

January 31, 2003

Advice 2343-E

(Pacific Gas and Electric Company ID U 39 E)

Public Utilities Commission of the State of California

Subject: Submission of Modified Transitional Procurement Contract

Pacific Gas and Electric Company hereby re-submits for Commission review and final approval, through the advice letter process outlined in Decision (D.) 02-08-071, Appendix B, a contract for the procurement of capacity and energy during the period March 2003 through September 2003, which has been modified to reduce the term of the contract, allow PG&E to execute without California Department of Water Resources' (DWR) credit support, and update pricing and exchange ratio terms.¹ Execution of the modified contract occurred on January 31, 2003.

Purpose:

Ordering Paragraphs (OP) 3 and 4 of D. 02-08-071 require PG&E to file by advice letter any contract for which it is seeking pre-approval under the decision within 30 days of signing or selection. Under the accelerated advice letter process set forth in Appendix B of D. 02-08-071, PG&E asks that the Commission issue a resolution no later than **February 13, 2003**, approving the modified contract and finding that the contract in Confidential Appendix A is reasonable and prudent for purposes of recovery in full in retail rates under the Public Utilities Code for the full term of the contract without further Commission review.

Background:

The contract that PG&E submits with this advice letter has previously been approved by the Commission in Resolution E-3796. This contract, along with several others, was selected through a general Request for Offer (RFO) held in fall 2002 for power supplies to meet PG&E's 2003 residual net short, as authorized in D. 02-08-071. On October 22, 2002, PG&E submitted the winning contracts for pre-approval as required by

¹ PG&E reserves all legal rights to challenge the decisions or statutes under which it has been required to make this filing, and nothing in this filing constitutes a waiver of such rights, including its rights to seek relief in federal court for violations of federal law or the U.S. Constitution. *See England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964). In addition, PG&E reserves any additional legal rights by reason of its status as a debtor under Chapter 11 of the U.S. Bankruptcy Code, and nothing in this filing constitutes a waiver of such rights.

D. 02-08-071 in Advice 2293-E. On November 21, 2002, the Commission issued Resolution E-3796, approving Advice 2293-E and the contracts. Subsequently DWR required the addition of certain provisions in the contract between the winning counterparties and DWR. The counterparties would not accept the DWR provisions. So, the contracts did not go into effect as planned by the end of 2002.²

PG&E is now willing to sign the modified contract, as attached to this advice letter, without DWR participation in the transaction. The term of the contract that PG&E is willing to sign has been reduced to less than 12 months and certain terms modified to reflect changes in market prices since October 2002. Just as in the previous submittal of the contract, certain terms will be refreshed if the Commission gives the appropriate approval for this advice letter.³ Although the final price will not be known until the Commission indicates its approval, the current cost benefit analysis for the contract is more favorable than at the time the contract was originally submitted to the Commission.

PG&E now re-submits this contract with changes that would allow it to be executed and go into effect without including DWR as a party to the contract arrangements. Specific language changes in the resubmitted contract provide for the immediate execution of this contract, removal of the provision that PG&E must first attain an investment grade credit rating before entering into the contract, and elimination of the requirement for DWR to serve as the creditworthy buyer until PG&E attains an investment grade credit rating. PG&E requests that the Commission issue an expedited resolution approving the transaction.

Neither the original nor the modified contract includes Standard of Conduct #7,⁴ because that Standard did not apply to contracts entered into pursuant to D. 02-08-071. Accordingly, the original contract also was approved in Resolution E-3796 as reasonable without Standard #7. In addition, the seller under the contract has indicated unequivocally that it will not accept Standard #7. Thus, if the Commission required the Standard to be included in the contract, the contract would not go into effect. Since the transaction benefits ratepayers substantially, as previously determined by the Commission, the Commission should not insert Standard #7 in the contract now.

The contract filed with this advice letter is an energy exchange agreement designed to allow the parties to capitalize on seasonal differences between them. For this reason, the transaction starts in March 2003 and continues through the summer of 2003. In order to proceed with the exchange, Commission approval is needed by mid-February. Otherwise, this contract may not go into effect and PG&E would have to find other arrangements.

² See PG&E's Advice Letter 2335-E, submitted January 6, 2003.

³ Confidential Appendix B of this advice letter contains an updated cost-benefit analysis, as required by the Adopted Master Data Request in Appendix C of D. 02-08-071. All other supporting documents for the contract were provided to the Commission in Advice 2293-E.

⁴ These standards were adopted in D. 02-10-062, and subsequently modified or clarified in D. 02-12-074. Later, in D. 02-12-080, the Commission suspended Standard 7 for the first three months of 2003.

Because the original contract was reviewed with PG&E's Procurement Review Group prior to its original submission, and the Commission has previously approved the original contract in Resolution E-3796, PG&E asks that the Commission approve the resubmitted contract on an expedited basis through the advice letter process at its February 13, 2003, decision conference.

Protests:

Appendix B of D. 02-08-071 requires that protests to this advice letter be made within seven days of its filing. Accordingly, protests are due on or before **February 7, 2003**. Replies to protests should be filed within three days of the protest, or **February 10, 2003**. Because of the accelerated timeline provided for protests, PG&E asks that all protests be mailed electronically to RxDd@pge.com and the service list for Rulemaking (R.) 01-10-024.

The protest must state the grounds upon which it based, including such items as financial and service impact, and should be submitted expeditiously. Protests should be mailed to:

IMC Branch Chief – Energy Division
California Public Utilities Commission
505 Van Ness Avenue, 4th Floor
San Francisco, California 94102
Facsimile: (415) 703-2200
E-mail: jjr@cpuc.ca.gov

Copies should also be mailed to the attention of the Director, Energy Division, Room 4005 and Jerry Royer, Energy Division, at the address shown above. It is also requested that a copy of the protest be sent via postal mail and facsimile to Pacific Gas and Electric Company on the same date it is mailed or delivered to the Commission at the address shown below.

Pacific Gas and Electric Company
Attention: Les Guliasi
Director, Regulatory Relations
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, California 94177

Facsimile: (415) 973-7226
E-mail: RxDd@pge.com

Effective Date

PG&E requests that this Advice Letter become effective on **February 13, 2003**.

Notice

In accordance with General Order 96-A, Section III, Paragraph G, a copy of this advice letter excluding the confidential appendices is being sent electronically and via U.S. mail to parties shown on the attached list and the service list for R. 01-10-024. Non-market participants who are members of PG&E's Procurement Review Group and have signed appropriate Non-Disclosure Certificates will also receive the advice letter and accompanying confidential attachments by overnight mail. Members of PG&E's Procurement Review Group have been advised of the advice letter filing.

The portions of this advice letter so marked Confidential Protected Material are in accordance with the May 1, 2002, Protective Order in R. 01-10-024 Regarding Confidentiality of Pacific Gas and Electric Company (PG&E) Power Procurement Information. As required by that Order, reviewing representatives of Market Participating Parties will not be granted access to Protected Material, but will instead be limited to reviewing redacted versions of documents that contain Protected Material.

Address change requests should be directed to Sandra Ciach at (415) 973-7572. Advice letter filings can also be accessed electronically at:

http://www.pge.com/customer_services/business/tariffs/

Vice President - Regulatory Relations

cc: Service List R.01-10-024

Attachments

Confidential Appendix A – Modified RFO Exchange Contract for which PG&E seeks Commission Approval

Confidential Appendix B – Cost Benefit Analysis