DOCKET
03-RPS-1078
DATE MAY 21 2007
RECD. MAY 25 2007

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May 21, 2007

RECEIVED
EXECUTIVE DIRECTOR

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: **Docket No.03-RPS-1078 (Renewables Portfolio Standard 2005 Procurement Verification – Committee Final Report)**

Chairmain Jackalyne Pfannenstiel
Commissioner James Boyd
Commissioner Art Rosenfeld
Commissioner John Geesman
Commissioner Jeffrey Byron

PG&E appreciates the opportunity to submit written comments on the proposed "Renewables Portfolio Standard 2005 Procurement Verification - Committee Final Report" in advance of the May 23, 2007, Commission Business Meeting. PG&E concurs with the findings in the Report with the exception of the one item related to the staff's assessment of RPS deliveries reported by PG&E from the Sierra Pacific Burney facility. This issue is described at footnote 9 of Table 7 "PG&E RPS Procurement," which appears on page 21 of the Report.

The Committee Final Report recommends that PG&E receive no credit for the RPS deliveries it received and paid for in 2004 from the Burney facility. The staff reached this conclusion because the 70,452 MWh of electric generation delivered to PG&E in 2004 by Sierra Pacific Burney, in combination with the 48,122 MWh of generation represented by Renewable Energy Certificates (RECs) purchased in 2004 by 3Phases Energy Services (3Phases), reportedly exceeded by more than 5 percent the total generation from the facility based on available data. According to the Committee Final Report, Sierra Pacific reported in its CEC-1304 report to the CEC that its total annual generation from the Burney facility was 94,103 MWh.

Footnote 9 of the Committee Final Report states, "PG&E claims that they procured both the generation and the (renewable) attributes from this facility, the facility claims it had the right to sell the renewable attributes to 3Phases Energy Services. This dispute is contractual in

nature and not within the Energy Commission's jurisdiction to resolve. Therefore, the energy commission will not credit PG&E or 3Phases Energy Services for their claimed procurement from this facility until such time as the dispute is resolved." The staff indicates willingness to revise its finding, "...so long as the resolution does not result in renewable attributes being double counted."

PG&E does not agree with the staff's characterization that there is a "contractual dispute." PG&E and 3Phases are not claiming the right to the renewable attributes of the same electric generation.

PG&E simply seeks recognition of deliveries from a renewable energy Qualifying Facility (QF) project that is similar to many other renewable energy QF projects included in PG&E's RPS baseline.

The Adopted RPS Verification Report Should Credit PG&E With All of the Deliveries It Purchased from the Sierra Pacific Burney Plant Under its QF Contract.

Section 399.16(a)(5) of the Public Utilities Code, which became effective in January, 2007, states that deliveries under contract with a retail seller (for example, PG&E), executed before January 1, 2006, will be included in the baseline quantity of eligible renewable energy resources of the utility. By specifically allocating existing QF deliveries to the utility's baseline, the Legislature confirmed that existing QF deliveries belonged in a utility's renewables procurement from the inception of the RPS program, when baseline quantities were established.

PG&E's specific reasons to claim RPS credit for the entire 70, 452 MWh are as follows:

1. PG&E purchased and received 70,452 MWh of energy from Sierra Pacific Burney under its QF Standard Offer 4 Power Purchase Agreement (PPA). PG&E submitted invoices to the CEC verifying these 2004 renewable energy purchases.

2. PG&E has procured renewable energy from Sierra Pacific Burney under its QF Standard Offer 4 Power Purchase Agreement since 1986.

3. Deliveries under this QF PPA and all other QF PPAs with eligible renewable resources are included in PG&E's baseline of eligible renewable resource procurement pursuant to P.U. Code 399.15.

4. With the exception of this particular 2004 procurement from Sierra Pacific Burney, all QF contract deliveries reported to the CEC from eligible renewable QF resources have been credited to PG&E's RPS procurement.

5. Changes to the RPS statute made effective on January 1, 2007, by Senate Bill 107, (Stats.2006, Ch 464) confirm that deliveries under QF contracts continue to be included in the baseline quantity of eligible renewable resources of the purchasing retail seller pursuant to Pub. Util. Code sec 399.15, and also specify that no Renewable Energy Certificate (REC) is created by generation pursuant to any electricity purchase contract executed before January 1, 2005, unless the contract specifically provides for RECs. *PG&E's QF contract with Sierra Pacific has no such provision for RECs.*

6. While this statute did not become effective until January 1, 2007, it clarified the original intent of the Legislature, which was to ensure that deliveries from existing eligible renewable resources in a retail seller's portfolio could be counted toward a retail seller's baseline and not be claimed by another party.

   Public Utilities Code section 399.16(a)(5) states:

   Deliveries under (an electricity purchase contract with a retail seller executed before January 1, 2005) shall be tracked through the (CEC's accounting program) and included in the baseline quantity of eligible renewable energy resources of the purchasing retail seller pursuant to Section 399.15.

7. PG&E's right to count those deliveries toward RPS procurement supersede any potentially competing claim by a third party to claim RECs based on the same generation from the same facility because that right is provided by the RPS statute.

8. PG&E should get credit for all deliveries from the Sierra Pacific Burney contract reported in its RPS track form regardless of any renewable energy certificates reported as being purchased by another entity form the Sierra Pacific Burney Facility during 2004.

9. There is no contractual dispute between PG&E and 3Phases because PG&E is *not* claiming the right to any renewable energy credits arising from the 2004 generation. PG&E claims the right to count the deliveries toward its RPS procurement because those deliveries are in PG&E's baseline, by statute.

10. In this particular circumstance, where an apparent shortfall exists, the entire shortfall should be deducted from the third party claiming the RECs, and their claim should be considered subordinate to the IOU's claim for RPS credit from these QF resources for the reasons indicated above.

11. The facts and the law support crediting PG&E with the entire 70,452 MWh it purchased from Sierra Pacific Burney in 2004. However, to resolve the CEC staff's concern, it may be appropriate to consider that the renewable energy being counted by 3Phases toward RECs is actually different from the renewable energy that PG&E procured from the Sierra Pacific Burney facility.

The renewable energy that PG&E procured was the net output of the plant to the grid as measured and verified by the revenue meter. PG&E believes the renewable energy associated with 3Phases' RECs was "behind the meter" energy that the Burney facility produced and provided to its host load.

"Behind the meter" energy is not measured by, and is in addition to, the net energy recorded by the revenue meter and procured by PG&E. Although Sierra Pacific Burney's "behind the meter" generation in 2004 (23,651 MWh) is less than the amount of RECs (48,122 MWh) 3Phases reported it purchased in 2004 from Sierra Pacific Burney, this shortfall may be more than adequately made up with "behind the meter" generation in 2004 from Sierra Pacific's four other facilities reported on the verification report or from another Sierra Pacific facility not selling power to PG&E. Alternatively, the shortfall may be made up almost entirely with unused "behind the meter" generation in 2005 from Sierra Pacific's Burney plant. Any such reallocation of unused generation by Sierra Pacific and 3Phases would resolve this issue in a manner that would not trigger the CEC's threshold of total procurement exceeding annual generation by 5 percent.

PG&E understands 3Phases and Sierra Pacific are discussing ways to resolve this matter and that a solution may be forthcoming to the CEC. PG&E would support such a resolution so long as PG&E is able to receive RPS credit for all deliveries it purchased in 2004 from the Sierra Pacific Burney plant under its QF contract.

The RPS statute established a baseline of eligible renewable energy procurement to support the retail seller's annual procurement gains and eventual achievement of the 20 percent renewables goal. PG&E believes the staff's interpretation ignores the intent of the Legislature and could set a precedent that undermines the foundations of the RPS program. PG&E urges the Commission to reconsider the Final Committee Report's denial of credit to PG&E for its RPS purchases from this QF facility even though PG&E is entitled, by statute, to count the deliveries toward its RPS baseline.

Sincerely,

Les Guliasi

cc: B. B. Blevins
Jason Orta
Heather Raitt
CEC Docket Office