BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Revised 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.	Revised Draft Resolution E-4520 (Filed August 23, 2012 for discussion at the September 27, 2012 Commission Meeting)

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

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I. INTRODUCTION

The Public Utility District No. 1 of Snohomish County, Washington ("Snohomish"), respectfully submits these supplemental comments to Revised Draft Resolution E-4520 dated September 13, 2012, (ID#11496) ("Revised DR E-4520") in response to Revised DR E-4520 and the discussion during the California Public Utilities Commission's ("Commission") September 13, 2012 meeting in this proceeding. As further explained below, the Commission should approve cost recovery for the renewable energy credits ("RECs") covered by Revised 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*"), related to 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"). Snohomish sees no justification for disallowing the additional 0.33 percent (250,000 MWh) RPS procurement that would result from the Hay Canyon REC sales covered by *AL 3600-E*.

II. BACKGROUND

Snohomish is a consumer-owned utility in the state of Washington and provides electricity to its customers on a not-for-profit basis. Snohomish filed written comments on Draft Resolution E-4520 on August 13, 2012, ("August 13 Comments") and became a party for purposes of seeking rehearing. In the interest of brevity and efficiency, Snohomish will not repeat the points it made in its August 13 Comments, but hereby incorporates those comments by reference.

Snohomish sold energy and green attributes from Hay Canyon, an eligible renewable resource as certified by the California Energy Commission ("CEC"), from January 1, 2010 through December 31, 2011 to Barclays under the Snohomish-Barclays Agreement. According to PG&E's initial filing and its first supplemental filing, AL 3600-E and AL 3600-E-A, PG&E sought approval of their contract with Barclays ("Agreement") for the purchase of 250 gigawatt hours per year of *firm energy* and *associated green attributes* from Hay Canyon. PG&E explained in AL 3600-E that Barclays was delivering the RPS-eligible energy as a "firmed and shaped" product at the California-Oregon Border ("COB").

Payment to Snohomish PUD for the green attributes associated with Hay Canyon is contingent upon Commission approval of *AL 3600-E*. Snohomish and its customers will suffer significant financial harm if Revised Draft Resolution E-4520 is adopted as drafted.

III. COMMENTS

A. Discussion of Revised Draft Resolution E-4520 at the September 13 Meeting

1. Response to Comments of Commissioners.

Snohomish appreciates this opportunity to comment on the discussion of the Commissioners and Energy Division Staff regarding Revised DR E-4520 at the September 13, 2012 meeting. Snohomish agrees with the general consensus of the Commissioners that the Energy Division should revisit its recommendations in Revised DR E-4520 in order to determine a reasonable and fair resolution.

As expressed at the September 13 meeting, there is considerable concern that approving Revised DR E-4520 as proposed will create an inequitable outcome and promote regulatory uncertainty. Snohomish appreciates that a number of the Commissioners recognize that it is unfair to reject contracts that followed and met all the applicable rules at the time of their execution because the law has changed after the fact. The Snohomish-Barclays agreement relied upon and followed the RPS program rules in effect at the time, as did Barclays and PG&E when they entered into the Agreement for the purchase of 250 gigawatt hours per year of *firm energy* and *associated green attributes* from Hay Canyon. As a result, it had a commercial expectation that these contracts would be approved. Snohomish is a consumer-owned, not-for-profit utility that strives to be a "good citizen" by providing consistent and low-cost service to its customers. Changing the rules without protections for those who relied upon them is inconsistent with the commercial expectations of market participants, results in uncertainty in the market and potentially raises costs for consumers.

Further, a number of Commissioners encouraged the Energy Division to review the contracts covered by Revised DR E-4520 separately. Snohomish believes whether the contracts are reviewed and addressed in one Resolution or in separate Resolutions that the contracts covered by *Al 3600-E* should be approved. If the contracts are reviewed separately, it is important that the Energy Division review the contracts on a consistent basis using the same rules for all contracts. In addition, whether the contracts are considered together or separately, Snohomish wishes to remain an active participant in the process and looks forward to working with the Commission and the Energy Division to reach a reasonable and fair resolution.

2. The Contract Covered by *AL 3600-E* Were Bundled RECs Under the Rules in Existence at the Time the Contracts Were Executed and When AL 3600-E was Submitted for Approval.

During the Commission meeting on September 13, Energy Division staff stated the rules for *REC-only* contracts were in flux in 2009 and that parties should have been aware that *REC-only* deals were "at risk." While this may be true, it is imperative the Commission understand

that the transactions underlying *AL 3600-E* were not REC-only transactions. Instead, the Agreement was a bundled transaction pursuant to which PG&E purchased both energy and green attributes from Hay Canyon. The fact that the RPS-eligible energy included energy and green attributes that could be delivered at different times, but were delivered in the same calendar year, does not make the Agreement a purchase of only green attributes, or a REC-only transaction. Rather, this type of firming and shaping was and is accepted as a valuable means of backing up or supplementing resources with variable delivery schedules such as wind or solar resources. This same delivery structure had been approved by the Commission many times prior to and after the submission of AL 3600-E in January 2010.

Moreover, it is unfair to penalize Snohomish and its customers for changes made to the California renewable energy rules after execution of its then-compliant contract with Barclays and after PG&E timely requested approval. Snohomish believes such a result could have a chilling effect on the renewable energy market in California due to the risks of unanticipated statutory and regulatory changes, and in particular bring to fruition the concerns of out-of-state investors becoming "drive bys." The CPUC included language in its new rules to allow for the grandfathering of contracts under the rule.[1] The grandfathering language in the new rule created certainty for the market and gave contract participants a sense of security that they would be dealt with fairly in the new regulatory regime. Denying the contracts at this stage would undermine the intent of creating market certainty through the new rules.

3. Bundled RECs Covered by *AL 3600-E* Would Provide Value to PG&E Ratepayers.

The current rules grandfather all transactions executed prior to June 1, 2010. The contracts underlying *AL 3600-E* were executed in 2009 and submitted for approval in January 2010. As acknowledged by the Energy Division in the Commission meeting, the contracts covered by Revised DR E-4520, including the Hay Canyon contract, are eligible for grandfathering and should count in full under the existing regulatory regime.[2] The RECs in a grandfathered transaction which are eligible to count in full can be used to meet any of the Portfolio Content Categories (buckets 1, 2 and 3) and can be used during any of the Compliance Periods (1, 2 or 3).

At the September 13 meeting, the Energy Division raised PG&E's need for RECs and stated that although PG&E did not have a need for RECs in Compliance Periods 1 and 2, because the RECs at issue "count in full," they could be used in Compliance Period 3. Nonetheless, the Energy Division recommended that the contracts be rejected due to uncertainty of their value in the later Compliance Period. In the Commissioner's discussion the decision was referred to as whether to "purchase insurance" now to ensure PG&E has RECs to meet its future RPS needs, possibly as far out as Compliance Period 3.

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[1] *See*, further discussion of grandfathered contracts below.

[2] *See also,* Revised DR E-4520 at 19 ("The Commission agrees with the comments of PG&E…and the PUDs [including Snohomish] on the issue of whether the REC Agreements have been 'grandfathered' and thus are eligible to 'count in full.'")

Terminating the use of the RECs from the Hay Canyon facility as proposed by the Energy Division improperly eliminates the use of the grandfathering benefit through Compliance Period 3. Doing so is inconsistent with SB 2 (1X) and the Commission's rules, and effectively eliminates the grandfathering benefit at the end of Compliance Period 2. Snohomish urges the Commission to apply the grandfathering provisions, and allow the rules to work as intended by approving *AL 3600-E* and providing for PG&E to use the Hay Canyon RECs to meet its RPS requirements through Compliance Period 3.

With regard to value, concerns were raised at the September 13 Commission meeting regarding the economics of the contracts covered by DR E-4520. Although a number of the Commissioners and Energy Division Staff understand that the prices in the contracts covered by Revised DR E-4520 were competitive in the market at the time they were executed, concern was expressed that the prices exceed current prices for REC-only contracts. Snohomish agrees that a proper comparison could be to the price at the time the contracts were executed. If, however, the prices are to be compared to current prices, the prices for the contacts underlying *AL 3600-E* are competitive in the market for similar contracts that would be used to meet Category 1 needs in Compliance Period 3.

As part of a grandfathered contract, Snohomish believes that the pricing of the Agreement must be viewed in the context of other contracts expected to satisfy Category 1 RPS requirements in Compliance Period 3, primarily proposed solar projects.[3] Snohomish understands financeable solar power purchase agreements are now priced in the $80 to $110 per megawatt-hour range. The long term power price is not more than $50 per megawatt-hour, and the REC premium can be derived by subtracting the long term power price from these bundled deliveries. This results in a REC premium for solar PPAs in the $30 to $60 per megawatt-hour range. As Snohomish stated in its August 13 comments, in 2009 when the contracts underlying *AL 3600-E* were executed, the price for the REC component of the bundled energy contracts was in the $30 to $43 range. Therefore, the RECs covered by *AL 3600-E* remain competitively priced based on the market and would provide valuable cost-effective insurance for purposes of meeting PG&E's REC needs through Compliance Period 3.

B. Revised Draft Resolution E-4520

1. The 14 Percent Safe Harbor Does Not Apply Because PG&E Has Not Requested a Waiver.

Snohomish believed it was complying with the California renewable energy contracting rules when it executed the Agreement with Barclays for the energy and green attributes associated with Hay Canyon. Although both Draft Resolution E-4520 and Revised DR E-4520 state that the covered contracts, including the Agreement, followed the California renewable energy contracting rules, the Energy Division nevertheless recommends denying cost recovery.

[3] This is consistent with Revised DR E-4520 which states that the "value of these REC Agreements [including the Hay Canyon Agreement] can be compared to the value of other RPS compliance products." (Revised DR E-4520).

Revised DR E-4520 concedes that the contracts, including those covered by *AL 3600-E,* met the bilateral contracting rules and that PG&E used the least cost best fit methodology when the agreement was negotiated and executed. In addition, Revised DR E-4520 agrees with Snohomish that the 2010 RPS target of 20 percent was not revised by SB 2 (1X). Nonetheless, because PG&E attained a 15.9 percent RPS in 2010 and could qualify for the 14 percent RPS procurement waiver under D.12-06-038, Revised DR E-4520 incorrectly claims that PG&E "does not need RECs associated with pre-2011 generation for compliance purposes." (Revised DR E-4520 at 18).

The rules establishing the 14 percent threshold allow a buyer that meets the threshold to request a waiver from the 2010 RPS target of 20 percent. PG&E has not requested a waiver. In fact, as indicated by its comments on DR E-4520, PG&E is clearly seeking approval of the Hay Canyon contract and that the RECs covered by *AL 3600-E* be allowed to count in full.

2. The Delay in Approving *AL 3600-E* Allowed Later-Filed RECs to Be Counted Toward PG&E's Near-Term Compliance Needs Instead of the RECs Covered by *AL 3600-E.*

Although Revised DR E-4520 agrees that the REC Agreements could be grandfathered and are eligible to "count in full" toward PG&E's RPS obligations, it inexplicably recommends rejection because PG&E "lacks an immediate near-term RPS compliance need." (Revised DR E-4520 at 22). As explained in Snohomish's August 13 comments, AL 3600-E was timely submitted to the Commission for approval in January 2010, over 30 months ago. In that interim period, 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. These advice letters include at least the following:

Resolution E-4341(Southern California Edison ("SCE") and Coso Clean Power, LLC-83 MW RECs, approved within 5 months);

Resolution E-4390 (**PG&E** and Halkirk I Wind Project LP, et al.-450 MW RECs, approved within 11 months);

Resolution E-4393 (**PG&E** and SGS-1, LLC-150 MW RECs, approved within 6 months);

Resolution E-4425 (San Diego Gas & Electric ("SDG&E") and Arlington Valley Solar-150 MW RECs, approved within 3 months);

Resolution E-4447 (**PG&E** and Copper Mountain II, LLC-150 MW RECs, approved within 4 months);

Resolution E-4445 (SCE and multiple entities-144 MW RECs, approved within 11 months);

Resolution E-4448 (SDG&E and SCE and SDG&E and Calpine-270 MW RECs, approved within 5 months);

Resolution E-4449 (SCE and SDG&E-193 MW RECs, approved within 4 months).

The RECs approved in the PG&E Advice Letters (the second, third and fifth on the list) have been counted toward PG&E's compliance needs, effectively displacing the RECs in *AL 3600-E*. There is little question that if *AL 3600-E* had been timely approved, the RECs covered therein would have been counted toward PG&E's RPS obligation in Compliance Period 1 or Compliance Period 2. Snohomish believes it would be inequitable and unreasonable to allow RECs from later-filed Advice Letters to "edge out" the RECs listed in *AL 3600-E*, which qualify for "grandfathering" and should "count in full" toward PG&E's compliance obligations.

IV. CONCLUSION

For the foregoing reasons and the reasons outlined in its August 13 Comments, Snohomish respectfully requests that the Commission amend Revised 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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