

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



November 6, 2008

**Advice Letters 3193-E/E-A/E-B**

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: Amendment to Standard Offer No. 1 Power Purchase Agreement between PG&E Company and The Pacific Lumber Company and Supplemental Filings**

Dear Mr. Cherry:

Advice Letters 3193-E/E-A/E-B are effective November 20, 2008 by Resolution E-4212.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Lewis".

Kenneth Lewis, Acting Director  
Energy Division



September 29, 2008

**Advice 3193-E-B**

(Pacific Gas and Electric Company ID U39 E)

Public Utilities Commission of the State of California

**Subject: Second Supplement - Amendment to Standard Offer No. 1  
Power Purchase Agreement between Pacific Gas and Electric  
Company and The Pacific Lumber Company**

**I. PURPOSE**

This filing supplements the request of Pacific Gas and Electric Company (PG&E) that the California Public Utilities Commission (Commission) approve an amendment to the Standard Offer No. 1 (SO1) power purchase and sale agreement (PPA) between The Pacific Lumber Company (PALCO) and PG&E (Amendment).

PG&E filed its original advice letter on January 11, 2008. On August 12, 2008, PG&E filed its first supplement by which it submitted a copy of the original SO1 PPA. In this second supplement, PG&E explains why the Commission is justified in approving the Amendment using the advice letter process.

**II. THE SIMILARITY BETWEEN THE COMMISSION'S QF AND RPS PROGRAMS PERMITS THE COMMISSION TO APPROVE THE PALCO AMENDMENT USING THE ADVICE LETTER PROCESS.**

The relationship between the Commission's Qualifying Facility (QF) and RPS programs permits the PALCO contract amendment to be submitted as advice letter for Commission approval. Although the Commission has not specifically addressed this procedural question, the statutory underpinning of the QF and RPS programs and the Commission's decisions and rulings justify use of an advice letter in this case.

**A. The RPS And QF Programs Share Similar Goals.**

The Public Utility Regulatory Policies Act of 1978 (PURPA) "was designed to encourage the development of cogeneration and small power production

facilities.”<sup>1/</sup> A small power production facility is defined as including biomass and waste.<sup>2/</sup>

When the Commission implemented PURPA in California during the 1980s it required the utilities to develop standard offer contracts that were made available to both small power production facilities (i.e., renewable generators) and cogenerators. PALCO’s wood waste facility has been generating renewable power since March, 1986.

When the California Legislature mandated the RPS program it did not do so to implement PURPA, but the program had the same overarching goal: to increase reliance on renewable energy resources like PALCO.<sup>3/</sup>

The QF and RPS programs share other similar goals. For example, PURPA was designed to combat the nationwide energy crisis.

At the time [1978], it was said that the generation of electricity consumed more than 25% of all energy resources used in the United States.... Approximately one-third of the electricity in this country was generated through use of oil and natural gas, and electricity generation was one of the fastest growing segments of the Nation’s economy.... In part because of their reliance on oil and gas, electricity utilities were plagued with increasing costs and decreasing efficiency in the use of their generating capacities; each of these factors had an adverse effect on rates to consumers and on the economy as a whole.... Congress accordingly determined that conservation by electricity utilities of oil and natural gas was essential to the success of any effort to lessen the country’s dependence on foreign oil, to avoid a repetition of the shortage of natural gas that had been experienced in 1977, and to control consumer costs.<sup>4/</sup>

Similarly, the RPS program was intended to “increas[e] the diversity . . . of the energy mix” and “reduce reliance on imported fuels.”<sup>5/</sup>

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1/ American Paper Inst. v. American Elec. Power (1983) 461 U.S. 402, 404-405.

2/ 16 U.S.C. section 796(17)(A).

3/ Pub. Util. Code section 399.11(b).

4/ FERC v. Mississippi (1982) 456 U.S. 742, 745-746; citations omitted.

5/ Pub. Util. Code section 399.11(a), (b).

**B. QFs May Qualify as Eligible Renewable Energy Resources and Generation from Such Facilities May Be Counted for RPS Compliance.**

The California Energy Commission (CEC) is responsible for certifying eligible renewable energy resources that RPS-obligated load-serving entities may use to comply with the RPS program.<sup>6/</sup> The CEC's RPS certification process and eligibility guidelines recognize that QFs may qualify as eligible renewable energy resources. For example, the CEC's RPS Application for Certification form contains a section where applicants may enter the facility's QF identification number.<sup>7/</sup> Additionally, the CEC's RPS Eligibility Guidebook provides that 100 percent of electricity generated by a renewable QF that began operating before 2002 and is currently certified as a renewable QF may be counted for RPS compliance, provided that the percentage of fossil fuel used is no greater than 25 percent of the facility's total energy input per year.<sup>8/</sup>

Under SB 107, deliveries under pre-2005 contracts with eligible renewable energy resources, where the contract does not contain terms regarding the ownership and disposition of renewable energy credits associated with such deliveries, are included in a retail seller's baseline.<sup>9/</sup> Deliveries received under pre-2005 contracts with renewable QFs that fall within this category are therefore included in a retail seller's baseline of eligible renewable energy resources. SB 107 also explicitly permits deliveries under QF contracts executed after January 1, 2005 to be counted toward a retail seller's RPS compliance obligations.<sup>10/</sup>

**C. A Significant Percentage of PG&E's RPS Baseline is Composed of QF Generation.**

By statute, the Commission is responsible for setting an initial baseline of eligible renewable energy resources for each RPS-obligated load-serving entity for the purpose of establishing annual procurement targets.<sup>11/</sup> The Commission has

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6/ Pub. Util. Code section 399.13(a).

7/ See California Energy Commission's "Application for Certification" for California RPS Program, form CEC-RPS-1A, January 2008, section III, number 11.

8/ California Energy Commission Renewables Portfolio Standard Eligibility Guidebook, Third Edition, CEC-300-2007-006-ED3-CMF, adopted December 19, 2007, p. 19.

9/ Pub. Util. Code section 399.16(a)(5).

10/ Pub. Util. Code section 399.16(a)(6).

11/ Pub. Util. Code section 399.15(b)(2); See also D.06-07-032 Mimeo p. 16, Finding of Fact No. 8, allowing PG&E to receive full credit for all energy purchased pursuant to the IEP Settlement from Renewable QFs in satisfaction of PG&E's RPS requirements.

determined the baseline for the investor-owned utilities in a series of decisions.<sup>12/</sup> A significant percentage of PG&E's RPS baseline is composed of QF generation, including purchases under the PALCO contract.

Moreover, the Commission's recent QF pricing and policy decision (D.07-09-040) evidences the Commission's intent to encourage opportunities for renewables to enter the utilities' supply portfolio by increasing the means by which a QF may contract with a utility. Decision 07-09-040 directed the utilities to develop standard contracts that will be available to all QFs, many of which are renewable resource generators. Thus, the Commission does not distinguish between cogenerators and renewable generators in this context. Indeed, the standard contract PG&E has proposed will, upon Commission approval, be available to both cogenerators and renewable generators alike.

#### **D. The Commission Permits Use of The Advice Letter Process to Approve Both RPS and QF Contracts.**

The Commission has permitted utilities to submit for approval by advice letter RPS contracts executed as a result of an RPS Solicitation.<sup>13/</sup> The Commission has also permitted utilities to use the advice letter process to seek approval of RPS contract amendments.<sup>14/</sup>

Similarly, for QF contracts, the Commission established a "Restructuring Advice Letter Filing (RALF) for review of QF contract restructurings. The Commission adopted the RALF in fulfillment of its request for a "generic and possibly expedited process by which we can assess the reasonableness of contract restructurings...."<sup>15/</sup> The Commission asked for such a process in 1996 to implement an incentive mechanism "to encourage the restructuring of QF contracts so total transition costs [resulting from electric restructuring] might be reduced."<sup>16/</sup>

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12/ See *Order Instituting Rulemaking*, R.04-04-026, April 22, 2004, p. 4; D.04-06-014, mimeo pp. 10-11 and Appendix B; D.06-10-050, mimeo pp. 23-24 and Attachment A.

13/ D.04-07-029, mimeo pp. 9-12; D.07-02-011, p. 49.

14/ See, e.g., Resolution E-4161, approving PG&E's contract and amendment for the "Shiloh II" wind project.

15/ D.96-12-088; 70 CPUC 2d 497, 527.

16/ Id, referring to the Commission's Preferred Policy Decision, D.95-12-063 as modified by D.96-01-009.

### **E. The PALCO Amendment Should Be Treated As An RPS Contract.**

The PALCO amendment does not fall clearly within either of the processes discussed above. It is not a contract or amendment resulting from an RPS solicitation. It is not an amendment intended to reduce transition costs. Instead, it is an amendment intended to retain PALCO's renewable energy deliveries for another eight years. Because of the close relationship between the QF and RPS programs and their very similar goals, the PALCO amendment should be treated similar to an RPS contract and approved through the advice letter process.

Although the PALCO amendment is not an RPS contract, it is nevertheless a contract with an RPS-certified facility whose generation counts toward PG&E's RPS compliance obligations. Thus, the Commission should approve the PALCO advice letter as submitted.

### **III. REQUEST FOR COMMISSION APPROVAL**

One of the conditions of the Amendment is satisfactory Commission approval. Therefore, PG&E requests that the Commission expeditiously issue a resolution that:

1. Adopts the Amendment without change; and
2. Approves the Amendment in its entirety, including payments to be made by PG&E pursuant to the Amendment, subject to the Commission's review of PG&E's administration of the Amendment.
3. Finds that any stranded costs that may arise from the PPA are 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 being addressed in Rulemaking 06-02-013.
4. The Amendment will have no effect upon the RPS eligibility of the project.

### **Protests**

PG&E asks that the protest and comment period not be reopened given that this supplement merely explains why use of the advice letter process is appropriate in this case.

**Effective Date:**

PG&E requests that this advice filing become effective on **November 21, 2008**.

**Notice:**

In accordance with General Order 96-B, Section IV, a copy of this advice letter 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.08-08-009. Address changes should be directed to Rose De La Torre (415) 973-4716. Advice letter filings can also be accessed electronically at:

<http://www.pge.com/tariffs>



Brian K. Cherry  
Vice President - Regulatory Relations

cc: Service List for R.08-08-009  
Service List for R.01-10-024  
Paul Douglas - Energy Division

Attachments

**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 (ID U39 M)**

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) #: **3193-E-B**

**Tier: [3]**

Subject of AL: **Second Supplement - Amendment to Standard Offer No. 1 Power Purchase Agreement between Pacific Gas and Electric Company and The Pacific Lumber 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: No

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

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for: No

Confidential information will be made available to those who have executed a nondisclosure agreement: N/A

Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information: N/A

Resolution Required?  Yes  No

Requested effective date: 11/21/2008

No. of tariff sheets: N/A

Protests, dispositions, 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**

**Tariff Files, Room 4005**

**DMS Branch**

**505 Van Ness Ave., San Francisco, CA 94102**

**jnj@cpuc.ca.gov and mas@cpuc.ca.gov**

**Pacific Gas and Electric Company**

**Attn: Brian K. Cherry, Vice President, Regulatory Relations**

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**P.O. Box 770000**

**San Francisco, CA 94177**

**E-mail: PGETariffs@pge.com**

**PG&E Gas and Electric  
Advice Filing List  
General Order 96-B, Section IV**

Aglet	Department of the Army	Northern California Power Association
Agnews Developmental Center	Dept of General Services	Occidental Energy Marketing, Inc.
Alcantar & Kahl	Division of Business Advisory Services	OnGrid Solar
Ancillary Services Coalition	Douglas & Liddell	PPL EnergyPlus, LLC
Anderson & Poole	Douglass & Liddell	Pinnacle CNG Company
Arizona Public Service Company	Downey & Brand	Praxair
BART	Duke Energy	R. W. Beck & Associates
BP Energy Company	Duncan, Virgil E.	RCS, Inc.
Barkovich & Yap, Inc.	Dutcher, John	RMC Lonestar
Bartle Wells Associates	Ellison Schneider & Harris LLP	Recon Research
Blue Ridge Gas	Energy Management Services, LLC	SCD Energy Solutions
Braun & Associates	FPL Energy Project Management, Inc.	SCE
C & H Sugar Co.	Foster Farms	SESCO
CA Bldg Industry Association	Foster, Wheeler, Martinez	SMUD
CAISO	Franciscan Mobilehome	SPURR
CLECA Law Office	G. A. Krause & Assoc.	Santa Fe Jets
CSC Energy Services	GLJ Publications	Seattle City Light
	Goodin, MacBride, Squeri, Schlotz & Ritchie	Sempra Utilities
California Cotton Ginners & Growers Assn	Green Power Institute	Sequoia Union HS Dist
California Energy Commission	Hanna & Morton	Sierra Pacific Power Company
California League of Food Processors	Heeg, Peggy A.	Silicon Valley Power
California Public Utilities Commission	Hitachi	Smurfit Stone Container Corp
Calpine	Hogan Manufacturing, Inc.	Southern California Edison Company
Cameron McKenna	Imperial Irrigation District	St. Paul Assoc.
Cardinal Cogen	Innercite	Sunshine Design
Casner, Steve	International Power Technology	Sutherland, Asbill & Brennan
Cerox	Intestate Gas Services, Inc.	TFS Energy
Chamberlain, Eric	J. R. Wood, Inc.	Tabors Caramanis & Associates
Chevron Company	JTM, Inc.	Tecogen, Inc.
Chris, King	Los Angeles Dept of Water & Power	Tioga Energy
City of Glendale	Luce, Forward, Hamilton & Scripps LLP	TransCanada
City of Palo Alto	MBMC, Inc.	Turlock Irrigation District
City of San Jose	MRW & Associates	U S Borax, Inc.
Clean Energy Fuels	Manatt Phelps Phillips	United Cogen
Coast Economic Consulting	Matthew V. Brady & Associates	Utility Cost Management
Commerce Energy	McKenzie & Associates	Utility Resource Network
Commercial Energy	Meek, Daniel W.	Utility Specialists
Constellation	Merced Irrigation District	Vandenberg Air Force
Constellation New Energy	Mirant	Verizon
Consumer Federation of California	Modesto Irrigation District	Wellhead Electric Company
Crossborder Energy	Morgan Stanley	Western Manufactured Housing Communities Association (WMA)
		White & Case
Davis Wright Tremaine LLP	Morrison & Foerster	eMeter Corporation
Day Carter Murphy	New United Motor Mfg., Inc.	
Defense Energy Support Center	Norris & Wong Associates	
Department of Water Resources	North Coast SolarResources	