

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

I. D. # 11534
RESOLUTION E-4545
January 24, 2013

CONFIDENTIAL
R E S O L U T I O N

Resolution E-4545. Pacific Gas and Electric Company requests approval of an amended and restated power purchase agreement with Rice Solar Energy, LLC which is a subsidiary of SolarReserve, LLC.

PROPOSED OUTCOME: This Resolution approves cost recovery for the amended and restated power purchase agreement between Pacific Gas and Electric Company and Rice Solar Energy, LLC.

ESTIMATED COST: Confidential

By Advice Letter 3989-E filed on January 17, 2012.

SUMMARY

Cost recovery for Pacific Gas and Electric Company's amended and restated renewable energy power purchase agreement (PPA) with Rice Solar Energy, LLC is approved.

Pacific Gas and Electric Company (PG&E) requests approval of a power purchase agreement (PPA) with Rice Solar Energy, LLC (Rice Solar) which is a subsidiary of SolarReserve, LLC. Rice Solar proposes to develop a 150 megawatt (MW) thermal solar power tower facility with molten salt storage near Rice, CA. Forecast annual generation of 448 gigawatt hours (GWh) is contracted to be delivered over a 25 year term beginning on June 1, 2016.

The PPA under consideration for approval is an amended and restated contract (Amended PPA) that was originally approved by the California Public Utilities Commission (CPUC) by Resolution E-4340 on July 29, 2010 (Original PPA). In 2011, Rice Solar decided to change the point of interconnection for the project which resulted in the re-opening of the contract. In late 2011, PG&E and Rice Solar executed the Amended PPA which; 1) changes the point of interconnection from within the California Independent System Operator (CAISO) balancing authority area (BAA) to the Western Area Power Administration BAA with

delivery to PG&E at the Mead substation, 2) revises the guaranteed commercial operation date (GCOD) from October 1, 2013 to June 1, 2016 to account for the increase in time necessary to interconnect through WAPA to Mead, and 3) changes the payment provisions to mitigate any pricing risk associated with a change in the point of interconnection. As a result, Advice Letter 3989-E was filed on January 17, 2012 which requests approval of the Amended PPA.

The CPUC approves cost recovery for the Amended PPA between PG&E and Rice Solar. Cost recovery is being approved for three reasons. First, the price and value of the Amended PPA compare favorably against shortlisted bids resulting from PG&E's 2009 RPS Solicitation. Second, the GCOD has been extended to June 1, 2016 which is in better alignment with PG&E's RPS portfolio need. Third, the Rice Solar project will be utilizing molten salt storage technology, giving it the ability to strategically shift and optimize load based on changes in electricity demand and the potential need for grid stabilization.

The following table summarizes the project-specific features of the agreement:

Generating Facility	Type	Term Years	MW Capacity	Annual Deliveries	Online Date	Project Location
Rice Solar	Tower with Salt Storage	25	150	448 GWh	6/1/2016	Rice, CA

BACKGROUND

Overview of the Renewables Portfolio Standard (RPS) Program

The California RPS program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036, and SB 2 (1X).¹ The RPS program is codified in Public Utilities Code Sections 399.11-399.31.² Under SB 2 (1X), the RPS program administered by the Commission requires each retail seller to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources be an amount that equals an average of 20 percent of the total electricity sold to retail customers in

¹ SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

² All further references to sections refer to Public Utilities Code unless otherwise specified.

California for compliance period 2011-2013; 25 percent of retail sales by December 31, 2016; and 33 percent of retail sales by December 31, 2020.³

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

NOTICE

Notice of AL 3989-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

PG&E's Advice Letter 3989-E was timely protested on February 6, 2012 by the Division of Ratepayer Advocates (DRA) and Californians for Renewable Energy (CARE). PG&E responded to the protests on February 13, 2012.

DRA recommends that the Commission deny cost recovery for the Amended PPA on the following grounds: 1) uncompetitive price, 2) lack of RPS portfolio need, and agrees with the Independent Evaluator (IE) report which opined that it is difficult to conclude that the Amended PPA merits Commission approval.

CARE also believes that the cost of the Amended PPA is uncompetitive and that PG&E lacks portfolio need for the project. CARE also asserts that it has filed a lawsuit against the Rice Solar project which has the potential to negatively impact the development of the facility.

PG&E believes that the Commission should reject the DRA and CARE protests and approve the Amended PPA for the following three reasons: 1) the technology is unique and allows PG&E to more easily integrate intermittent solar energy delivery from the project, 2) the COD is more in alignment with PG&E's portfolio need, and 3) the revised terms of the PPA do not add material risk/cost to PG&E's customers. PG&E also states that "while the price in the Amended PPA may be higher than market alternatives, the benefits... support a determination that the Amended PPA is just, reasonable and in the interests of PG&E's customers." PG&E also notes that DRA and CARE fail to recognize the unique operational characteristics of the project which includes molten salt

³ D.11-12-020 established a methodology to calculate procurement requirement quantities for the three different compliance periods set forth in Section 399.15 (2011-2013, 2014-2016, and 2017-2020).

storage. Lastly, PG&E believes the Commission should disregard CARE's assertion regarding its lawsuit against Rice Solar and suggests that the lawsuit should be addressed in the United States District Court and should not be a basis for rejecting the Amended PPA.

DISCUSSION

PG&E requests Commission approval of an amended and restated renewable energy contract between PG&E and Rice Solar.

Rice Solar is a wholly owned subsidiary of SolarReserve, LLC, developer of solar thermal (power tower) generation facilities that incorporate molten salt storage. The company is headquartered in Santa Monica, CA with offices in Madrid, Spain and Sandtown, South Africa. The 150 megawatt (MW) Rice Solar project is proposed to deliver estimated annual generation of 448 GWh over a term of 25 years.

SolarReserve is currently developing two projects that utilize its molten salt power tower technology. The first is a 110 MW power tower generation facility called the Crescent Dunes Solar Energy Project in Tonopa, Nevada. According to SolarReserve the project is on track and expected to be completed by the end of 2013. The second facility is being developed by SolarReserve as 50/50 joint venture partner with Spanish developer Preneal to construct a 50 MW project in Spain. Rice Solar is the third project that SolarReserve proposes to construct and it would also be the largest project the company has undertaken to date.

The Rice Solar project was originally proposed in PG&E's 2009 RPS Solicitation but the contract was negotiated bilaterally in November 2009. The Original PPA was submitted for approval to the Commission on December 22, 2009 in Advice Letter (AL) 3581-E, which was approved on July 29, 2010 in Resolution 4340-E. Under the Original PPA, the Rice Solar project's point of interconnection was at the [Redacted] substation within the CAISO BAA.

In late 2010, SolarReserve decided to forgo its Large Generator Interconnection Agreement (LGIA) study with the CAISO due to potential timing issues associated with the development of the [Redacted] Substation and the associated risk of the Rice Solar project not meeting its guaranteed commercial operation date (GCOD). In April 2011, SolarReserve and PG&E began negotiations to execute an Amended PPA that changed the point of interconnection and include other provisions associated with this modification to the Original PPA. After extensive negotiations, PG&E and SolarReserve executed an Amended PPA in late 2011 after which PG&E filed AL 3989-E on

January 17, 2012 seeking approval of the Amended PPA. The Amended PPA includes the following key revisions:

- 1) The point of interconnection changes from interconnecting directly with the California Independent System Operator (CAISO) balancing authority area (BAA) at the ^{Redacted} substation (CR) to interconnecting vis-a-vis a pseudo-tie agreement with the Western Area Power Administration (WAPA) BAA at WAPA's Mead substation.
- 2) The commercial operation date (COD) changes from October 1, 2013 to June 1, 2016 to account for delays in achieving a pseudo-tie agreement and delays in CPUC approval.
- 3) New provisions were included to ensure the full delivery/value of Resource Adequacy (RA) capacity full value of energy deliveries from Mead.

PG&E requests that the Commission issue a resolution that:

1. Approves the Amended PPA in its entirety, including payments to be made by PG&E pursuant to the Amended PPA, subject to the Commission's review of PG&E's administration of the Amended PPA;
2. Finds that any procurement pursuant to the Amended PPA constitutes procurement from an eligible renewable resource for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable resources pursuant to the RPS Legislation (PU Code Sec. 399.11 et seq.), D.03-06-071 and D.06-10-050 or other applicable law;

3. Finds that all procurement and administrative costs, as provided by PU Code Sec. 399.139(g), associated with the Amended PPA shall be recoverable in rates;
4. Adopts the following finding of fact and conclusion of law in support of CPUC approval:
 - a. The Amended PPA is consistent with PG&E's 2011 RPS procurement plan.
 - b. The terms of the Amended PPA, including the price of delivered energy, are reasonable.
5. Adopts the following finding of fact and conclusion of law in support of cost recovery for the amended and restated PPA:
 - a. The utility's costs under the Amended PPA shall be recovered through PG&E's Energy Resource Recovery Account.
 - b. Any stranded costs that may arise from the amended and restated PPA are subject to provisions of D.04-12-048 that authorize recovery of stranded renewables procurement costs over the life of the contract. The implementation of the D.04-12-048 stranded cost recovery mechanism is addressed in D.08-09-012.
6. Adopts the following findings with respect to resource compliance with the EPS adopted in R.06-04-009:
 - a. The Amended PPA is not covered procurement subject to EPS because the generating facility has a forecast capacity of less than 60 percent, and, therefore, is not baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules.
7. Adopts a finding of fact and conclusion of law that deliveries from the Amended PPA shall count in full toward PG&E's RPS procurement requirements and shall be exempt from the RPS portfolio content category requirements because the Original PPA and the Amended PPA meet the criteria set forth in Section 399.16(d) of the Public Utilities Code.

Energy Division Evaluated the Amended PPA on these Grounds:

- Consistency with PG&E's 2011 RPS Procurement Plan
- Consistency with Least-Cost Best-Fit Requirements
- RPS Portfolio Need
- Price Reasonableness and Value
- Independent Evaluator (IE) Report

- Consistency with RPS Standard Terms and Conditions
- Procurement Review Group Participation
- Contribution to Minimum Long Term Contracting Requirement
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard

Consistency with PG&E's 2011 RPS Procurement Plan

California's RPS statute requires the Commission to direct each utility to prepare an annual RPS Procurement Plan (Plan) and then review and accept, modify, or reject the Plan prior to the commencement of a utility's annual RPS solicitation.⁴ The Commission must then accept or reject proposed PPAs based on their consistency with the utility's approved Plan. PG&E's stated preferences in its 2011 RPS Plan include 1) projects that allow it to address its long-term 33% mandate under the third compliance period, and 2) projects with high viability. Because the GCOD of the Amended PPA has been pushed out from October 1, 2013 to June 1, 2016, the Rice Solar project can help PG&E meet its long-term needs in the third compliance period that begins in 2017.

The Amended PPA is consistent with PG&E's 2011 RPS Procurement Plan approved by D.11-04-030.

Consistency with PG&E's Least-Cost Best-Fit Requirements

The LCBF decision directs the utilities to use certain criteria in their bid ranking.⁵ The decision offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations. PG&E's bid evaluation includes a quantitative and qualitative analysis, as well as each proposal's absolute value to PG&E's customers and relative value in comparison to other proposals. The basic components of PG&E's LCBF evaluation and selection criteria and process for RPS contracts were established in the Commission's LCBF Decisions D.03-06-071 and D.04-07-029.

Consistent with these decisions, the four main steps undertaken by PG&E are: (1) determination of market value of bid; (2) calculation of transmission adders

⁴ §399.13.

⁵ See D.04-07-029

and integration costs; (3) evaluation of portfolio fit, and; 4) consideration of non-price factors. PG&E applied these criteria to the proposals received in the 2011 solicitation in order to establish a short-list of proposals from bidders with whom PG&E would engage in contract discussions. PG&E's 2011 RPS solicitation was the most recent solicitation at the time that the Amended PPA was negotiated and executed.

PG&E examined the reasonableness of the Amended PPA using the same LCBF evaluation methodology that it used for RPS offers received for the 2011 RPS solicitation. Although the Amended PPA was negotiated bilaterally, PG&E determined that the agreement was reasonable and compared favorably to proposals that PG&E received in its 2011 Solicitation and to other bilateral offers negotiated around the same time. PG&E stated in AL 3989-E that while the economics of the Rice Solar project compare unfavorably to its 2011 RPS Solicitation short-list, PG&E entered into the Amended PPA for the following reasons:

- 1) The project provides technology diversity to PG&E's portfolio;
- 2) The technology allows PG&E to more easily integrate deliveries of intermittent solar energy from the project;
- 3) The Amended PPA does not add material risk/cost to PG&E customers, and;
- 4) The Amended PPA is better aligned with PG&E's portfolio need because the new GCOD.

PG&E's decision to execute the Amended PPA primarily on the basis of non-price factors and portfolio need negates the significant decrease in pricing that has occurred over the last two years for renewables projects resulting in the execution of the Amended PPA with disregard to results from PG&E's 2011 RPS Solicitation. However, the core characteristics of the Rice Solar project – technology, location, permitting – remain unchanged from the Original PPA, as do the qualitative attributes that the project will provide such as grid stabilization. Therefore, the Amended PPA is viewed as the same project that was submitted for CPUC approval in the Original PPA and it is prudent to compare the Amended PPA to projects that were shortlisted at the time the Original PPA was executed. That said, the Amended PPA was executed in 2010 and should be compared to shortlisted projects resulting from PG&E's 2009 RPS Solicitation. When compared against these cohorts, the Rice Solar project compares favorably on price and value. See Confidential Appendix A for more details.

PG&E adequately examined the reasonableness of the Amended PPA utilizing its LCBF methodology during the time the PPA was being negotiated and executed.

RPS Portfolio Need

The California RPS Program was established by Senate Bill (SB) 1078 and has been recently modified by SB 2 (1X), which became effective on December 10, 2011. SB 2 (1X) made significant changes to the RPS Program.⁶ SB2 (1X) established new RPS procurement targets such that retail sellers must procure "...from January 1, 2011 to December 31, 2013...an average of 20 percent of retail sales...25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020."⁷

PG&E's RPS portfolio need falls within the third compliance period which is between 2017 and 2020. The extension of the GCOD for the Rice Solar project to June 2016 better aligns deliveries from the project with PG&E's RPS compliance needs. The Commission disagrees with both DRA and CARE's concern that the Rice Solar Project does not satisfy the need requirements for RPS compliance purposes. The new GCOD of June 1, 2016 is better aligned with PG&E's forecast portfolio need and DRA and CARE's protests are denied on this basis.

The Commission finds that generation from the Rice Solar project adequately fits the portfolio need requirements of PG&E's RPS portfolio.

Price Reasonableness and Value

The Amended PPA was compared to projects offered to PG&E resulting from its 2009 RPS Solicitation. The Original PPA was executed in early 2010 and the Amended PPA was submitted to the Commission in early 2012. Because the core characteristics of the Rice Solar project did not change materially or impact the value of the project since the Original PPA was executed, Energy Division evaluated the Amended PPA against the original set of cohorts from PG&E's 2009 RPS Solicitation. If the core characteristics and the value of the Rice Solar project had changed materially since the execution of the Original PPA, then Energy Division would have compared the Amended PPA to shortlisted projects resulting from PG&E's 2011 RPS Solicitation and recently executed contracts approved by the CPUC.

⁶ The Commission opened Rulemaking (R.) 11-05-005 (May 5, 2011) to implement the new RPS law.

⁷ See § 399.15(b)(2)(B), SB 2 (1X)

Based on a comparison of the Amended PPA's price and value compared to shortlisted projects resulting from PG&E's 2009 RPS Solicitation, the Rice Solar project is competitive. The Commission disagrees with both DRA and CARE's concern that the Rice Solar project is not competitive based on price and value when benchmarked against the proper cohorts and denies both protests on this basis. See Confidential Appendix A for a price and value comparison of the Amended PPA.

The Commission is sensitive to DRA and CARE's concern that the Amended PPA does not compare favorably to current market metrics. The health of the renewables market in California depends on fairness and transparency in the procurement process. The Commission is currently undertaking a procurement reform initiative that proposes to limit the time allowed for contract negotiations with the intention of aligning contract pricing with the most current market conditions. See the Second Assigned Commissioner's Ruling Issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals.⁸

The price and net market value of the Amended PPA are reasonable compared to shortlisted projects resulting from PG&E's 2009 RPS Solicitation.

The CPUC approves cost recovery for the Amended PPA between PG&E and Rice Solar.

Independent Evaluator Report (IE)

PG&E retained Arroyo Seco Consulting as the Independent Evaluator for the Amended PPA. The IE states in its report:

"Arroyo would find it difficult to conclude that the amended and restated Rice Solar contract merits CPUC approval... The contract is now distinctly uncompetitive when compared to alternatives available to PG&E. Despite progress the developer has made, Rice Solar still ranks low in project viability... to competing alternatives. To execute the amended Rice Solar contract while rejecting numerous 2011 Offers for projects with both higher viability, higher net (market) value, and lower price creates the appearance of unfairness to those project developers... Observers who have a different set of priorities and judgments regarding tradeoffs of price, ratepayer risk, fairness to competitors, technology diversity, and

⁸ See <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M029/K970/29970716.PDF>

firmness of generating output could certainly come to a different opinion.”

The IE benchmarked the Amended PPA against shortlisted bids resulting from the 2011 RPS Solicitation. The Rice Solar project’s core attributes have not changed materially since the Original PPA was signed in early 2010 nor has there been a material change in the price or value of the Amended PPA. That said, the proper cohorts to compare the Amended PPA against are shortlisted projects resulting from PG&E’s 2009 RPS Solicitation. Furthermore, since the execution of the Original PPA, the Rice Solar project has achieved significant project milestones improving the overall viability of the project. In addition, the developer is on track for the completion of its Crescent Dunes Solar Energy Project in Nevada by the end of 2012, which utilizes the same technology that the Rice Solar project will use. See Confidential Appendix A for a discussion on project viability.

Consistency with RPS Standard Terms and Conditions

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, four of which are considered “non-modifiable.” The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028. The Commission further refined these STCs in D.10-03-021, as modified by D.11-01-025.

The Amended PPA includes 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.

Procurement Review Group Participation

The Procurement Review Group (PRG) process was initially established in D.02-08-071 as an advisory group of non-market participants to review and assess the details of the investor-owned utilities’ overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission as an interim mechanism for procurement review.

According to PG&E, participants in its PRG include representatives from the Commission’s Energy Division, the Division of Ratepayer Advocates, The Utility Reform Network, California Utility Employees, the Union of Concerned Scientists, California Department of Water Resources, and Redacted as a PG&E ratepayer. PG&E informed the PRG of the Amended PPA on July 20, 2011, December 1, 2011, and December 13, 2011.

Pursuant to D.02-08-071, PG&E complied with the Commission's rules for involving the Procurement Review Group.

Contribution to Minimum Quantity Requirement for Long-Term Contracts

Section 399.13(b) requires that the commission establish "minimum quantities of eligible renewable energy resources to be procured through contracts of at least 10 years' duration."

Because the term of the Amended PPA is greater than 10 years in length, the PPA may be construed as counting toward the minimum quantity requirements that the Commission established in D.12-06-038.

Compliance with the Interim Greenhouse Gas Emissions Performance Standard (EPS)

California Public Utilities Code Sections 8340 and 8341 require the Commission to consider emissions associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers.

D.07-01-039 adopted an interim EPS that establishes an emission rate for obligated facilities at levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. The EPS applies to all energy contracts for baseload generation that are at least five years in duration.⁹ Generating facilities using certain renewable resources, including geothermal energy, are deemed compliant with the EPS.¹⁰

The Amended PPA is not covered procurement subject to EPS because the generating facility has a forecast capacity of less than 60 percent, and, therefore, is not baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules.

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Public Utilities Code Section 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable "eligibility" language in all

⁹ "Baseload generation" is electricity generation at a power plant "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." Pub. Utils. Code § 8340 (a).

¹⁰ D.07-01-039, Attachment 7, p. 4

RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an “Eligible Renewable Energy Resource,” that the project’s output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.¹¹

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires “CPUC Approval” of a PPA to include an explicit finding that “any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.11-12-020 and D.11-12-052, or other applicable law.”¹²

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission determine prior to final CEC certification of a project, that “any procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.”

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract enforcement activities shall be reviewed pursuant to the Commission’s authority to review the utilities’ administration of such contracts.

CONFIDENTIAL INFORMATION

The Commission, in implementing Public Utilities Code Section 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, including price, is confidential for three years from the date the contract states that energy

¹¹ See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

¹² See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

deliveries begin, except contracts between IOUs and their affiliates, which are public.

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.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS AND CONCLUSIONS

1. The Amended PPA is consistent with PG&E's 2011 RPS Procurement Plan approved by D.11-04-030.
2. PG&E adequately examined the reasonableness of the Amended PPA utilizing its LCBF methodology during the time the PPA was being negotiated and executed.
3. The Commission finds that generation from the Rice Solar project adequately fits the portfolio need requirements of PG&E's RPS portfolio.
4. The price and net market value of the Amended PPA are reasonable compared to shortlisted projects resulting from PG&E's 2009 RPS Solicitation.
5. The Amended PPA includes 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.
6. Pursuant to D.02-08-071, PG&E complied with the Commission's rules for involving the Procurement Review Group.

7. Because the term of the Amended PPA is greater than 10 years in length, the PPA may be construed as counting toward the minimum quantity requirements that the Commission established in D.12-06-038.
8. The Amended PPA is not covered procurement subject to EPS because the generating facility has a forecast capacity of less than 60 percent, and, therefore, is not baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules.
9. The protests of DRA and CARE should be denied.
10. Procurement pursuant to the Amended PPA is procurement from an eligible renewable energy resource for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.11-12-020 and D.11-12-052, or other applicable law.
11. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under the Amended PPA to count towards an RPS compliance obligation. Nor shall that finding absolve PG&E of its obligation to enforce compliance with the Amended PPA.
12. 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.
13. The Amended PPA should be approved in its entirety.
14. Advice Letter 3989-E should be approved effective today without modification.
15. Payments made by PG&E under the Amended PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.

THEREFORE IT IS ORDERED THAT:

1. The power purchase agreement between Pacific Gas and Electric Company and Rice Solar Energy, LLC as proposed in Advice Letter 3989-E is approved without modifications.
2. The protests of the Division of Ratepayer Advocates and Californians for Renewable Energy are denied.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on January 24, 2013; the following Commissioners voting favorably thereon:

Paul Clanon
Executive Director

Confidential Appendix A

Price/Value Reasonableness, Need and Viability

Price/Value Reasonableness

When making a determination of whether a project is more economically beneficial to ratepayers compared to other projects, the focus should be on the net market value of a project versus its price. The net market value of a project reflects the premium paid for a renewable project over the alternative of acquiring system power and capacity in the wholesale market over the term of the PPA. Conversely, when comparing the PPA price to similar contracts, one only considers the cost of energy delivery from a renewable facility without taking into consideration the relative cost of system generation and capacity that can be acquired to fulfill system demand. Therefore, the net market value is a more important and informative metric when comparing the economic value of a renewable project against comparable projects. IOUs rank projects first and foremost for shortlisting using the net market value with price only as a secondary consideration. Energy Division also uses the net market value calculation as the primary determinant of market competitiveness for benchmarking purposes.

The price and value of the Amended PPA is compared to projects offered to PG&E resulting from its 2009 RPS Solicitation. The Original PPA was executed in early 2010 and the Amended PPA was submitted to the Commission in early 2012. Because the core characteristics of the Rice Solar project did not change or materially impact the value of the project since the Original PPA was executed, Energy Division evaluated the Amended PPA against the original set of cohorts from PG&E's 2009 RPS Solicitation. If the core characteristics and the value of the Rice Solar project changed materially since the execution of the Original PPA then Energy Division would have compared the Amended PPA to shortlisted projects resulting from PG&E's 2011 RPS Solicitation and recently executed contracts approved by the CPUC.

As can be seen in Table 1, the bilaterally negotiated Rice Solar project would have been shortlisted in PG&E's 2009 RPS solicitation based on a comparable net market value calculation that falls in the middle of the range of bids. In addition, while the price of the project falls at the high end of the range, it is still comparable to many of the bids that were shortlisted.

Table 1: Comparable Shortlisted Projects from PG&E's 2009 RPS Solicitation Sorted by Net Market Value

Project	Technology	Adjusted Price (\$/MWh)	Term (Years)	Market Value (\$/MWh)
Antelope Valley PV III	Solar PV	\$120.26	25	\$20.05
Pacific Wind	Wind	\$91.32	N/A	\$4.85
Mayacamas	Wind	\$108.11	25	-\$8.09
North Star Solar 1	Solar PV	\$184.50	20	-\$15.69
Weldon Solar	Solar PV	\$150.79	25	-\$22.64
Sand Ridge Wind Project	Wind	\$109.16	20	-\$25.58
Sweetwater Solar Facility	Solar PV	\$192.34	25	-\$30.46
Antelope Ridge Wind Farm	Wind	\$100.32	15	\$32.30
Longview Solar PV 1	Solar PV	\$158.92	25	\$32.99
Arlington Valley Solar Energy 1	Solar PV	\$138.15	25	-\$35.73
CCDLP CORAM BRODIE	Wind	\$117.82	20	-\$36.64
Summit Ridge 1	Wind	-\$90.20	20	-\$37.33
Bundled	Wind	\$89.55	2	-\$37.73
Atwell Island West	Solar PV	\$192.00	25	-\$45.29
White River West	Solar PV	\$168.52	25	-\$45.69
FRV Vega Solar PV	Solar PV	\$168.52	25	-\$46.70
Blythe Solar Tower	Solar Thermal	\$177.18	25	-\$48.08
Desert Claim	Wind	\$96.18	N/A	-\$52.03
Geysers Power (Units 25 & 27)	Geothermal	\$156.60	20	-\$52.26
Rice Solar	Solar Thermal	\$187.85	25	-\$53.01
Short-term Wind PPA	Wind	\$108.88	5	-\$53.21
Sunshine Three Solar Project	Solar PV	\$171.09	20	-\$53.72
Sunshine Five Solar Project	Solar PV	\$170.24	20	-\$53.97
PV-12 (Monte Vista Solar Array)	Solar PV	\$155.21	25	-\$54.07
PV-03 (Antelope 1 Solar Array)	Solar PV	\$158.04	25	-\$55.73
Coalinga Solar Project	Solar PV	\$192.56	30	-\$57.39
Rosamond Solar	Solar PV	\$156.10	20	-\$57.49
Fort Mojave Solar Project	Solar PV	\$179.05	25	-\$65.00
Salton Sea PV	Solar PV	\$157.35	20	-\$68.03
PacPower South Avenue Solar Farm	Solar PV	\$190.05	20	-\$70.58

Portfolio Need

As can be seen in Table 2, PG&E's need for incremental RPS generation begins in 2018, assuming a project failure rate of 40%. PG&E's portfolio need beginning in 2018 coincides with the Rice Solar Project's GCOD of June 1, 2016.

Table 2: PG&E's Compliance Position Under a 60% Success Planning Scenario

RPS Requirement	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Estimated RPS Compliance Period Position (%)	20.9% average			23.3% average			30% average			33%	32%	
Estimated Annual Position (%)	19.3%	19.9%	23.3%	26.3%	27.9%	28.0%	27.6%	25.4%	24.4%	23.3%	22.7%	19.7%
Annual Surplus/(Deficit) (GWh)	(810)	(58)	2,563	3,568	3,572	2,339	487	(2,846)	(5,257)	(7,813)	(8,356)	(10,813)
Compliance Period Surplus/(Deficit) (GWh)	1,994			9,479			(15,429)			(8,356)	(10,813)	
Volumes (Banked)/Withdrawn from Bank	0*			(9,479)			9,479			0	0	
Revised Surplus/(Deficit)	1,994			0			(5,950)			(8,356)	(10,813)	
RPS Position after bank applied (%)	20.9%			23.3%			28.1%			22.7%	19.7%	
Cumulative Banked Volumes (GWh)	0			9,479			0			0	0	

* Volumes from short-term contracts exceed the total surplus in the first compliance period, therefore PG&E expects no surplus volumes will be bankable

Rice Solar Project Viability

Energy Division submitted a data request to PG&E on November 5, 2012 to update the project milestone metrics for the Rice Solar project. Based on the information PG&E provided in response to this request, the Rice Solar project has achieved many of its major milestones.

First, the developer, SolarReserve, is nearing the successful completion of its 110 MW Crescent Dunes Solar Energy project in Nevada and is believed to be on time and on budget. A major concern of the IE was the lack of project development experience with the technology that SolarReserve will be utilizing for the Rice Solar Project. The near completion of the Crescent Dunes Solar Energy Project legitimizes the developer's ability to construct a new facility of similar technology vintage on time and on budget.

Second, PG&E states that all of the Rice Solar project's major permits are now acquired and SolarReserve is in final negotiations with WAPA for the facility's Large Generator Interconnection Agreement (LGIA). Furthermore, the project has received a full Project Performance Wrap from ACS Cobra which is backed up with applicable warranties and guarantees on equipment supplied by UTC.

Lastly, SolarReserve has commenced project financing discussions and PG&E believes the financing and construction schedule are on track to meet the ITC deadline for COD by the end of 2016.

Confidential Appendix B

Independent Evaluator Conclusions and Recommendations

Discussion of Merit for Approval

There are three reasons why Arroyo has reservations about the amended contract. For one, it exposes ratepayers to potential costs such as basis differences between [Redacted] and SP-15 that would not have been a concern with the original contract (assuming that the project interconnected to the CAISO).

A second source of concern about the terms of the amended contract is the special treatment that PG&E is offering to Rice Solar regarding allocations of Resource Adequacy import capability at [Redacted]. The amended contract obligates PG&E to pursue an allocation of 150 MW of import capability (or the maximum of what it is permitted to request, if that is less) on behalf of the Rice Solar project in an effort to enable the import of Rice Solar's RA benefits. Import capability at [Redacted] is a scarce resource, though essentially "free" to those utilities that succeed in obtaining such an allocation. PG&E's allocation of this resource could be devoted to more valuable uses than importing Rice Solar's RA benefits, such as facilitating delivery at Mead of power from less expensive and more viable projects.

Arroyo notes that among the Offers to PG&E's 2011 RPS solicitation, at least six proposals were for new out-of-CAISO facilities that proposed to deliver their output into the CAISO at Mead (some sited in California or in California balancing authority areas, others outside the state). Five of these proposals had levelized pre-TOD contract prices lower than the amended Rice Solar PPA, in the range of \$106 to \$139/MWh. Four of those five were scored by the PG&E team as higher in viability than Arroyo's estimate of a Calculator score of 56.

The total import capability into the CAISO at Mead is not thousands and thousands of megawatts but rather hundreds. By agreeing to lock in 150 MW of its potential allocation of RA import capability at [Redacted], PG&E is choosing to dedicate a scarce resource to facilitate deliveries from a now unattractively priced PPA, and limiting its potential to contract in the future with direct competitors of Rice Solar's that are similarly situated outside the CAISO but whose projects are more attractively priced, higher-valued, and more viable. Arroyo's opinion is that this is an unwise use of a scarce resource. Arroyo would have preferred a version of the amended contract that incorporated PG&E's proposed but rejected language requiring proration of Rice Solar's share of allocated import capacity at Mead. This would have better protected ratepayers'

interests than the executed amended contract that dedicates 150 MW to Rice Solar.

Thirdly, the Rice Solar PPA is no longer competitive with market alternatives for long-term contracts with RPS-eligible projects, based on PG&E's LCBF valuation of recent bilateral proposals. The shift in the renewables market has reframed a PPA that was fair to middling in valuation in 2009 as an unattractively valued one in 2011 – a bottom-quartile valuation at full price, and little likelihood that the lower EIC price will apply. Similarly, the pricing of the Rice Solar contract, which was above median compared to 2009 solicitation offers, would now rank it among the very highest-priced offers in the 2011 RPS RFO.¹³ About 194 of the Offers submitted to PG&E in its 2011 solicitation had both higher net value (based on the LCBF methodology) and higher project viability (based on PG&E's Calculator scores) than the Rice Solar contract does; most of those Offers were rejected for insufficient value or viability.

Arroyo ranks the amended Rice Solar PPA as high in price, low to moderate in value, and low in project viability.

As a matter of opinion, Arroyo finds it difficult to conclude from these findings that the Rice Solar contract amendment merits CPUC approval. Based on Arroyo's subjective value judgments, this IE would find it difficult to justify an extra \$700 million or so of ratepayer costs (compared to lower-priority 2011 shortlisted Offers that now seem unlikely to win contracts from PG&E) based on achieving less intermittency than wind or photovoltaic generators or on demonstrating at large scale an innovative technology. This seems to Arroyo to be a rather high price to pay to capture the world's biggest solar tower with molten salt storage for California.

Also, Arroyo's opinion is that PG&E's concession to Rice Solar to devote scarce megawatts of Redact import capability to this uncompetitive contract will likely turn out to be unfair to competing developers in the future, if out-of-CAISO projects (such as the ones submitted to PG&E in the 2011 RFO that offered better value and viability than Rice Solar does) will need allocations of Mead import

¹³ The contract price for Rice Solar is also higher than all but one of the eleven proposed solar thermal projects offered to PG&E in the 2011 RPS solicitation. PG&E scored four of those lower-priced Offers as more viable than Rice using the Project Viability Calculator.

capability as well. It was SolarReserve's discretionary choice to switch the point of interconnection to outside the CAISO, an action whose consequences include higher risk exposure for ratepayers and PG&E's unfortunate concession to reward Rice Solar with dedicated Redact import capability. Ratepayers and competing developers would have been better off with Rice Solar delivering at the original CAISO interconnection point.

Furthermore, to continue with the Rice Solar contract, amended to increase risks to ratepayers, would seem to be unfair to the many developers who submitted Offers to PG&E's 2011 solicitation for projects with higher viability (as scored by PG&E), higher value, and lower price than the Rice Solar PPA. One could argue that Rice Solar already has a contract with PG&E and the other, lower-priced projects do not, but in fact some of those rejected Offers were for existing and operating projects already under contract with PG&E.

Arroyo understands that utility executives, policymakers, and other observers might choose to place a greater weight in their own value judgments on the innovative technology that Rice Solar would employ at a first-of-its-kind scale, as opposed to an emphasis on risk-shifting to ratepayers from Rice Solar and the fairness with which competitors are treated. In rendering an independent opinion about the merits of the case for this contract amendment, Arroyo has chosen to place little emphasis on the benefits of technology diversity in the utility's resource mix and on the relative firmness of Rice Solar's output compared to photovoltaic and wind generators. Other observers who have different priorities regarding ratepayer risks, fairness, and technology diversity and investment could easily come to a different judgment about the merits of the amended Rice Solar contract.

Confidential Appendix C

Amended and Restated Contract Terms and Conditions

Term/Condition	RPS Contract
Type of Purchase (Renewable, renewable/conventional hybrid, etc.)	Renewable, concentrating solar thermal power (CSP)
Utility Ownership Option	Not Applicable
Conditions Precedent and Date Triggers	(i) This Agreement has been duly executed by the authorized representatives of each of Buyer and Seller; (ii) CPUC Approval has been obtained; (iii) Buyer receives a final and non-appealable order of the CPUC that finds that Buyer’s entry into this Agreement is reasonable and that payments to be made by Buyer hereunder are recoverable in rates; (iv) Buyer receives from Seller the documentation listed in Appendix XIII, (Seller Documentation Condition Precedent)
Average Actual Price (\$/MWh)	\$145.98/MWh (pre-TOD adjustments). \$187.85/MWh (post-TOD adjustments ¹⁴) PG&E’s 2009 Time of Delivery (“TOD”) factors will apply to the contract price under the Amended PPA.
Product Type	As-Available
Key Contract Dates (initial startup deadline, commercial operation deadline, PTC deadlines, etc.)	Financing Milestone Date (“FMD”): Project must achieve financial close by 270 days after CPUC approval of the Amended PPA Guaranteed Construction Start Date (“GCSD”): 30 days after Financing Milestone Date Guaranteed Commercial Operation Date (“GCOD”):12/1/2015 (Amended to June 1, 2016) The GCSD may be extended due to Force Majeure up to 360 days. The GCOD is subject to the delays applicable to the Guaranteed Construction Start Date. The GCOD may be further extended for additional Force Majeure occurring after construction start up to 360 days. Rice Solar may pay daily delay damages to PG&E for a period of up to 360 days, in order to avoid default, for failure to meet the GCOD after the permitted extensions described above. Reference: Section 3.9(c)

¹⁴ The “Levelized TOD-Adjusted Energy Cost \$/MWh” figure shown in this table differs from the “Levelized Final Contract Price (\$/MWh) over the term of the contract” figure included in the Above Market Funds (“AMF”) calculator. In the AMF Calculator, the discount rate is applied on an annual basis. In this analysis, however, PG&E applies the discount rate on a monthly basis. The “Levelized TOD-Adjusted Energy Cost \$/MWh” in this table is calculated using the 2009 TOD Factors. See “Application of TODs” section below.

Firming/Shaping Requirements	Not applicable
Expected Payments	\$1,004,459,042 (Net Present Value (“NPV”) calculation in above-market funds (“AMFs”) calculator) \$2,112,224,793 (Calculation in nominal dollars from AMF calculator)
Scheduling Coordinator	PG&E Reference: Section 3.4(c)

<p>Allocation of CAISO (or other control area) Charges</p>	<p>(a) Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer as a result of Seller's actions. Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties incurred by Seller as a result of Buyer's actions, including Buyer's Curtailment Periods. Seller shall assume all liability and reimburse Buyer, if applicable, for any and all WAPA Penalties assessed in connection with this Agreement; provided that such costs are not the result of Buyer's actions.</p> <p>(b) Buyer shall be responsible for all costs and charges assessed by the CAISO with respect to Scheduling and imbalances except as provided in Section 4.5(c) below. Seller and Buyer shall cooperate to minimize such charges and imbalances to the extent possible. Seller shall use commercially reasonable efforts to monitor imbalances and shall promptly notify Buyer as soon as possible after it becomes aware of any material imbalance that is occurring or has occurred. Such notification shall not alter Seller's and Buyer's respective responsibilities for payment for imbalance and congestion charges and CAISO Penalties under this Agreement. Throughout the Delivery Term, Buyer shall be entitled to all IFM Load Uplift Obligation credits (as defined or required for MRTU under the CAISO Tariff) associated with the Energy generated from the Project.</p> <p>(c) Forecasting Penalties.</p> <p>(i) In the event Seller does not in a given hour either (A) provide the access and information required in Section 3.1(l)(i); (B) comply with the installation, maintenance and repair requirements of Section 3.1(l)(iv); or (C) provide the Operating Model (including supplements or modifications) or forecast of Available Capacity required in Section 3.4(c)(iii); and (in addition to (A), (B) or (C)), the sum of Energy Deviations for each of the six Settlement Intervals in the given hour exceeded the Performance Tolerance Band defined below, then Seller will be responsible for Forecasting Penalties as set forth below.</p> <p>(ii) The Performance Tolerance Band is three percent (3%) multiplied by Contract Capacity multiplied by one (1) hour.</p> <p>(iii) Forecasting Penalties. The Forecasting Penalty shall be equal to one hundred fifty percent (150%) of the Contract Price for each MWh of Energy Deviation outside the Performance Tolerance Band, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 4.5(c)(i). Settlement of Forecasting Penalties shall occur as set forth in Section 6.1 of this Agreement.</p> <p>Reference: Section 3.4(c) and 4.5.</p>
<p>Allocation of Congestion Risk</p>	<p>PG&E is responsible for managing congestion risk from the Delivery Point.</p>
<p>Project Development Security</p>	<p>\$50,000/MW of capacity; \$7.5 million total</p> <p>Reference: Section 8.4(a)</p>

Daily Delay Damages	<p>Daily Delay Damages: \$62,500 (Project Development Security divided by 120)</p> <p>Reference: Section 1.54</p>
Seller-Required Performance	<p>Seller must deliver renewable energy according to the terms of the PPA, which includes Guaranteed Energy Production (“GEP”). GEP provisions are discussed below under “Energy Delivery Requirements.”</p> <p>Reference: Section 3.1(e)</p>
Seller Performance Assurances (calculation methodology, form of Performance Assurance and amount)	<p>All performance assurance to be posted by Rice in the form of cash or letter of credit.</p> <p>\$2,250,000 from five (5) business days following execution of the Original PPA until thirty (30) days following CPUC Approval of the Original PPA.</p> <p>\$4,500,000 to be posted from thirty (30) days following the date on which all Conditions Precedent of the Original PPA are met, including CPUC Approval.</p> <p>\$7,500,000 to be posted from a date not later than the earlier of: (I) five (5) days following the Effective Date of this Amended PPA, or (II) the Construction Start Date; and continuing until Seller posts Delivery Term Security</p> <p>Delivery Term Security in the amount of \$50,000,000 from the Commercial Operation Date until the end of the Term. Delivery Term Security can be drawn down to \$40,000,000 to pay RA Damages.</p> <p>Reference: Section 8.4(a)</p>
Availability Guarantees	Not Applicable.
Energy Delivery Requirements	<p>Beginning with the second (2nd) and third (3rd) Contract Year and throughout the Delivery Term, the Project shall be required to deliver to no less than 150% of the Contract Quantity (Guaranteed Energy Production or “GEP”) over each two consecutive Contract Years.</p> <p>In the event the Project fails to meet the GEP, they may elect to cure the under delivery by producing at least 90 percent of the Contract Quantity in the year immediately following the performance period for which GEP was not met.</p> <p>Reference Section 3.1(e)</p>
Liquidated Damages / Penalties for Failure to Perform	N/A
Buyer (PG&E) Curtailment	<p>Due to the operational constraints of the CSP facility, Buyer (PG&E) Curtailment Periods are limited to no more than 250 hours cumulatively per Contract Year with 10 minute minimum down time for Buyer (PG&E) Curtailment Orders.</p> <p>Reference: Section 3.1(o) and Appendix XVII.</p>

Force Majeure Provisions	<p>Force Majeure Termination Event.</p> <p>(a) Force Majeure Failure. Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of the following:</p> <p>(i) if after the Commercial Operation Date, the Project fails to deliver at least forty percent (40%) of the Contract Quantity to the Delivery Point for a period of twelve (12) consecutive rolling months following a Force Majeure event that materially and adversely impacts the Project (“Force Majeure Project Failure”); provided that:</p> <p>(A) if the Project may be capable of resuming normal production, then Seller shall be entitled to an additional period of time (not to exceed six (6) months) to remedy the Force Majeure if within forty-five (45) days of receipt of Notice from Buyer that a Force Majeure Project Failure has occurred, Seller presents Buyer with a plan for mitigation of the effect of the Force Majeure which plan is commercially reasonable and satisfactory to Buyer, as evidenced by Buyer’s written acknowledgement of such plan, and Seller diligently pursues such mitigation plan throughout said additional period; or</p> <p>(B) if the Project is destroyed or rendered inoperable by a Force Majeure caused by a catastrophic natural disaster, upon Buyer’s written request to Seller, Seller shall have not more than ninety (90) days to retain an independent, third party engineer to determine whether the Project is capable of being repaired or replaced within twenty-four (24) additional months and provide Buyer a copy of the engineer’s report, at no cost to Buyer; provided that if such engineer’s report concludes that the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the period deemed necessary by the engineer’s report (not to exceed twenty-four (24) months), after which time, Buyer may terminate unless the Project has been repaired or replaced, as applicable, and the Seller has resumed and is satisfying its performance obligations under this Agreement.</p>
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Force Majeure Provisions	<p>(ii) if prior to the Construction Start Date or Commercial Operation Date, as applicable, Seller is unable, due solely to a Force Majeure event, to achieve the Construction Start Date or place the Project into Commercial Operation by either of the Guaranteed Milestones, after applicable extensions or cure periods have run, as set forth in Sections 3.9(c)(iii) and (iv) (in either case a “Force Majeure Development Failure”); provided that in the event of a Force Majeure caused by a catastrophic natural disaster, upon Buyer’s written request to Seller, Seller shall have not more than ninety (90) days to retain an independent, third party engineer to determine whether the Project is capable of being repaired or replaced within twenty-four (24) additional months and provide Buyer a copy of the engineer’s report, at no cost to Buyer; provided further that if such engineer’s report concludes that the Project is capable of being repaired or replaced within such twenty-four (24) months period and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the period deemed necessary by the engineer’s report (not to exceed twenty-four (24) months), after which time, Buyer may terminate unless the Project has been repaired or replaced, as applicable, and the Seller has resumed and is satisfying its performance obligations under this Agreement.</p> <p>(b) Right of First Offer.</p> <p>(i) If Buyer exercises its termination right in connection with the Force Majeure Failure, then for a period of three (3) years from the date on which Buyer Notifies Seller of such termination (“Exclusivity Period”), neither Seller, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Project to any third party, unless Seller first offers, in writing, to sell to Buyer such Products from the Project on the same terms and conditions as this Agreement, subject to permitted modifications identified in Section 11.1(b)(ii) below, (the “First Offer”) and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.</p> <p>(ii) If Buyer accepts the First Offer, Buyer shall Notify Seller within thirty (30) days of receipt of the First Offer subject to Buyer’s management approval and CPUC Approval (“Buyer’s Notice”), and then the Parties shall have not more than ninety (90) days from the date of Buyer’s Notice to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, subject to CPUC Approval, if necessary; provided that the Contract Price may only be increased to reflect Seller’s documented incremental costs in overcoming</p>
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<p>Force Majeure Provisions</p>	<p>the Force Majeure event. (iii) If Buyer rejects or fails to accept Seller’s First Offer within thirty (30) days of receipt of such offer, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Project to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller (A) summarizing the material terms and conditions of such agreement and (B) certifying that the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. Seller’s certificate shall be in substantially the form of Appendix IX. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the Project without first offering to sell or otherwise transfer such Products to Buyer on such more favorable terms and conditions (the “Revised Offer”) in accordance with subpart (ii) above. If within thirty (30) days of receipt of Seller’s Revised Offer the Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from the Project to any third party on such terms and conditions as set forth in the certificate.</p> <p>Reference: Section 11.1</p>
<p>No Fault Termination</p>	<p>See Conditions Precedent above</p>
<p>Seller’s Termination Rights</p>	<p>This agreement is void upon failure to obtain CPUC Approval within 240 days following the filing date of this agreement with the CPUC.</p> <p>Reference: Section 2.4(b)</p>
<p>Utility’s Termination Rights</p>	<p>See Force Majeure Provisions above.</p>

<p>Right of First Refusal or Rights of First Offer</p>	<p>If Rice Solar defaults under the PPA and PG&E terminates the PPA prior to the Commercial Operation Date, PG&E will have a Right of First Offer (“ROFO”) on any energy from any Rice Solar or affiliate generating facility located within a two-mile radius of the Project or from any facility using this Project’s interconnection queue position. The ROFO would be in effect for three years following the date of termination and would require the same terms and conditions as this agreement, at the lower of the contract price for this PPA or the price offered to a third-party.</p> <p>PG&E has a ROFO following a termination of the PPA due to a prolonged event of Force Majeure per the Standard 2009 form PPA.</p> <p>Reference: Section 5.9</p>
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