirm them in a Resolution approving the contract.

The Draft Resolution errs, however, in determining that the agreement should be denied as a result of a lack of RPS compliance need. As the Draft Resolution correctly notes, SB 2 (1X) significantly changed the targets and many rules associated with RPS compliance. PG&E and other utilities in California now must procure (i) an

⁵ SB 2 (1X), Section 399.16 (d) (emphasis added).

⁶ Draft Resolution at p. 11.

⁷ Draft Resolution at p. 11-12.

average of 20% of retail sales from renewable resources from January 1, 2011 to December 31, 2012, (ii) an average of 25% from December 31, 2013 to December 31, 2016 and (iii) 33% of retail sales by December 31, 2020.⁸ The Draft Resolution finds—based on a confidential exhibit not available to TransAlta for review—that PG&E has no near-term need for these resources due to its current risk-adjusted net short position relative to current RPS targets.

A. The Commission Should Approve The TransAlta REC Agreement Based On PG&E’s Need At The Time The Contract Was Executed In 2009

TransAlta urges the Commission to reject the policies implied by the Draft Resolution’s conclusion that PG&E does not have a need to procure RECs through the compliance periods corresponding to the TransAlta REC Agreement. Even acknowledging that PG&E has taken the position that, currently, it may not have a near-term need for additional renewable resources,⁹ it would be shortsighted and contrary to the spirit and intent of the State’s renewables policy initiatives to reject otherwise economic, competitively negotiated renewables options for California’s utilities.

In the particular context of the TransAlta REC Agreement, the Commission should review need based on PG&E’s need and level of procurement at the time the contract was executed—and not three or more years later following delay that was incurred solely as a result of an ever-changing landscape of regulatory policies and modified statutory requirements. PG&E was, as the Draft Resolution finds, prudent in its bilateral negotiations and successfully negotiated a contract that was “reasonably” priced. Similarly, TransAlta closely followed the requirements of California agencies, including the CPUC and CEC to ensure that its sale of RECs fully complied with then-applicable policies and requirements, which TransAlta understands may have had to change as complex policies evolved in recent years. But while changing regulatory policies and associated delay may at times be unavoidable, TransAlta urges the Commission not to punish market participants that expended significant resources to abide by those policies and supply Californians with economic sources of renewable resources. The Commission should accept the TransAlta REC Agreement based on PG&E’s demonstrated need for renewable resources to satisfy RPS requirements at the time the contract was originally filed in the Fall of 2009.

⁸ Draft Resolution at 12 (citing SB 2 (1X), Section 399.15 (b)(2)(B)).

⁹ See Comments of Pacific Gas and Electric on Draft Resolution, at p.4 (filed Aug. 13, 2012).

B. The TransAlta REC Agreement Should Also Be Approved Based On PG&E's Ability To Utilize This Renewable Procurement For Future Compliance Periods

Even if the Commission reviews the reasonableness of contract approval based on PG&E's current need projections, the agreement should still be approved as it reflects an economic source of high quality renewables procurement that can satisfy future PG&E compliance targets. The Commission's recent June 27, 2012, Decision 12-06-038 affirms that under Section 399.16 (d) contracts from qualified renewable sources originally executed prior to June 1, 2010, shall "count in full" towards an electrical corporation's RPS procurement targets.¹⁰

The TransAlta REC Agreement is such a contract—it was executed prior to June 1, 2010, and the very limited subsequent amendments to the agreement have not increased the nameplate capacity or annual quantities procured. In addition, the requirement that the renewable resource "was eligible under the rules in place" as of the date when the contract was executed is also met.¹¹ The facility is a wind facility in development at the time the contract was executed and appropriately certified by the CEC. Thus, the agreement meets the "grandfathering" requirements of SB 2 (1X). As such, and as reaffirmed in D.12-06-038, the TransAlta REC Agreement counts for RPS compliance "without regard to portfolio content category or minimum or maximum quantity requirements for procurement."¹² Most significantly, procurement that reflects excess procurement above targets, when associated with such grandfathered agreements, can be carried forward and used for future procurement.¹³ Accordingly, the agreement provides renewable procurement benefits to PG&E from a facility that is in full operation and does not pose development risk, and under a contract that can be utilized flexibly by PG&E for future compliance purposes.

The Draft Resolution errs in concluding that the "near-term nature" of the TransAlta REC Agreement renders it "inconsistent" with PG&E's demonstrated compliance need. The Commission should, accordingly, reverse this aspect of the Draft Resolution and promptly approve the TransAlta REC Agreement, consistent with PG&E's long-term procurement requirements.

¹⁰ D.12-06-038, *Decision Setting Compliance Rules for the Renewables Portfolio Standard Program*, at pp. 28-29 (June 27, 2012).

¹¹ See SB 2 (1X), Section 399.16 (d)(1).

¹² D.12-06-038 at p. 29.

¹³ See D.12-06-038 at 32 (finding "procurement from contracts signed prior to June 1, 2010 will 'count in full' and not be subject to the excess procurement rules...").

III. CONCLUSION

For the foregoing reasons, TransAlta urges the Commission to reverse the Energy Division Staff's determination that PG&E has failed to demonstrate that the TransAlta REC Agreement is needed, and approve the agreement consistent with PG&E's need for qualified RPS procurement and the Commission's recent RPS compliance findings in D.12-06-038.

Respectfully submitted,

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APPENDIX A – PROPOSED FINDINGS AND ORDERING PARAGRAPHS

RECOMMENDED MODIFICATIONS TO PROPOSED FINDINGS

8. The REC Agreement submitted with Advice Letter 3862-E qualifies as a contract that counts in full toward PG&E's compliance and may be carried forward for PG&E's long-term RPS compliance ~~near-term nature of these REC Agreements is inconsistent with PG&E's demonstrated compliance need through the first and second compliance periods.~~
14. Advice Letter 3862-E should be ~~denied~~ approved.

RECOMMENDED MODIFICATION TO ORDERING PARAGRAPHS

4. Pacific Gas and Electric Company's purchase and sale agreement with TransAlta Corporation filed in Advice Letter 3862-E is ~~denied~~ approved.