

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



January 8, 2009

**Advice Letter 2992-E**

Brian K. Cherry  
Vice President, Regulatory Relations  
Pacific Gas and Electric Company  
77 Beale Street, Mail Code B10C  
P.O. Box 770000  
San Francisco, CA 94177

**Subject: Withdrawal of Amendment to Master Power Purchase and  
Sale Agreement by and between FPL Energy Montezuma  
Wind, LLC and PG&E Company**

Dear Mr. Cherry:

Advice Letter 2992-E is withdrawn per your letter dated December 23, 2008.

Sincerely,

A handwritten signature in blue ink that reads "Julie A. Fitch".

Julie A. Fitch, Director  
Energy Division



**Brian K. Cherry**  
Vice President  
Regulatory Relations

77 Beale Street, Room 1087  
San Francisco, CA 94105

*Mailing Address*  
Mail Code B10C  
Pacific Gas and Electric Company  
P.O. Box 770000  
San Francisco, CA 94177

415.973.4977  
Internal: 223.4977  
Fax: 415.973.7226  
Internet: BKC7@pge.com

February 23, 2007

**Advice 2992-E**

(Pacific Gas and Electric Company ID U 39 E)

Public Utilities Commission of the State of California

**Subject:** Amendment to Master Power Purchase and Sale Agreement by  
and Between FPL Energy Montezuma Wind, LLC and Pacific Gas  
and Electric Company

Pacific Gas and Electric Company (PG&E) hereby submits to the California Public Utilities Commission (CPUC or Commission), for its approval, an amendment (Amendment) of the Master Power Purchase and Sale Agreement (PPA) by and between FPL Montezuma, LLC (FPL Montezuma) and PG&E, dated April 8, 2005. The PPA resulted from FPL Montezuma's response to PG&E's July 15, 2004, solicitation for renewable energy, was filed for Commission approval on April 26, 2005, in Advice 2655-E, and was approved by the Commission on July 21, 2005, in Resolution E-3946.

**I. Introduction**

This Amendment would increase the contract price, extend the contract term, waive seller's Production Tax Credit (PTC) termination right, modify the project development security, increase the performance assurance amount, and provide FPL Montezuma with limited flexibility on the project's capacity (allowing FPL Montezuma to either increase the project's capacity within a specified range above the original amount provided in the PPA or, to a lesser extent, to decrease the project's original capacity. The Amendment would not require any change in the original PPA with respect to supplemental energy payments (SEPs), as deliveries under the Amendment will continue to be priced at or below the 2004 market price referent (MPR) and thus do not require any SEPs. Appendix B provides a comparison of contract payments under the Amendment and the MPR.

In addition, the Amendment would ensure that the PPA conforms to all non-negotiable Contract Terms and Conditions, as defined in Commission Decision (D.) 04-06-014, Appendix A.<sup>1</sup>

PG&E requests the Commission approve this contract through a resolution no later than May 24, 2007, and that the resolution contain the findings required by the definition of "CPUC Approval" in Appendix A of D.04-06-014 and incorporated in the amended PPA, so that the contract for this renewable resource can remain in effect.

In support of this request, PG&E submits the following confidential documents under seal to protect sensitive commercial terms from public disclosure, consistent with D.06-06-066. The justification for confidential treatment is set forth in the Declaration Seeking Confidential Treatment accompanying this advice letter.

Appendix A – Amendment to Power Purchase Agreement

Appendix B – Treatment of Standard Contract Terms and Conditions that "may not be modified" per CPUC D.04-06-014

Appendix C -- Contract Analysis

Appendix D -- Developer Cost Increase Documentation

Appendix E – SEP/MPR worksheet

## **II. BACKGROUND**

The FPL Montezuma facility is a wind project located in Solano County. The PPA was one of the first three contracts resulting from PG&E's 2004 RPS solicitation. The Commission granted its approval of those three PPAs in Resolution E-3946, dated July 21, 2005.

In June 2006, FPL Montezuma informed PG&E that the combination of increases in turbine prices from the time the PPA was signed, together with continued construction cost increases for the FPL Montezuma project, had effectively made the project economically non-viable at the current contract price. In order to go forward with the project, FPL Montezuma requested a contract price increase and an extension of the contract term from 20 to 25 years.

---

<sup>1</sup> The Commission, in D. 07-02-011, adopted changes to standard terms and conditions to reflect SB 107, but did not require those changes for contracts executed prior to Jan. 1, 2007. D.07-02-011, mimeo, at p. 47. The Amendment was executed prior to Jan. 1, 2007, and could not reasonably be changed in the interim while documentation was obtained to support Commission review of the Amendment.

In subsequent negotiations, FPL Montezuma and PG&E agreed to amend the contract to enable the project to achieve operation under the changed conditions. Parties signed the Amendment on December 19, 2006.

This amendment would:

- Provide a small price increase
- Extend the contract term from 20 to 25 years
- Waive seller's PTC termination right
- Modify the Project Development Security amount
- Increase the Performance Assurance amount
- Allow FPL Montezuma to have some flexibility, within a fixed range, in establishing the final contract capacity prior to the guaranteed construction start date, as set forth in the PPA.
- Result in an increase to expected deliveries of 5 GWh per year from the original PPA, and possibly up to an additional 15 GWh per year.

The Amendment is attached as Appendix A.

### **III. PRG Feedback**

PG&E has, on several occasions, informed its Procurement Review Group (PRG) that developers of eligible renewable resources have asked for price concessions due to escalating development costs. PRG members either supported or did not oppose PG&E's negotiation of terms that allow these projects to go forward.

### **IV. Supplemental Energy Payments**

As shown in Appendix B, the revised contract payments do not exceed the 2004 MPR. No supplemental energy payments are required.

### **V. Request for Commission Approval**

Except as expressly amended by the Amendment, the terms and conditions of the Agreement, as previously approved by the Commission, shall remain in full force and effect. The effectiveness of the Amendment is conditioned upon Commission Approval. Time is of the essence in the Commission's consideration and approval of this advice letter, because the additional funding represented by the increased contract price is needed immediately to enable the project to meet its expected on-line date.

Therefore, PG&E requests that the Commission issue a resolution no later than May 24, 2007 that:

1. Approves the Amendment in its entirety, including payments to be made by PG&E, subject to CPUC review of PG&E's administration of the amended Agreement.
2. Finds that procurement pursuant to the amended Agreement constitutes 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, or other applicable law;
3. Finds that any procurement pursuant to the amended Agreement constitutes incremental procurement or procurement for baseline replenishment by PG&E from an eligible renewable energy resource for purposes of determining PG&E's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard, D.03-06-071 and D.06-10-050, or other applicable law;
4. Finds that there is a risk that the proposed development and deliveries will not occur as described by the agreement due to factors that are beyond PG&E's control; that PG&E has made reasonable attempts to reduce the risk of non-performance associated with the Agreement without unduly increasing its cost; and that PG&E shall not be subject to penalties for RPS delivery shortfalls due to seller non-performance, consistent with previous decisions.
5. Finds that the payments made under the amended Agreement and any indirect cost of renewables procurement identified in Section 399.15(d) shall be fully recoverable in rates over the life of the project.
6. Finds that any cost of bringing generation from the delivery point to PG&E's load center is a transmission cost associated with procurement that will be recorded in the Energy Resource Recovery Account for rate recovery;
7. Finds that any above-market costs associated with these contracts are eligible for recovery from all existing customers, including future departing load customers, subject to final determination of this issue in PG&E's 2006

Long Term Procurement Plan proceeding, Rulemaking 06-02-013.

**Protest Period:**

Anyone wishing to protest this filing may do so by sending a letter by March 15, 2007, which is **20** days from the date of this filing. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. Protests should be mailed to:

CPUC Energy Division  
Attention: Tariff Unit, 4<sup>th</sup> Floor  
505 Van Ness Avenue,  
San Francisco, California 94102

Facsimile: (415) 703-2200  
E-mail: [mas@cpuc.ca.gov](mailto:mas@cpuc.ca.gov) and [inj@cpuc.ca.gov](mailto:inj@cpuc.ca.gov)

Copies should also be mailed to the attention of the Director, Energy Division, Room 4005 and Honesto Gatchalian, 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 PG&E on the same date it is mailed or delivered to the Commission at the address shown below.

Pacific Gas and Electric Company  
Attention: Brian K. Cherry  
Vice President, Regulatory Relations  
77 Beale Street, Mail Code B10C  
P.O. Box 770000  
San Francisco, California 94177

Facsimile: (415) 973-7226  
E-Mail: [PGETariffs@pge.com](mailto:PGETariffs@pge.com)

**Effective Date:**

PG&E requests that this advice filing become effective no later than **May 24, 2007**.

**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 lists for R.01-10-024 and R.06-05-027. Non-market participants who are members of PG&E's PRG and have signed appropriate Non-Disclosure Certificates will also receive the advice letter and accompanying confidential attachments by overnight mail.

**Limited Access to Confidential Material:**

The portions of this advice letter marked as Confidential Protected Material are submitted under the confidentiality protection of Section 583 of the Public Utilities Code and General Order 66-C. This material is protected from public disclosure because it consists of the contract agreement itself and price information, which are protected pursuant to D.06-06-066. A separate Declaration of Confidential Treatment regarding the confidential information is filed concurrently herewith.

**Confidential Attachments:**

Appendix A – Amendment to Power Purchase Agreement

Appendix B – Changes to Standard Contract Terms and Conditions that “may not be modified” per CPUC D.04-06-014

Appendix C -- Contract Summary

Appendix D – Developer Cost Increase Documentation

Appendix E – SEP/MPR worksheet



Vice President, - Regulatory Relations

Cc: Service List for R.06-05-027  
Service List for R.01-10-024  
Paul Douglas – Energy Division

# CALIFORNIA PUBLIC UTILITIES COMMISSION

## ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. Pacific Gas and Electric Company (ID39E)

Utility type:

ELC

GAS

PLC

HEAT

WATER

Contact Person: David Poster

Phone #: (415) 973- 1082

E-mail: dxpu@pge.com

EXPLANATION OF UTILITY TYPE

ELC = Electric

GAS = Gas

PLC = Pipeline

HEAT = Heat

WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 2992-E

Subject of AL: Amendment to Master Power Purchase and Sale Agreement by and Between FPL Energy Montezuma Wind, LLC and Pacific Gas and Electric Company

Keywords (choose from CPUC listing): PPA

AL filing type:  Monthly  Quarterly  Annual  One-Time  Other

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: N/A

Summarize differences between the AL and the prior withdrawn or rejected AL: \_\_\_\_\_

Resolution Required?  Yes  No

Requested effective date: 05-24-07

No. of tariff sheets: 0

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: N/A

Service affected and changes proposed<sup>1</sup>: N/A

Pending advice letters that revise the same tariff sheets: N/A

**Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:**

**CPUC, Energy Division**

**Attention: Tariff Unit**

**505 Van Ness Ave.,**

**San Francisco, CA 94102**

[mas@cpuc.ca.gov](mailto:mas@cpuc.ca.gov) and [jni@cpuc.ca.gov](mailto:jni@cpuc.ca.gov)

**Utility Info (including e-mail)**

**Attn: Brian K. Cherry**

**Vice President, Regulatory Relations**

**77 Beale Street, Mail Code B10C**

**P.O. Box 770000**

**San Francisco, CA 94177**

**E-mail: [PGETariffs@pge.com](mailto:PGETariffs@pge.com)**

**DECLARATION OF RICHARD A. MIRAM  
SEEKING CONFIDENTIAL TREATMENT  
FOR CERTAIN DATA AND INFORMATION CONTAINED  
IN ADVICE LETTER 2992-E  
(PACIFIC GAS AND ELECTRIC COMPANY ID U 39 E)**

I, Richard A. Miram, declare:

1. I am presently employed by Pacific Gas and Electric Company (PG&E) and have been an employee since 1973. My current title is Principal in PG&E's Energy Procurement Department. In this position, my responsibilities include negotiating power purchase agreements with sellers and other counter parties in the business of producing electric energy. In carrying out these responsibilities, I have acquired knowledge of PG&E's contracts with such sellers, including contract restructurings and amendments, and the negotiation of such transactions. I have also gained knowledge of the operations of such sellers in general and, based on my experience in dealing with facility owners and operators, I am familiar with the types of data and information about their operations that such owners and operators consider confidential and proprietary.

2. Based on my knowledge and experience, and in accordance with the "Administrative Law Judge's Ruling Clarifying Interim Procedures For Complying With Decision 06-06-066," issued August 22, 2006, I make this declaration seeking confidential treatment of certain data and information contained in PG&E's "Amendment to Master Power Purchase and Sale Agreement Between FPL Energy Montezuma Wind, LLC and Pacific Gas and Electric Company," Advice 2992-E, submitted on February 23, 2007. By this Advice Letter PG&E is seeking this Commission's approval of an amendment of a CPUC-approved power purchase agreement (PPA) between FPL Montezuma, LLC and Pacific Gas and Electric

Company that resulted from Montezuma's response to PG&E's July 15, 2004 solicitation for renewable energy.

3. The data and information for which PG&E is seeking confidential treatment fall into the following category:

- The PPA Amendments between PG&E and FPL Montezuma, LLC and data/information related to or derived from these agreements.

4. The PPA amendment falls within a category of protected, confidential information specified in Appendix 1 of the Commission's recent confidentiality decision, D.06-06-066 (Confidentiality Matrix). I am informed and believe that such information qualifies for confidential treatment pursuant to this Commission's General Order No. 66-C.

5. As the Advice Letter states, the PPA Amendments alter renewable resource PPAs that do not require Supplemental Energy Payments (SEPs) from the California Energy Commission. As such, they are protected by category VII.G. of the Confidentiality Matrix, which governs "Renewable Resource Contracts under RPS program-purchase agreements between utilities and non-affiliated Contacts without SEPs."

6. PG&E will comply with the limitations on confidentiality described in the Confidentiality Matrix for the type of data specified in category VII.G.

7. This information is not already public.

8. If the Commission orders disclosure of the confidential data that is included in the Advice Letter, PG&E may be hampered in future contract negotiations. Sellers may be more reluctant to negotiate agreements with PG&E if they know their confidential, proprietary information must be made public as part of the Commission approval process. Such

circumstances could limit PG&E's ability to obtain and/or retain customer benefits through direct negotiations with facility owners.

9. The data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.

10. I am informed and believe that developers' information qualifies for confidential treatment pursuant to paragraphs 2.2 and 2.8 of General Order No. 66-C.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on February 23, 2007, at San Francisco, California.

A handwritten signature in black ink, appearing to read "Richard A. Miram", written over a horizontal line.

RICHARD A. MIRAM

**PG&E Gas and Electric Advice  
Filing List  
General Order 96-A, Section III(G)**

ABAG Power Pool	Douglass & Liddell	PG&E National Energy Group
Accent Energy	Downey, Brand, Seymour & Rohwer	Pinnacle CNG Company
Aglet Consumer Alliance	Duke Energy	PITCO
Agnews Developmental Center	Duke Energy North America	Plurimi, Inc.
Ahmed, Ali	Duncan, Virgil E.	PPL EnergyPlus, LLC
Alcantar & Kahl	Dutcher, John	Praxair, Inc.
Ancillary Services Coalition	Dynegy Inc.	Price, Roy
Anderson Donovan & Poole P.C.	Ellison Schneider	Product Development Dept
Applied Power Technologies	Energy Law Group LLP	R. M. Hairston & Company
APS Energy Services Co Inc	Energy Management Services, LLC	R. W. Beck & Associates
Arter & Hadden LLP	Exelon Energy Ohio, Inc	Recon Research
Avista Corp	Exeter Associates	Regional Cogeneration Service
Barkovich & Yap, Inc.	Foster Farms	RMC Lonestar
BART	Foster, Wheeler, Martinez	Sacramento Municipal Utility District
Bartle Wells Associates	Franciscan Mobilehome	SCD Energy Solutions
Blue Ridge Gas	Future Resources Associates, Inc	Seattle City Light
Bohannon Development Co	G. A. Krause & Assoc	Sempra
BP Energy Company	Gas Transmission Northwest Corporation	Sempra Energy
Braun & Associates	GLJ Energy Publications	Sequoia Union HS Dist
C & H Sugar Co.	Goodin, MacBride, Squeri, Schlotz &	SESCO
CA Bldg Industry Association	Hanna & Morton	Sierra Pacific Power Company
CA Cotton Ginners & Growers Assoc.	Heeg, Peggy A.	Silicon Valley Power
CA League of Food Processors	Hitachi Global Storage Technologies	Smurfit Stone Container Corp
CA Water Service Group	Hogan Manufacturing, Inc	Southern California Edison
California Energy Commission	House, Lon	SPURR
California Farm Bureau Federation	Imperial Irrigation District	St. Paul Assoc
California Gas Acquisition Svcs	Integrated Utility Consulting Group	Sutherland, Asbill & Brennan
California ISO	International Power Technology	Tabors Caramanis & Associates
Calpine	Interstate Gas Services, Inc.	Tecogen, Inc
Calpine Corp	IUCG/Sunshine Design LLC	TFS Energy
Calpine Gilroy Cogen	J. R. Wood, Inc	Transcanada
Cambridge Energy Research Assoc	JTM, Inc	Turlock Irrigation District
Cameron McKenna	Luce, Forward, Hamilton & Scripps	U S Borax, Inc
Cardinal Cogen	Manatt, Phelps & Phillips	United Cogen Inc.
Cellnet Data Systems	Marcus, David	URM Groups
Chevron Texaco	Matthew V. Brady & Associates	Utility Cost Management LLC
Chevron USA Production Co.	Maynor, Donald H.	Utility Resource Network
City of Glendale	MBMC, Inc.	Wellhead Electric Company
City of Healdsburg	McKenzie & Assoc	Western Hub Properties, LLC
City of Palo Alto	McKenzie & Associates	White & Case
City of Redding	Meek, Daniel W.	WMA
CLECA Law Office	Mirant California, LLC	
Commerce Energy	Modesto Irrigation Dist	
Constellation New Energy	Morrison & Foerster	
CPUC	Morse Richard Weisenmiller & Assoc.	
Cross Border Inc	Navigant Consulting	
Crossborder Inc	New United Motor Mfg, Inc	
CSC Energy Services	Norris & Wong Associates	
Davis, Wright, Tremaine LLP	North Coast Solar Resources	
Defense Fuel Support Center	Northern California Power Agency	
Department of the Army	Office of Energy Assessments	
Department of Water & Power City	OnGrid Solar	
DGS Natural Gas Services	Palo Alto Muni Utilities	