

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID # 12838
RESOLUTION E-4649
April 10, 2014

REDACTED

R E S O L U T I O N

Resolution E-4649. Pacific Gas and Electric Company requests approval of three agreements for the procurement of renewable energy credits with Sterling Planet, LLC, Iberdrola Renewables, LLC, and NextEra Energy Power, LLC.

PROPOSED OUTCOME: This Resolution approves cost recovery for Pacific Gas and Electric Company's agreements for renewable energy credits with Sterling Planet, LLC, Iberdrola Renewables, LLC, and NextEra Energy Power, LLC.

SAFETY CONSIDERATIONS: The agreements approved by this resolution will not alter PG&E's existing agreements or any facility operations. Because these sales agreements do not require a change in PG&E's facility operations, there are no incremental safety implications associated with approval of these agreements beyond the status quo.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letters (ALs) 4299-E, 4300-E, and 4301-E filed on October 10, 2013.

SUMMARY

Pacific Gas and Electric Company's (PG&E) agreements for the purchase of renewable energy credits (RECs) from Sterling Planet, LLC (Sterling Planet), Iberdrola Renewables, LLC (Iberdrola), and NextEra Energy Power, LLC (NextEra) are approved.

PG&E filed Advice Letter ALs 4299-E, 4300-E, and 4301-E on October 10, 2013 requesting California Public Utilities Commission (Commission) approval of three purchase and sale agreements (PSAs) to purchase RECs from facilities certified by the California Energy Commission (CEC) as eligible renewable resources (ERRs). Under the terms of the PSAs, PG&E would purchase portfolio content category¹ (PCC) 3 RECs from facilities owned by Sterling Planet, Iberdrola, and NextEra (the sellers). PG&E procured the REC-only PSA with Sterling Planet through its 2012 Renewables Portfolio Standard (RPS) Solicitation (RFO) and procured the other 2 REC-only PSAs with NextEra and Iberdrola through bilateral negotiations. Under the terms of the PSAs, the sellers would transfer the RECs associated with the RPS-eligible energy generated at their RPS-eligible facilities to PG&E's Western Renewable Energy Generation Information System (WREGIS) account.

The PSAs would require the sellers to transfer to PG&E the RECs associated with 1,094,500 megawatt-hours (MWh) of generation (1,094,500 RECs) from 2012 through 2022.² The PSAs are front-loaded with approximately 90% of the RECs being delivered in Compliance Period 2011-2013 (CP 1).³ The 10-year structure of the PSAs allow PG&E to bank the RECs in the PSAs as excess procurement that can be used for future RPS compliance.

The PSAs with the sellers qualify as REC-only contracts as defined by Decision (D.) 10-03-021, as modified by D.11-01-025, based on the delivery structure proposed by PG&E. This resolution approves the REC PSAs between PG&E and Sterling Planet, PG&E and Iberdrola, and PG&E and NextEra.

¹ D.11-12-052 implemented RPS portfolio content categories established in Public Utilities Code § 399.16 (b), pursuant to SB 2 (1X). PCC 1 procurement is procurement of energy and RECs delivered to a California balancing authority (CBA) without substituting electricity from another source. PCC 2 procurement is procurement of energy and RECs that cannot be delivered to a CBA without substituting electricity from another source. PCC 3 procurement is procurement of unbundled RECs only, or RECs that do not meet the conditions for PCC 1 and PCC 2.

² One REC represents the renewable attributes associate with one MWh of eligible renewable generation.

³ D.11-12-020 established three multi-year compliance periods (CP) as directed by SB 2 (1X) (CP1: 2011-13, CP2: 2014-16, CP3: 2017-20).

The following table provides a summary of Sterling Planet, Iberdrola, and NextEra PSAs:

Counter-Party	Resource Type	Project Location	Annual Volume of RECs	Total Volume of RECs	Term (Years)
Sterling Planet, LLC	Various	Any CEC-certified eligible renewable energy resource	Year 1: 455,000 Years 2-10: 5,000/year	500,000	10
Iberdrola Renewables, LLC			Year 1: 136,000 Years 2-10: 1,500/year	149,500	
NextEra Energy Power, LLC			Year 1: 400,000 Years 2-10: 5,000/year	445,000	

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).⁴ The RPS program is codified in Public Utilities Code Sections 399.11-399.31.⁵ Under SB 2 (1X), the RPS program administered by the Commission requires each retail seller to increase its total procurement of eligible renewable energy resources so that 33 percent of retail sales are served by eligible renewable energy resources no later than December 31, 2020.⁶

Additional background information about the Commission’s RPS Program, including links to relevant laws and Commission decisions, is available at

⁴ 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).

⁵ All further references to sections refer to Public Utilities Code unless otherwise specified.

⁶ Decision (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).

<http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and
<http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

NOTICE

Notice of Advice Letters 4299-E, 4300-E, and 4301-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

ALs 4299-E, 4300-E, and 4301-E were timely protested by the Office of Ratepayer Advocates (ORA) and jointly by The Utility Reform Network (TURN) and the Coalition of California Utility Employees (CCUE) on October 30, 2013. PG&E responded to these protests on November 6, 2013.

ORA protested ALs 4299-E, 4300-E, and 4301-E and recommends that the Commission reject the ALs for the following reasons: 1) PG&E has not adequately demonstrated a need to procure additional RECs given its projection to already have a large amount of surplus RECs; 2) PG&E has not demonstrated that the PSAs will minimize costs and maximize ratepayer value; and 3) the prices of the 3 REC PSAs are too high.

PG&E responded by stating that the Commission should reject ORA's protest and approve ALs 4299-E, 4300-E, and 4301-E because: 1) PG&E wants to maintain a robust bank to minimize RPS compliance shortfalls due to unanticipated project failures, potential curtailments, and short-term / annual production variability; 2) the 3 PSAs are a more cost-effective option than procuring long-term bundled contracts on a net present value basis and offer banking attributes that other short-term deals may not offer; and 3) PG&E asserts it procured the lowest-cost PSAs in an illiquid market with very few offers for PG&E to choose from.

TURN and CCUE protested ALs 4299-E, 4300-E, and 4301-E and recommend that the Commission reject the ALs for the following reasons: 1) the 3 REC PSAs provide inferior value when compared against other procurement options from PG&E's 2012 RPS RFO; 2) PG&E has no identified RPS compliance need for PCC 3 RECs in CP 1 and Compliance Period 2014-2016 (CP 2) and should not procure the PCC 3 RECs for the purpose of stockpiling additional surplus RECs; and 3)

the PSAs are functionally short-term agreements designed to circumvent the statutory banking restrictions of SB 2 (1X).

PG&E responded by stating that the Commission should reject the joint TURN and CUE protest and approve ALs 4299-E, 4300-E, and 4301-E because: 1) it is inaccurate to compare PCC 3 RECs against PCC 1 and 2 offers and the three REC PSAs compare favorably against other offers from the 2012 RPS RFO for net market value; 2) PG&E's procurement of additional PCC 3 RECs allows PG&E to avoid the need to enter into agreements with unfavorable prices in the case that PG&E needs to meet unplanned RPS compliance shortfalls; 3) PG&E asserts the levelized cost of the three REC PSAs are cheaper than the implied REC price of potential future long-term RPS purchases; and 4) the PSAs comply with the statute regarding banking under SB 2 (1X).

DISCUSSION

PG&E requests Commission approval of agreements with Sterling Planet, Iberdrola, and NextEra for the purchase of renewable energy credits, also known as green attributes.

PG&E filed ALs 4299-E, 4300-E, and 4301-E on October 10, 2013 requesting Commission approval of three PSAs to purchase RECs from facilities certified by the CEC as ERRs. Under the terms of the PSAs, PG&E would purchase PCC 3 RECs from facilities owned by the sellers. PG&E procured the PSA with Sterling Planet through its 2012 RPS RFO and procured the other 2 PSAs with NextEra and Iberdrola through bilateral negotiations. Under the terms of the PSAs, the sellers would transfer the RECs associated with the RPS-eligible energy generated at their RPS-eligible facilities to PG&E's WREGIS account.

The PSAs would require the sellers to transfer to PG&E the RECs associated with 1,094,500 MWh of generation (1,094,500 RECs) from 2012 through 2022. The PSAs are front-loaded with approximately 90% of the RECs being delivered in CP 1. The 10-year structure of the PSAs allows PG&E to bank the RECs in the PSAs as excess procurement that can be used for future RPS compliance.

For a more detailed description of PG&E's REC PSAs with the sellers, see Confidential Appendix C of this resolution.

PG&E requested that the Commission issue a resolution for the filed Advice Letters that contains the following findings:

1. Approves the three Purchase and Sales Agreements between PG&E and Sterling Planet, PG&E and Iberdrola, and PG&E and NextEra in their entirety, including payments to be made by PG&E pursuant to the Purchase and Sales Agreements, subject to the Commission's review of PG&E's administration of the Purchase and Sales Agreements.
2. Finds that any procurement pursuant to the Purchase and Sales Agreements 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.03-06-071 and D.06-10-050, or other applicable law.
3. Finds that all procurement and administrative costs, as provided by Public Utilities Code section 399.14(g), associated with the Purchase and Sales Agreements shall be recovered in rates.
4. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:
 - a. The Purchase and Sales Agreements are consistent with PG&E's 2012 RPS procurement plan.
 - b. The terms of the Purchase and Sales Agreements are reasonable.
5. Adopts the following finding of fact and conclusion of law in support of cost recovery for the Purchase and Sales Agreements:
 - a. The utility's costs under the Purchase and Sales Agreements shall be recovered through PG&E's Energy Resource Recovery Account.
 - b. Any stranded costs that may arise from the Purchase and Sales Agreements are subject to the provisions of D.04-12-048 that authorize recovery of stranded renewables procurement costs over the life of the contracts. 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 Emissions Performance Standard adopted in R.06-04-009:

- a. The Purchase and Sales Agreements are not covered procurement subject to the Emissions Performance Standard because they do not involve procurement of electric energy.
7. Adopts a finding of fact and conclusion of law that deliveries from the Purchase and Sales Agreements shall be categorized as procurement under the portfolio content category specified in Section 399.16(b)(3), subject to the Commission's after-the-fact verification that all applicable criteria have been met.
8. Adopts a finding of fact and conclusion of law that the Purchase and Sales Agreements are not short term contracts subject to Conclusion of Law 27 of D.12-06-038.

Energy Division Evaluated the REC Agreements on the Following Grounds:

- Consistency with Bilateral Contracting Rules
- Consistency with RPS Standard Terms and Conditions
- Consistency with PG&E's 2012 RPS Procurement Plan
- Consistency with PG&E's Least-Cost, Best-Fit Requirements
- RPS Portfolio Need
- Price Reasonableness
- Consistency with Portfolio Content Categories Requirements
- Consistency with Long-Term Contracting Requirement
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard
- Procurement Review Group Participation
- Independent Evaluator (IE) Review
- Project Viability
- Safety Considerations

Consistency with Bilateral Contracting Rules

The PSAs between PG&E and Iberdrola and PG&E and NextEra were executed as a result of bilateral negotiations. PG&E entered into bilateral negotiations given the lack of PCC 3 REC offers it received in its 2012 RPS RFO. PG&E chose

to seek PCC 3 REC offers through bilateral negotiations in order to see if lower-priced offers were available and to test if PCC 3 REC offers received in its 2012 RPS RFO were reasonably priced.

The Commission developed guidelines pursuant to which utilities may enter into bilateral RPS contracts. In D.03-06-071, the Commission authorized entry into bilateral RPS contracts provided that such contracts did not require Public Goods Charge funds and provided that they were “prudent.” In D.06-10-019, the Commission established additional rules pursuant to which the IOUs could enter into bilateral RPS contracts. PG&E adhered to these bilateral contracting rules because the Iberdrola and NextEra PSAs are longer than one month in duration, the PSAs were filed by advice letter, and the PSAs are reasonably priced as discussed in more detail below.

In D.09-06-050, the Commission also determined that bilateral agreements should be reviewed according to the same processes and standards as projects that come through a solicitation. Accordingly, PG&E attests that the Iberdrola and NextEra PSAs were compared to other similar offers received by PG&E from its 2012 RPS RFO; the proposed PSAs were reviewed by PG&E’s Procurement Review Group (PRG); and an independent evaluator oversaw the negotiation of the PSAs.

The Iberdrola and NextEra PSAs are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.

Consistency with RPS Standard Terms and Conditions

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

The PSAs with Sterling Planet, Iberdrola, and NextEra include all of 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.

Consistency with PG&E's 2012 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.⁷ The Commission must then accept or reject proposed contracts based on their consistency with the utility's approved Plan.

The three REC PSAs were executed on September 25, 2013. At the time the PSAs were executed, the most recent Commission-approved Plan was PG&E's 2012 Plan, which was conditionally approved in D.12-11-016. Pursuant to statute, PG&E's Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.⁸

In its 2012 RPS Plan, PG&E stated that its 2012 RPS procurement goals included requesting bids for long-term (bankable) PCC 3 REC offers and stated that PCC 3 REC offers did not need to start in the 2019-2020 period. PG&E also stated that it was flexible on the start date for PCC 3 offers but likely had more eligible volume during CP 1.⁹ The 3 REC PSAs are long-term PCC 3 offers that are front-loaded with RPS deliveries during CP 1.

The PSAs with Sterling Planet, Iberdrola, and NextEra are consistent with PG&E's 2011 RPS Procurement Plan as approved by D.12-11-016.

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

The LCBF decision directs the utilities to use certain criteria in their bid ranking.¹⁰ 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

⁷ Pub. Util. Code, § 399.14.

⁸ Pub. Util. Code, §399.14(a)(3).

⁹ PG&E's 2012 RPS Procurement Plan at 97.

¹⁰ See D.04-07-029

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, PG&E's process for identifying the LCBF renewable resources focuses on five primary areas: 1) market valuation; 2) portfolio fit; 3) project viability; 4) RPS Goals; and 5) transmission adder. PG&E applied this LCBF evaluation criteria to the proposals received in its 2012 RPS RFO in order to establish a short-list of RPS proposals. PG&E's 2012 RPS RFO was the most recent solicitation at the time that the REC PSAs were negotiated and executed.

PG&E examined the reasonableness of the three REC PSAs using the same LCBF evaluation methodology that it used for RPS offers received in its 2012 RPS RFO. The Sterling Planet PSA was shortlisted since it compared favorably against competing proposals from PG&E's 2012 RPS RFO. Although the Iberdrola and NextEra REC PSAs were negotiated bilaterally, PG&E determined that these PSAs were reasonable and compared favorably against competing proposals that PG&E received in its 2012 RPS RFO and against other bilateral offers negotiated around the same time.

The Commission finds that PG&E adequately examined the reasonableness of the PSAs with Sterling Planet, Iberdrola, and NextEra utilizing its LCBF methodology during the time the agreements were being negotiated and executed.

RPS Portfolio Need

The California RPS Program was established by Senate Bill (SB) 1078 and has been modified by SB 2 (1X), which became effective on December 10, 2011. SB 2 (1X) made significant changes to the RPS Program.¹¹ SB 2 (1X) established new RPS procurement targets such that retail sellers must procure "...from

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

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.”¹²

PG&E’s stated RPS portfolio need falls within CP 3 (2017-2020). PG&E is not procuring the 3 REC PSAs for near-term RPS compliance, but rather to add to PG&E’s surplus RPS procurement (bank) in order to maintain a robust bank to manage a post-2020 RPS portfolio. PG&E is looking to build its bank to: 1) mitigate risks associated with variability in load; 2) protect PG&E from failing to meet its RPS compliance targets due to project failure or delay exceeding forecasts; and 3) eliminate the need at this time to intentionally procure long-term contracts above the 33% target by utilizing the bank to manage the year-to-year variability from performing RPS resources. See Confidential Appendix A for a detailed need analysis on the three REC PSAs. The results of the need analysis demonstrate why PG&E’s procurement of the three REC PSAs to maintain a substantial bank is advantageous to PG&E because it reduces their RPS compliance risk and any associated price pressure that would be created by a short-term procurement need. The Commission denies ORA’s and TURN/CCUE’s protests on this basis.

RECs from the PSAs with Sterling Planet, Iberdrola, and NextEra fit the portfolio need requirements of PG&E’s RPS portfolio.

Price Reasonableness

PG&E compared the value of the three REC PSAs against offers PG&E received in its 2012 RPS RFO. Since the PSAs are REC-only agreements, PG&E couldn’t directly compare the REC-only (PCC 3) PSAs against bundled product (PCC 1 and 2) offers based on their value. The value of a REC-only PSA is not directly comparable to bundled agreements because the sole attribute of the PSA is a REC used for RPS compliance and it does not include the procurement of electric energy. It was difficult to quantify the value of many of the attributes of the REC PSAs such as: 1) the fixed quantity and price of deliveries in the PSA; 2) the front-loading of 90% of the RECs in CP 1; 3) PCC 3 RECs allowing PG&E to diversify its RPS portfolio and decrease RPS compliance costs; 4) the ability to bank the RECs in the 3 PSAs; and 5) RPS compliance products that will not contribute

¹² See § 399.15(b)(2)(B), SB 2 (1X).

incrementally to operational challenges such as renewable integration. Consequently, this resolution does not make a finding regarding the value reasonableness of the three REC PSAs.

Aside from the Sterling Planet PSA, PG&E did not receive any other REC-only, long-term offers in its 2012 RPS RFO and thus it is impossible to make a relevant price comparison for the three REC PSAs. However, PG&E provided a list of broker quotes for REC-only PSAs that were offered to PG&E through discussions with brokers. This list can be seen in confidential appendix A. The three REC PSAs are reasonable when compared against other quotes available to PG&E based on their price. Energy Division Staff also compared the price of the three REC PSAs against REC-only PSAs that have recently been executed by PG&E and approved by the Commission. When compared against this set of cohorts, the three REC PSAs compare favorably based on their price. The Commission denies ORA's and TURN/CCUE's protests on this basis.

In conclusion, the Commission finds that the price of the PSAs with Sterling Planet, Iberdrola, and NextEra is reasonable. Payments made by PG&E pursuant to the PSAs with Sterling Planet, Iberdrola, and NextEra are fully recoverable in rates over the life of the Agreements, subject to Commission review of PG&E's administration of the Agreements.

Consistency with Portfolio Content Category Requirements

In D.11-12-052, the Commission defined and implemented portfolio content categories for the RPS program and authorized the Director of Energy Division to require the investor-owned utilities to provide information regarding the proposed contract's portfolio content category classification in each advice letter seeking Commission approval of an RPS contract. The purpose of the information is to allow the Commission to evaluate the claimed portfolio content category of the proposed RPS contract and the risks and value to ratepayers if the proposed contract ultimately results in renewable energy credits in another portfolio content category.

In ALs 4299-E, 4300-E, and 4301-E, PG&E claims that the product procured pursuant to the three REC PSAs will be classified as PCC 3. To support its claim, PG&E asserts that the three REC PSAs require the sellers to provide only the unbundled renewable energy credits associated with generation from the PSAs.

Consistent with D.11-12-052, PG&E provided information in ALs 4299-E, 4300-E, and 4301-E regarding the expected portfolio content category classification of the

renewable energy credits to be procured pursuant to the PSAs with Sterling Planet, Iberdrola, and NextEra.

In this resolution, the Commission makes no determination regarding the 3 REC PSAs' PCC classification. The RPS contract evaluation process is separate from the RPS compliance and PCC classification process, which requires consideration of several factors based on various showings in a compliance filing. Thus, making a PCC classification determination in this resolution regarding the procurement considered herein is not appropriate. PG&E should incorporate the procurement resulting from the three REC PSAs and all applicable supporting documentation to demonstrate PCC classification in the appropriate compliance showing(s) consistent with all applicable RPS program rules.

Consistency with Long-Term Contracting Requirement

In D.12-06-038, the Commission established a long-term contracting requirement that must be met in order for retail sellers to count RPS procurement from contracts less than 10 years in duration for compliance with the RPS program.¹³ In order for the procurement from any short-term contract(s) signed after June 1, 2010 to count for RPS compliance, the retail seller must execute long-term contract(s) in the same compliance period in which the short-term contract(s) is signed. The volume of expected generation in the long-term contract(s) must be sufficient to cover the volume of generation from the short-term contract(s).¹⁴

SB 2 (1X) requires long-term contracts to be ten years in duration and does not establish quantity requirements for bankability.¹⁵ Consistent with the statute, the PSAs comply with requirements of SB 2 (1X). The Commission denies TURN/CCUE's joint protest on this basis.

¹³ For the purposes of the long-term contracting requirement, contracts of less than 10 years duration are considered "short-term" contracts. (D.12-06-038).

¹⁴ Pursuant to D.12-06-038, the methodology setting the long-term contracting requirement is: 0.25% of Total Retail Sales in 2010 for the first compliance period; 0.25% of Total Retail Sales in 2011-2013 for the second compliance period; and 0.25% of Total Retail Sales in 2014-2016 for the third compliance period.

¹⁵ The excess procurement rules adopted in D.12-06-038 prohibit PCC 3 RECs from being carried forward as excess procurement. However, PCC 3 RECs from long-term contracts are included in the excess procurement calculation for each CP when calculating the amount of PCC 1 and PCC 2 RECs that can be banked.

Because the REC PSAs with Sterling Planet, Iberdrola, and NextEra are 10 years in length, the PSAs 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) PPAs 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 GHG emissions of a combined-cycle gas turbine power plant. The EPS applies to all energy PPAs for baseload generation that are at least five years in duration.¹⁶ The Commission found that RECs would not have any value for EPS compliance under the Commission's rules.¹⁷

The PSAs with Sterling Planet, Iberdrola, and NextEra are pre-approved as meeting the EPS because they are REC-only agreements and do not involve the procurement of electric energy.

Procurement Review Group Participation

The PRG process was initially established in D.02-08-071 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 a mechanism for procurement review by non-market participants.

According to PG&E, participants in its PRG included representatives from the Commission's Energy Division and the Office of Ratepayer Advocates, the Department of Water Resources, the Union of Concerned Scientists, the Utility Reform Network, the California Utility Employees, and Jan Reid, as a PG&E ratepayer. The REC PSAs with Sterling Planet, Iberdrola, and NextEra were presented to the PRG as potential contracts for execution on August 13, 2013. Additionally, the PSAs were presented to the PRG a second time on November

¹⁶ "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. Util. Code § 8340(a).

¹⁷ D.07-01-039 at 124.

12, 2013, in which PG&E provided a more in-depth analysis on the portfolio need and value of the PSAs.

Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the PSAs with Sterling Planet, Iberdrola, and NextEra, and PG&E has complied with the Commission's rules for involving the PRG.

Independent Evaluator (IE) Review

The IE for the three REC PSAs was Arroyo Seco Consulting (Arroyo). Arroyo evaluated the three REC PSAs at the time that they were negotiated and executed by PG&E in 2013. The IE concluded that the PSAs compared favorably to alternative RPS options in the main evaluation categories of price, market valuation, portfolio fit, and project viability. See Confidential Appendix B for a detailed explanation of the IE's findings.

Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw PG&E's negotiations with Sterling Planet, Iberdrola, and Nextera and recommended the PSAs for approval.

Contract Viability

The generation to be sold under the PSAs is from operating facilities that have been certified by the CEC as RPS-eligible. Thus, it is reasonable to expect that Sterling Planet, Iberdrola, and NextEra will be able to meet the terms and conditions of the PSAs.

Safety Considerations

California Public Utilities Code Section 451 requires that every public utility maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment and facilities to ensure the safety, health, and comfort of the public.

This resolution approves PSAs for the sale of unbundled RECs from facilities owned by the sellers. The PSAs do not include the procurement of generation associated with the RECs and thus won't alter PG&E's facility operations. Based on the information before us, these PSAs do not appear to result in any adverse safety impacts on the facilities or operations of PG&E.

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 PPA, the Commission has required standard and non-modifiable “eligibility” language in all RPS PPAs. 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.¹⁸

The Commission requires a standard and non-modifiable clause in all RPS PPAs that requires “CPUC Approval” of a PPA to include an explicit finding that “any procurement pursuant to these PSAs 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.”¹⁹

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is not 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

¹⁸ See, e.g. D.08-04-009 at Appendix A, STC 6, Eligibility.

¹⁹ See, e.g. D.08-04-009 at Appendix A, STC 1, CPUC Approval.

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 PPAs. Such information, including price, is confidential for three years from the date the contract states that energy 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 Purchase and Sale Agreements with Sterling Planet, Iberdrola, and NextEra qualify as a Renewable Energy Credit-only contract as defined by D.10-03-021, as modified by D.11-01-025.
2. Senate Bill 2 (1X) imposed significant changes on the Renewables Portfolio Standard Program, including setting new Renewables Portfolio Standard compliance targets through 2020.
3. The Iberdrola and NextEra Purchase and Sale Agreements are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.
4. The Purchase and Sale Agreements with Sterling Planet, Iberdrola, and NextEra include all of the Commission adopted Renewables Portfolio

Standard “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.

5. The Purchase and Sale Agreements with Sterling Planet, Iberdrola, and NextEra are consistent with PG&E’s 2011 Renewables Portfolio Standard Procurement Plan as approved by D.12-11-016.
6. PG&E adequately examined the reasonableness of the Purchase and Sale Agreements with Sterling Planet, Iberdrola, and NextEra utilizing its Least-Cost Best-Fit methodology during the time the agreements were being negotiated and executed.
7. Renewable Energy Credits from the Purchase and Sale Agreements with Sterling Planet, Iberdrola, and NextEra fit the portfolio need requirements of PG&E’s Renewables Portfolio Standard portfolio.
8. The price of the Purchase and Sale Agreements with Sterling Planet, Iberdrola, and NextEra is reasonable.
9. The Office of Ratepayer Advocates’ protest should be denied.
10. The Utility Reform Network and the California Coalition of Utility Employees’ joint protest should be denied.
11. Payments made by PG&E pursuant to the Purchase and Sale Agreements with Sterling Planet, Iberdrola, and NextEra are fully recoverable in rates over the life of the Agreements, subject to Commission review of PG&E’s administration of the Agreements.
12. Consistent with D.11-12-052, PG&E provided information in Advice Letters 4299-E, 4300-E, and 4301-E regarding the expected portfolio content category classification of the renewable energy credits to be procured pursuant to the Purchase and Sale Agreements with Sterling Planet, Iberdrola, and NextEra.
13. Because the Purchase and Sale Agreements with Sterling Planet, Iberdrola, and NextEra are 10 years in length, the Purchase and Sale Agreements may be construed as counting toward the minimum quantity requirements that the Commission established in D.12-06-038.
14. The Purchase and Sale Agreements with Sterling Planet, Iberdrola, and NextEra are pre-approved as meeting the Emissions Performance Standard because they are Renewable Energy Credit-only agreements and do not involve the procurement of electric energy.

15. Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the Purchase and Sale Agreements with Sterling Planet, Iberdrola, and NextEra, and PG&E has complied with the Commission's rules for involving the PRG.
16. Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw PG&E's negotiations with Sterling Planet, Iberdrola, and NextEra and recommended the Purchase and Sale Agreements with Sterling Planet, Iberdrola, and NextEra for approval at the time that PG&E originally filed the Advice Letters for Commission approval.
17. It is reasonable to expect Sterling Planet, Iberdrola, and NextEra will meet the terms and conditions of the Purchase and Sale Agreements.
18. Procurement pursuant to the Purchase and Sale Agreements with Sterling Planet, Iberdrola, and NextEra is procurement of Renewable Energy Credits that conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, for purposes of determining PG&E's compliance with any obligation it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), or other applicable law.
19. The immediately preceding finding shall not be read to absolve PG&E of its obligation to enforce compliance with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009, and included in this Agreement.
20. 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.
21. Advice Letters 4299-E, 4300-E, and 4301-E should be approved.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's purchase and sale agreements with Sterling Planet, LLC, Iberdrola, LLC, and NextEra Energy Power, LLC filed in Advice Letters 4299-E, 4300-E, and 4301-E, respectively, are approved.

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 April 10, 2014; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Pacific Gas & Electric's RPS Portfolio Need
and Price Reasonableness of the PSAs with Sterling
Planet, Iberdrola, and NextEra

[REDACTED]

Begin Appendix

Confidential Appendix B

Independent Evaluator Conclusions and Recommendations

[REDACTED]

Confidential Appendix C

Summary of 3 REC PSAs Contract Terms and Conditions

[REDACTED]

End Appendix