PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #13257
RESOLUTION E-4686
October 2, 2014

REDACTED

R E S O L U T I O N

Resolution E-4686. Pacific Gas and Electric Company (PG&E) requests Commission approval of a renewable energy power purchase agreement with CA Flats Solar 150, LLC.

PROPOSED OUTCOME:

- This resolution approves cost recovery for the long-term renewable energy power purchase agreement between PG&E and CA Flats Solar 150, LLC. The power purchase agreement is approved without modification.

SAFETY CONSIDERATIONS:

- The power purchase agreement requires the seller of the generation to comply with all applicable safety requirements of law relating to the project.

ESTIMATED COST:

- Actual costs of the power purchase agreement are confidential at this time.

By Advice Letter 4367-E filed on February 25, 2014.

SUMMARY

Pacific Gas and Electric Company's (PG&E) renewable energy power purchase agreement (PPA) with CA Flats Solar 150, LLC (CA Flats) complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved without modification.

PG&E filed Advice Letter (AL) 4367-E on February 25, 2014, requesting California Public Utilities Commission (Commission) review and approval of a twenty year renewable energy PPA between PG&E and CA Flats, which is owned by First Solar Inc. (First Solar). The PPA was procured through PG&E's 2012 RPS solicitation (RPS RFO). Pursuant to the PPA, RPS-eligible generation will be purchased from the CA Flats facility. The CA Flats facility's capacity is 150 megawatts (MW) and is located in Monterey County, California.

This resolution approves the CA Flats PPA. PG&E's execution of this PPA is consistent with PG&E's 2012 RPS Procurement Plan (RPS Plan), including its resource need, which the Commission approved in Decision 12-11-016. In addition, RPS deliveries under the CA Flats PPA are reasonably priced and fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.

The following table provides a summary of the CA Flats PPA:

Table 1: Summary of CA Flats PPA

Generating Facility	Technology Type	Capacity (MW)	Expected Deliveries (GWh/yr)	Contract Start Date	Term (Years)	Location
CA Flats	Solar photovoltaic (PV), New	150	381	December 31, 2018	15	Monterey County, CA

BACKGROUND

Overview of the Renewables Portfolio Standard 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 Pub. Util. Code §§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 California

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.

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

NOTICE

Notice of AL 4367-E was made by publication in the Commission's Daily Calendar. PG&E states that copies of the ALs were mailed and distributed in accordance with Section IV of General Order (GO) 96-B.

PROTESTS

PG&E's AL 4367-E was timely protested by The Center for Biological Diversity (The Center) and Jan Reid of Coast Economic Consulting (Coast) on March 17, 2014. PG&E responded to these protests on March 24, 2014.

The Center protested AL 4367-E and recommends that the Commission deny cost recovery and approval of the CA Flats PPA due to environmental conflicts that may be identified in the California Environmental Quality Act (CEQA) review process. Specifically, the Center is concerned that the biological conflicts at this site are significant and potentially unmitigable, that the site is unsuitable for large-scale industrial solar development, and that alternative sites must be considered for development. Futhermore, The Center is concerned that Commission approval of the PPA will lead to the contractual dates and other terms of the PPA later being used to limit consideration of a full range of alternatives to mitigate the potential environmental consequences identified in the CEQA process. The Center requests that the Commission reject the PPA or delay any decision on this AL until the full environmental review is complete.

Jan Reid of Coast Economic Consulting (Coast) recommends that the Commission approve the CA Flats PPA in its entirety, but require PG&E to file an AL and notify the Procurement Review Group (PRG) within 10 days in the

[3] D.11-12-020 established a methodology to calculate procurement requirement quantities for the three different compliance periods covered in SB 2 (1X) (2011-2013, 2014-2016, and 2017-2020).

case that First Solar re-assigns the CA Flats project to a third party.[4] Coast also recommends the removal of confidentiality protection for §10.6 of the PPA so any re-assignment of the CA Flats PPA can be discussed in public.

PG&E believes the Commission should reject the Center's protest because CEQA review is outside the scope of the AL process since the Commission's role in this AL filing is solely limited to review of the PPA between PG&E and CA Flats. Additionally, PG&E believes the Commission should reject Coast's protest since ratepayers are already protected by the direct control pro forma language included in PG&E's 2012 RPS pro forma PPA approved by the Commission in D.12-11-016. PG&E also notes that if the CA Flats PPA is re-assigned by First Solar, PG&E would report this information through its Quarterly Compliance Report AL and it would be reviewed by the Commission through the Energy Resource Recovery Account compliance filing, which is available to the PRG upon request. Lastly, PG&E disagrees with Coast's confidentiality request since a public filing or notice regarding a potential change in control of a project could impact First Solar's ability to engage in selling or completing the sale.

DISCUSSION

Pacific Gas & Electric Company requests approval of a renewable energy power purchase agreement with CA Flats.

On February 25, 2014, PG&E filed AL 4367-E requesting Commission approval of a long-term PPA with CA Flats. The CA Flats PPA concerns generation from the 150 MW CA Flats facility, which is contracted to begin delivery of energy, renewable energy credits, capacity attributes, and any ancillary services beginning December 31, 2018. Pursuant to the CA Flats PPA, PG&E will receive approximately 381 gigawatt-hours (GWh) of RPS-eligible deliveries annually.

The CA Flats facility is located in Monterey County, CA and has its first point of interconnection with the California Independent System Operator (CAISO), a California balancing authority. The PPA under consideration has a term of fifteen years and begins deliveries on December 31, 2018.

[4] Coast recommends that the proposed AL include: 1) Financial condition of the third party; 2) Credit worthiness of the third party; 3) Labor relations history of the third party; 4) Technical expertise of the third party; and 5) Whether or not PG&E supports the contract assignment.

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

1. Approves the PPA in its entirety, including payments to be made by PG&E pursuant to the PPA, subject to the Commission's review of PG&E's administration of the PPA.
2. Finds that any procurement pursuant to the 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 RPS (Pub. Util. Code §399.11 et seq.), D.03-06-071, D.06-10-050, D.11-12-020, D.11-12-052 or other applicable law.
3. Finds that all procurement and administrative costs, as provided by Pub. Util. Code §399.13(g), associated with the PPA shall be recovered in rates.
4. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:
    a. The PPA is consistent with PG&E's 2012 RPS procurement plan.
    b. The terms of the 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 PPA:
    a. The utility's costs under the PPA shall be recovered through PG&E's Energy Resource Recovery Account.
    b. Any stranded cost that may arise from the PPA is subject to the 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 Emissions Performance Standard (EPS) adopted in R.06-04-009:
    a. The PPA is not a form of covered procurement subject to the EPS, because the generating facility has an expected capacity factor of less than 60 percent and, therefore, is not baseload generation under paragraph 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 PPA shall be categorized as procurement under the portfolio content

category specified in Section 399.16(b)(1)(A), subject to the Commission's after-the-fact verification that all applicable criteria have been met.

Energy Division Evaluated the CA Flats PPA on the Following Criteria:

- Consistency with PG&E's 2012 RPS Procurement Plan
- Consistency with PG&E's Least-Cost, Best-Fit (LCBF) requirements
- Consistency with RPS Standard Terms and Conditions (STCs)
- Consistency with Portfolio Content Category (PCC) Requirements
- Consistency with Long-Term Contracting Requirement
- Independent Evaluator (IE) review
- Price Reasonableness and Value
- Project Viability Assessment and Development Status
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard (EPS)
- Procurement Review Group Participation
- Public Safety

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 Plan and then review and accept, modify, or reject the Plan prior to the commencement of a utility's annual RPS RFO.[5] The Commission must then accept or reject proposed PPAs based on their consistency with the utility's approved Plan.

The CA Flats PPA was executed on December 30, 2013. At the time the PPA was executed, PG&E's most recent Commission-approved Plan was its 2012 Plan, which was conditionally approved in D.12-11-016 on November 14, 2012. 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

[5] Pub. Util. Code, §399.14.

solicitation protocol setting forth the need for renewable generation of various operational characteristics.[6]

In PG&E's 2012 RPS Plan, PG&E stated that it seeks to procure about 1,000 GWh of new generation in its 2012 RPS RFO, with a preference for long-term contracts that qualify as a PCC 1 product with initial RPS deliveries starting in 2019-2020.[7]

The CA Flats PPA fits within PG&E's stated RPS procurement goal of an additional 1,000 GWh annually. Additionally, the PPA is long-term and PG&E expects the RPS deliveries to satisfy the criteria of PCC 1. The CA Flats PPA will begin delivering on the last day of 2018 and any deliveries from the CA Flats PPA that are in excess of PG&E's RPS procurement quantity requirement could be used by PG&E to satisfy future RPS compliance needs.

<u>The CA Flats PPA is consistent with PG&E's 2012 RPS Procurement Plan, as approved by D.12-11-016.</u>

PG&E's RPS Portfolio Need

The California RPS Program was established by SB 1078 and was modified by SB 2 (1X), which became effective on December 10, 2011. SB 2 (1X) made significant changes to the RPS Program.[8] 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."[9]

PG&E currently projects that its existing RPS portfolio will provide enough RPS generation to meet its needs in Compliance Period (CP) 1 (2011-2013) and CP 2 (2014-2016). Beginning in CP 3 (2017-2020), PG&E has stated that it has a need to procure additional RPS generation. The CA Flats PPA is contracted to begin delivering RPS-eligible energy on December 31, 2018, which aligns with PG&E's RPS need beginning at the end of CP3. See confidential appendix A for a detailed discussion on PG&E's RPS need.

[6] Pub. Util. Code, §399.14(a)(3).

[7] PCCs were defined in D.11-12-052.

[8] The Commission opened Rulemaking (R.) 11-05-005 (May 5, 2011) to implement SB2 (1X).

[9] *See* Pub. Util. Code, §399.15(b)(2)(B), SB 2 (1X).

<u>RPS generation from the CA Flats PPA fits the portfolio need requirements of PG&E's RPS portfolio.</u>

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

The basic components of PG&E's LCBF evaluation and selection criteria and process for RPS PPAs were established in the Commission's LCBF Decisions D.03-06-071, D.04-07-029 and D.12-11-016. Consistent with these decisions, the four main LCBF evaluation steps undertaken by PG&E are:

1. Determination of market value of bid;
2. Calculation of transmission adders and integration costs;
3. Evaluation of portfolio fit; and
4. Consideration of non-price factors.

The LCBF decisions direct the utilities to use certain criteria in their bid selection. The decisions offer guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations.

The CA Flats PPA was selected from PG&E's 2012 RPS RFO. As a result, PG&E examined the reasonableness of the CA Flats PPA using the same LCBF methodology that they used for assessing other RPS bids received in the 2012 RPS RFO. When compared against offers from PG&E's 2012 RPS RFO using LCBF, the CA Flats PPA compares favorably for price, value, viability, and need. See Confidential Appendix A for more details.

<u>PG&E adequately examined the reasonableness of the CA Flats PPA utilizing its LCBF methodology.</u>

Consistency with RPS Standard Terms and Conditions

The Commission adopted a set of STCs required in RPS contracts, three 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 and D.13-11-024.

<u>The CA Flats PPA includes the Commission adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, D.10-03-021, as modified by D.11-01-025.</u>

Consistency with Portfolio Content Category Requirements

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

In AL 4367-E, PG&E claims that the product procured pursuant to CA Flats PPA will be classified as PCC 1. To support its claim, PG&E asserts that the CA Flats PPA meets the upfront showing required for PCC 1 because it is an in-state RPS resource that expects to have its first point of interconnection with the CAISO, a California balancing authority.

<u>Consistent with D.11-12-052, PG&E provided information in AL 4367-E regarding the expected portfolio content category classification of the renewable energy credits to be procured pursuant to the CA Flats PPA.</u>

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.[10] 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).[11]

[10] 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).

[11] 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.

Because the CA Flats PPA is greater than 10 years in length, the PPA will contribute to PG&E's long-term contacting requirement established in D.12-06-038.

Independent Evaluator Review

PG&E retained IE Arroyo Seco Consulting Group (Arroyo) to oversee its 2012 RPS RFO and to evaluate the overall merits of each PPA submitted to the Commission for approval. Arroyo compared the price and value of the CA Flats PPA against competing offers from PG&E's 2012 RPS RFO using Arroyo's proprietary evaluation model. Based on this comparison, Arroyo opines that the CA Flats PPA ranks low for price and moderate to high for value when compared against relevant peer groups of competing proposals. Additionally, Arroyo opines that the CA Flats PPA ranks moderate for viability when compared against competing offers from PG&E's 2012 RPS RFO. The IE recommends that the Commission approve the CA Flats PPA. See Appendix B for a detailed explanation of the IE's findings.

Consistent with D.06-05-039, an independent evaluator oversaw PG&E's RPS procurement process. Additionally, an independent evaluator oversaw PG&E's negotiations and compared the costs, value and viability of the CA Flats PPA against peer groups consisting of alternative competing proposals currently or recently available to PG&E.

Price Reasonableness and Value

The Commission's price reasonableness review for RPS PPAs includes a comparison of the proposed PPA's price against other RPS offers received in the 2012 RPS RFO and against contracts executed in the 12 months prior to the proposed PPA's execution date. Using this analysis and the confidential analysis provided by PG&E in AL 4367-E, the Commission determines that the price and value of the CA Flats PPA are reasonable. See Confidential Appendix A for a price and value comparison of the CA Flats PPA against the appropriate cohorts.

The CA Flats PPA ranks favorably for price and value when compared against competing RPS offers from PG&E's 2012 RPS solicitation and contracts executed by PG&E 12 months prior to executing the CA Flats PPA.

Payments made by PG&E under the CA Flats PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA and any other applicable Commission review.

Project Viability Assessment

Arroyo provided the following viability information about the CA flats facility and its development status in its IE Report.

Project development experience

Based on its record of project development and ownership, Arroyo believes that First Solar or its acquisitions have developed and constructed at least two solar PV projects that are larger in terms of energized capacity, at their current incomplete state, than the proposed CA Flats project.

Ownership/O&M Experience

First Solar has stated its business with respect to utility-scale projects is to design, construct, and sell photovoltaic (PV) solar power systems, not to continue to own them. However, First Solar also "may provide ongoing O&M services to the system owner under long-term service agreements."[12] While First Solar generally has not owned solar PV projects it developed and built, it did own the 5 MW Tilbury solar project in Ontario for a few months after completion of construction before selling it. First Solar also achieved commercial operation of a 20 MW solar PV project near Hagerstown, Maryland, in late 2013, and has not yet sold it, though the company indicated that it expected to sell it.

Manufacturing Capacity

First Solar reported that it had 1.9 GW/year of manufacturing capacity at its plants in Ohio and Malaysia at the end of 2012. It shipped 1.4 GW of modules in 2012. Since First Solar is vertically-integrated, there appear to be no constraints on the company's ability to supply panels.

Site control

The project site is located on ranchland in rural Monterey County. First Solar has secured full site control for the CA Flats project through lease options. The point of interconnection will be at a new switching station on the Morro Bay Gates 230-

[12] First Solar's 2012 Form K12.

kilovolt (kV) line that will be at the project site, so control of rights-of-way for a gen-tie line are not an issue.[13]

Permitting

An application to Monterey County for a conditional use permit for the CA Flats project was completed in December 2012. The County then issued a Draft Environmental Impact Report (DEIR) on August 6, 2014 which is currently undergoing a 50-day comment period that ends September 22, 2014.[14] The County will then respond to any comments before preparing a final EIR which would undergo the combined development permit approval and EIR certification process in December 2014. The CA Flats project is also undergoing the process for receiving its secondary permits from the necessary agencies.

The Center for Biological Diversity protested the AL 4367-E for environmental reasons and there is reported opposition to the project from other landowners. However, the CA Flats facility will not be constructed by PG&E and thus the Commission has no jurisdiction over construction of the project, is not a responsible agency under CEQA, and is not tasked with state and Federal environmental review authority.[15] Environmental review and permitting determinations are outside of the AL review process and thus the Commission denies The Center's protest. Additionally, The Commission notes that approval of the CA Flats PPA should have no bearing on the schedule of the CEQA process.

Reasonableness of Commercial Online Date

A DEIR has been issued and First Solar has made progress on receiving its secondary permits, site control has already been achieved, and First Solar appears to have the manufacturing capacity in place to meet the project's

[13] Monterey County, *Notice of Preparation of an Environmental Impact Report for the California Flats Solar Project Development Application: Planning File Number PLN120294*, April 9, 2013.

[14] The DEIR can be found at: www.co.monterey.ca.us/planning/major/California%20Flats%20Solar/California_Flats_Solar.htm

[15] Guidelines for Implementation of the California Environmental Quality Act, Cal. Code Regs., tit. 14, §§15000 ("CEQA Guidelines"), at §15381 (responsible agencies include only "public agencies other than the Lead Agency which have discretionary approval power over the project").

requirements. Given these considerations, Arroyo's opines that it is reasonable to expect the CA Flats project to come on-line at the guaranteed COD at the end of 2018.

It is reasonable to expect that First Solar will be able to meet the terms and conditions in the CA Flats PPA.

Compliance with the Interim Greenhouse Gas Emissions Performance Standard

Pub. Util. Code §§8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) baseload power contracts procured on behalf of California ratepayers. [16]

D.07-01-039 adopted an interim EPS that establishes an emission rate for obligated facilities at levels no greater than the greenhouse gas emissions of a combined-cycle gas turbine power plant. Generating facilities using certain renewable resources are deemed compliant with the EPS.[17]

The CA Flats PPA is not covered procurement subject to the EPS because the generating facility has a forecast annualized capacity factor 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.

Procurement Review Group Participation

The PRG was initially established in D.02-08-071 to review and assess the details of the IOU's 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.

PG&E asserts participants in its PRG included representatives from the Office of Ratepayer Advocates, Department of Water Resources, Union of Concerned Scientists, The Utility Reform Network, the California Utility Employees, and Jan

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[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, Attachment 7, p. 4.

Reid, as a PG&E ratepayer. The CA Flats PPA was presented to the PRG as a potential contract for execution at PG&E's November 12, 2013 PRG meeting.

Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the CA Flats PPA.

Public Safety

Pub. Util. Code §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.

Local, state and federal agencies that have review and approval authority over the CA Flats facility are charged with enforcing safety, environmental and other regulations including decommissioning. Section 3.9(a) of the PPA requires First Solar (the entity with control over on-site decisions) to "acquire all permits and other approvals necessary for the construction, operation and maintenance of the CA Flats project." The safety provisions in the CA Flats PPA clarify that the burden of safe operations and the duty to protect PG&E customers against bearing the cost of imprudent or unsafe operations resides with First Solar. The safety provisions do not provide PG&E with rights to enforce or dictate safe operations of the CA Flats project as those rights reside with the governmental authorities with safety and permitting oversight over the CA Flats project.

Re-assignment of the Project

Coast Economic Consulting protested AL 4367-E requesting that PG&E file a supplemental AL and notify the PRG in the event that the CA Flats PPA is re-assigned by First Solar. This is unnecessary additional contract administration since the Commission already reviewed and approved PG&E's 2012 RPS pro forma PPA in D.12-11-016, which includes terms that address the issue of PPA re-assignment. The Commission requires PG&E to reasonably administer the CA Flats PPA in order to recover costs for the PPA. Therefore, any re-assignment must be reasonably administered under the Commission-approved terms, making it unnecessary for the Commission to require further review of any re-assignment of the CA Flats PPA. As such, the Commission rejects Coast Economic Consulting's protest for additional contract administration requirements and review.

Furthermore, Coast's recommendation that §10.6 of the CA Flats PPA is made public is rejected. Given that PG&E's 2012 RPS pro forma PPA was already approved by the Commission, §10.6 of PG&E's 2012 RPS pro forma PPA is allowed confidential treatment under the Commission's confidentiality rules. As such, the Commission denies Coast Economic Consulting's protest.

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Pub. Util. Code §399.13, the California Energy Commission (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 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 (*Pub. Util. Code §99.11 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

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[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.

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 Pub. Util. Code §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 RFOs. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as 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

Pub. Util. Code §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 CA Flats power purchase agreement is consistent with PG&E's 2012 Renewables Portfolio Standard Procurement Plan, as approved by D.12-11-016.
2. Renewable energy generation from the CA Flats power purchase agreement fits the portfolio need requirements of PG&E's Renewables Portfolio Standard portfolio.
3. PG&E adequately examined the reasonableness of the CA Flats power purchase agreement utilizing its least-cost best-fit methodology.

4. The CA Flats power purchase agreement includes the Commission adopted Renewables Portfolio Standard "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, D.10-03-021, as modified by D.11-01-025, and D.13-11-024.
5. Consistent with D.11-12-052, PG&E provided information in Advice Letter 4367-E regarding the expected portfolio content category classification of the renewable energy credits to be procured pursuant to the CA Flats power purchase agreement.
6. Because the CA Flats power purchase agreement is greater than 10 years in length, the power purchase agreement will contribute to PG&E's long-term contacting requirement established in D.12-06-038.
7. Consistent with D.06-05-039, an independent evaluator oversaw PG&E's Renewables Portfolio Standard procurement process. Additionally, an independent evaluator oversaw PG&E's negotiations with First Solar and compared the costs, value and viability of the CA Flats power purchase agreement against peer groups consisting of alternative competing proposals currently or recently available to PG&E.
8. The CA Flats power purchase agreement ranks favorably for price and value when compared against competing Renewables Portfolio Standard offers from PG&E's 2012 Renewables Portfolio Standard solicitation and contracts executed by PG&E 12 months prior to executing the CA Flats power purchase agreement.
9. Payments made by PG&E under the CA Flats power purchase agreement are fully recoverable in rates over the life of the power purchase agreement, subject to Commission review of PG&E's administration of the power purchase agreement and any other applicable Commission review.
10. The Center for Biological Diversity's protest is denied.
11. It is reasonable to expect that First Solar will be able to meet the terms and conditions in the CA Flats power purchase agreement.
12. The CA Flats power purchase agreement is not covered procurement subject to the Emissions Performance Standard because the generating facility has a forecast annualized capacity factor of less than 60 percent and therefore is not baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim Emissions Performance Standard Rules.

13. Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the CA Flats power purchase agreement.
14. Coast Economic Consulting's protest is denied.
15. 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.
16. Advice Letter 4367-E should be approved effective today.

<u>THEREFORE IT IS ORDERED THAT:</u>

1. Pacific Gas & Electric Company's Advice Letter 4367-E requesting Commission review and approval of a power purchase agreement with CA Flats Solar 150, LLC is approved without modification.

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 in San Francisco on October 2, 2014; the following Commissioners voting favorably thereon:

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PAUL CLANON

Executive Director

Confidential Appendix A

Price/Value Reasonableness, Need, and Viability

[REDACTED]

Appendix B

Independent Evaluator Conclusions and Recommendations

Discussion of Merit for Approval[20]

In Arroyo's opinion, the CA Flats PPA merits CPUC approval:

- The PPA price (both before and after adjustment for TOD factors) ranks low when compared to all offers received in PG&E's 2012 RPS RFO. It was not priced low compared to PG&E's 2012 RPS Shortlist, but within the overall competitive marketplace its price is low.
- PG&E's estimate of PAV ranks the PPA as high compared to all offers received in PG&E's 2012 RPS RFO. Arroyo's independent analysis ranks the PPA as moderate in net value when compared to all 2012 RPS RFO offers. The difference in ranking derives from PG&E's adjustments to value that elevate the valuation of northern California-based projects over those in southern California.
- In Arroyo's opinion, the proposed CA Flats facility ranks as moderate in project viability. Its developer is one of very few in the world with experience developing, constructing, and energizing at least 150 MW of solar PV capacity. First Solar has not owned large a project, having chosen to sell its large projects to other owners prior to commercial operation. First Solar has substantial manufacturing capacity for solar modules in place. The project has full site control, has received its Phase II interconnection study, and Arroyo expects that the end-2018 COD can reasonably be met. A DEIR has been issued for a conditional use permit from Monterey County, and a reliable interconnection to the grid will require construction of a new switching station connecting to a 230-kV transmission line, which will also be permitted by Monterey County as part of the EIR process.
- The CA Flats PPA ranks moderate to high in portfolio fit when compared against all of PG&E's 2012 RPS RFO offers using PG&E's

[20] Arroyo's "Report of the Independent Evaluator on a Contract with CA Flats Solar 150, LLC", pages 30-31.

metric for adjusting PAV for timing of contribution to RPS compliance needs.

Overall, Arroyo's opinion is that the CA Flats PPA merits Commission approval based on superior pricing coupled with moderate to high value and portfolio fit, and moderate project viability.

Confidential Appendix C

CA Flats PPA Major Contract Provisions

[REDACTED]