

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

AGENDA ID # 13599
RESOLUTION E -4696
January 29, 2015

R E S O L U T I O N

Resolution E-4696. Pacific Gas & Electric Company ("PG&E") requests approval of two contracts for Resource Adequacy ("RA") capacity between PG&E and Dynegy Moss Landing, LLC ("Dynegy").

PROPOSED OUTCOME: This resolution approves both Dynegy Moss Landing RA contracts without modification.

SAFETY CONSIDERATIONS: The RA Capacity in question is associated with Moss Landing 1, an existing and operational generating facility; as such there are no incremental safety implications associated with this contract beyond status quo.

ESTIMATED COST: Contract costs are confidential at this time.

By Advice Letter 4496-E Filed on September 16, 2014.

SUMMARY

Pacific Gas & Electric Company ("PG&E") requests that the California Public Utilities Commission ("Commission" or "CPUC") 1) approve the proposed resource adequacy ("RA") capacity agreement with Dynegy Moss Landing, LLC ("Dynegy") for July through September 2017 ("Dynegy Summer Contract") and 2) approve the proposed RA capacity agreement with Dynegy for the full 2017 calendar year ("Dynegy Full-Year Contract", and both contracts collectively "the Dynegy Contracts").

These Contracts arose from PG&E's 2014 RA Intermediate-Term Request for Offers ("ITRFO"), a competitive solicitation seeking RA benefits from 2015 through 2018. The Dynegy Contracts will provide PG&E with System RA benefits from Moss Landing 1, an existing natural gas-fired generating unit. The

unit is in the NP-15 region and is not in a Local Capacity Area. Moss Landing 1 is subject to the State Water Resources Control Board ("SWRCB") once-through cooling ("OTC") policy and has a SWRBC OTC compliance deadline of December 31, 2017.

The Dynegy Summer Contract is for 300 megawatts ("MW") of System RA capacity, for a term beginning on July 1, 2017 and continuing through September 30, 2017. The Dynegy Full-Year Contract is for 75 MW of System RA capacity, for a term beginning on January 1, 2017 and continuing through December 31, 2017. The Dynegy Contracts do not include Local RA attributes, nor do they include any energy tolling capacity. The amount of Flexible RA attributes included in the Dynegy Contracts, if any, was submitted to the Commission confidentially.

For the reasons discussed below, the Commission approves AL 4496-E without modification.

BACKGROUND

On April 22, 2014, PG&E issued its 2014 ITRFO, a competitive solicitation seeking both System and Local RA. The Dynegy Contracts are among the winning bids in the ITRFO, which concluded on September 4, 2014. PG&E's bid evaluations were conducted considering price, portfolio fit, credit and conformance to the RA confirmation, and supplier diversity. The ITRFO process was monitored by an independent evaluator (IE), Arroyo Seco Consulting, with the IE's observations and recommendations recorded in the IE Report included in AL 4496-E.

The Dynegy Summer Contract is for 300 MW of System RA from Moss Landing 1. It has a term of three months, from July 1, 2017 through September 30, 2017. The Dynegy Full-Year Contract is for 75 MW of System RA from the same unit, from January 1, 2017 through December 31, 2017. Therefore, during the months of July, August, and September 2017, the total quantity of System RA to be provided will be 375 MW; during all other months of 2017, the total quantity of System RA will be 75 MW. This capacity is less than the full Net Qualifying Capacity ("NQC") of Moss Landing 1, which is 510 MW. Because Moss Landing 1 is not within any Local Capacity Areas, it can provide System RA only, and not Local RA. The unit has an Effective Flexible Capacity ("EFC") of 368.98 MW; the amount of this capacity, if any, that will be provided to PG&E is confidential. The Dynegy Contracts do not include any energy tolling capacity.

NOTICE

Notice of AL 4496-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed to the service list for Rulemaking ("R.") 13-12-010 in accordance with Section 4 of General Order 96-B.

PROTESTS

Advice Letter AL 4496-E was not protested.

DISCUSSION

Decision ("D.") 12-04-046 directed that any OTC power purchase agreement that terminates one year or less prior to the applicable SWRCB compliance deadline must be submitted to the Commission for approval via a Tier 3 advice letter. Moss Landing 1 has a SWRCB OTC compliance deadline of December 31, 2017. The Dynegy Summer Contract ends on September 30, 2017, three months prior to the OTC deadline. The Dynegy Full-Year Contract ends on December 31, 2017, on the day of the OTC deadline. Therefore, PG&E sought approval of the Dynegy Contracts through a Tier 3 advice letter, AL 4496-E.

We evaluated AL 4496-E based on criteria established in previous Commission decisions and in California Public Utilities Code, Section 454.5, which provide guidance to the IOUs and the Commission for the procurement of electricity and electricity-related products. Specifically, PG&E must demonstrate that the transaction:

1. is in compliance with the Energy Action Plan ("EAP") Loading Order;
2. is in compliance with once-through cooling Procurement Rules;
3. was discussed with the Procurement Review Group ("PRG");
4. is in compliance with PG&E's Public Utilities Code Section 454.5 Bundled Procurement Plan;
5. meets residual energy and capacity needs; and
6. is at a reasonable price.

The Dynegy Contracts are in compliance with the EAP Loading Order.

The EAP Loading Order, published on May 8, 2003, and endorsed in D.04-12-048, contains explicit direction regarding California's preferences for meeting identified resource needs, and directs the Investor Owned Utilities ("IOUs") to

prioritize their resource selections accordingly. The EAP prioritizes resources in a “loading order” of policy preference and directs IOUs to procure resources in the following order of priority: Energy Efficiency (“EE”) and Demand Response (“DR”), renewable fuel resources, clean fossil-fired Distributed Generation (“DG”), and clean central-station generation.¹ Moss Landing 1 is an existing natural gas-fired combined-cycle electric generating facility.

The Dynegy Contracts do not meet all of PG&E’s bundled customer needs, and PG&E states that they will not displace any preferred resources, which may be used to meet bundled customer needs. Additionally, the Dynegy Contracts enable PG&E to meet its CPUC-mandated System RA capacity obligations, which currently cannot be entirely met with preferred resources. Therefore, the Dynegy Contracts are not inconsistent with the EAP Loading Order.

The Dynegy Contracts comply with OTC Procurement Rules.

D.12-04-046 directed that any OTC power purchase agreement that terminates one year or less prior to the applicable SWRCB compliance deadline must be submitted to the Commission for approval via a Tier 3 advice letter. The Dynegy Summer Contract ends on September 30, 2017, and the Dynegy Full-Year Contract ends on December 31, 2017, the day of the OTC deadline. These Contracts are therefore subject to this guideline and to other procurement rules. D.12-04-046 provided guidance on how the utilities must prepare, and how the Energy Division must evaluate, such power purchase agreements. We address how the Dynegy Contracts comply with each of the criteria specified in D.12-04-046 below.

1) How the contract helps facilitate compliance with the SWRCB’s OTC policy or, at a minimum, does not delay compliance.

Moss Landing 1 is subject to the SWRCB’s OTC policy. The SWRCB OTC compliance deadline for all Moss Landing units is December 31, 2017. The Dynegy Summer Contract ends on September 30, 2017, and the Dynegy Full-Year Contract ends on December 31, 2017, on the day of the OTC deadline. According to PG&E, Dynegy has stated that these Contracts will not delay compliance by the December 31, 2017 deadline, nor will they delay or prevent Moss Landing Energy Facility’s compliance with any current or interim requirements prior to

¹ D.04-12-048, page 98.

that final compliance deadline. Moreover, PG&E asserts that the Dynegy Contracts will facilitate compliance with OTC policy by providing funding for “baseline impingement and entrainment studies that are required to be completed prior to the final compliance date,” and for “the evaluation and testing of alternative measures, including both operational and technological controls, which will enable the plant to achieve compliance with the SWRCB OTC policy impingement and entrainment reduction standards by the final compliance deadline.”² While the Dynegy Full-Year Contract ends on the same date as the SWRCB OTC compliance deadline, we nevertheless find PG&E compliant with this requirement because the Dynegy Contracts will not delay compliance, and will provide funding to facilitate timely compliance.

2) Include the expected operation of the OTC facility under normal load (1 in 2) and high load (1 in 10) conditions, including number of starts and run time after each start. Because the Dynegy Contracts are RA-only, this section is not applicable and this operational information was not included in AL 4496-E. We agree that this section is not applicable, and find PG&E compliant with this requirement.

3) Include the Local Capacity requirement (“LCR”) net position with and without the OTC facility over the contract duration and two years beyond the contract duration. Moss Landing 1 is not within a designated local capacity area. PG&E’s LCR net position is not affected by this unit.

4) How any other available generation resources compare under these criteria. The Dynegy Contracts stem from a competitive solicitation, PG&E’s 2014 ITRFO. Bids were evaluated considering price, portfolio fit, credit and conformance to the RA confirmation, and supplier diversity. The solicitation was monitored by an Independent Evaluator, Arroyo Seco Consulting, which found the process to be fairly conducted.

Because the Dynegy Contracts are compliant with the first two OTC contract criteria specified in D.12-04-046 – as described in sections 1) and 2) above – other available generation resources would only be preferable under these criteria if they helped meet PG&E’s Local Capacity requirements. Any other available generation resources that could offer Local RA had the opportunity to compete

² AL 4496-E, page 4.

in the ITRFO, and because the ability to provide Local RA was considered as part of the bid evaluation process, if any other resources had been preferable, they would have been selected according to PG&E's least cost-best fit methodology. We agree with the Independent Evaluator that the ITRFO process was fairly conducted and that therefore the competitively-procured Dynegy Contracts represent the best available resources to meet both the OTC criteria and PG&E's other bid evaluation criteria.

Consistent with D.02-08-071, PG&E's Procurement Review Group ("PRG") was notified of the Dynegy Contracts.

The Commission established PRGs to oversee the procurement activities of IOUs and mandated that each IOU maintain and routinely consult with its PRG. The purpose of the PRG is to review and assess the details of the IOUs' overall procurement strategy and specific proposed procurement contracts and processes prior to submitting filings to the Commission.³ PG&E briefed the PRG on the forthcoming ITRFO on April 8, 2014. On June 10, 2014, it presented on offers, bid evaluation, and procurement recommendations. On September 8, 2014, PG&E notified the PRG that it had completed the ITRFO, including information on the final, executed contracts. On December 19, 2014, PG&E provided the PRG with additional details on the volume, tenor, and price of these contracts.

The Dynegy Contracts are in compliance with PG&E's Public Utilities Code Section 454.5 Bundled Procurement Plan.

A Commission-approved AB 57 Bundled Procurement Plan establishes the limits and criteria that guide utility procurement activities. All transactions and actions that fall within the boundaries of a Commission-approved AB 57 procurement plan are compliant and are assured cost recovery.

In D.12-01-033, the Commission adopted PG&E's 2010 Bundled Procurement Plan compliance filing covering the years 2012 through 2022 with modifications. This Decision required PG&E to file a conformed version of the 2010 Bundled Procurement Plan through a Tier 3 advice letter, which was approved by Resolution E-4544 on October 11, 2012.

³ D.02-08-071, pages 7 and 8.

Among other things, PG&E's Bundled Procurement Plan specifies electrical capacity position limits and transaction rate limits (referred to as "ratable rates") that apply to electrical capacity transactions for delivery months that occur two or more calendar years beyond the transaction year. Ratable rates are calculated by dividing the maximum transaction volume requirements by the number of months or years available to conduct transactions. The construct of ratable rates prevents PG&E from procuring too much of its forward requirements too far in advance and thereby constraining future procurement.

In Confidential Appendix B of AL 4496-E, PG&E provided details on its maximum capacity procurement limits for 2017. We verified this information and found that the capacity requested for approval in AL 4496-E does not exceed PG&E's approved capacity purchase authority for 2017.

The Dynegy Contracts meet residual capacity needs for PG&E's bundled customers.

PG&E demonstrates its residual need in Confidential Appendix B of Advice Letter 4496-E. We evaluated this information and determined that the Dynegy Contracts meet residual system capacity needs for PG&E's bundled customers.

The Dynegy Contracts are reasonably priced.

PG&E employed a confidential methodology to evaluate bids in the ITRFO, though the overall criteria were made public as part of the solicitation process (price, portfolio fit, credit and conformance to the RA confirmation, and supplier diversity). As the Independent Evaluator Report states, "The quantitative analysis aligns closely with the principle of achieving least-cost procurement over the 2015-2018 period while seeking to meet the volume targets of the RFO and meeting constraints on RA imports," and "[e]valuations and selection decisions are based almost entirely on information submitted in Offers."⁴ We agree that these contracts are reasonably priced.

PG&E presented additional information on its evaluation process in Confidential Appendix A of Advice Letter 4496-E. The ITRFO bids and ensuing contract negotiations are further documented in Appendix D, the Independent Evaluator Report for the 2014 ITRFO. We evaluated PG&E's assumptions, evaluation

⁴ AL 4496-E, Appendix E, page 14.

criteria, and evaluation process, and found them reasonable. The quantitative evaluation results show that the Dynegy Contracts are reasonably priced, and provide cost certainty to PG&E customers for future years. These findings are confirmed by the Independent Evaluator Report.

The Dynegy Contracts do not violate safety concerns.

The Dynegy Contracts include a number of general provisions that require the seller to comply with certain operational and maintenance obligations in accordance with General Order 167, industry standards, and California Independent System Operator (“CAISO”) mandated standards, as well as requirements to comply with accepted electrical practices, applicable laws and permits, and other governmental authorities. PG&E has also reported to the Commission on Dynegy Moss Landing’s history of Occupational Safety and Health Administration (“OSHA”) employee recordable and contractor recordable incidents, safety planning, and associated programs. Dynegy Moss Landing Power Plant had one, zero, and three employee recordable incidents in 2012, 2013, and 2014, respectively.

Additionally, in response to Commission data requests, PG&E reports that the “Dynegy ACE (Accountability-Communication-Engagement) Action Plan sets achievable goals based on leading indicators and empowers the Safety Committee to administer the plan. Promoting hazard recognition, gaining feedback through safety surveys, learning new ways to communicate with all employees, encouraging employee wellness and reassessing historical modes of injury are examples of how Moss Landing Power Plant is committed to safety and wellness.”⁵

Decommissioning and demolition of Moss Landing is also an important safety consideration. Dynegy’s record in this regard is demonstrated by the successful decommissioning activities at its South Bay plant in Chula Vista.”⁶

In light of the preceding discussion, we are convinced that PG&E’s entrance into the Dynegy Contracts complies with all relevant requirements. We also expect

⁵ Provided in PG&E Data Request No. ED_002-02, *AdviceLetterRelatedDocuments4496-E/4497-E_DR_ED_002-Q02PUBLIC*, pp. 1-2.

⁶ AL 2977-E, page 14.

that PG&E will refrain from exercising market power in the resale of excess system capacity.

The disclosure of the Dynegy Contracts is subject to the Public/Confidential treatment specified in D.06-06-066 and other relevant precedent. The Dynegy Full-Year Contract begins on January 1, 2017, and the Dynegy Summer Contract begins on July 1, 2017; the confidential terms of these contracts will become public after three years,⁷ unless D.06-06-066 is modified to amend the current confidentiality treatment.

COMMENTS

Public Utilities Code section 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

1. Decision.12-04-046 directed that any once-through-cooling ("OTC") power purchase agreement that terminates one year or less prior to the applicable State Water Resources Control Board ("SWRCB") compliance deadline must be submitted to the Commission for approval via a Tier 3 advice letter.
2. On September 16, 2014 Pacific Gas & Electric Company ("PG&E") submitted Advice Letter 4496-E seeking Commission approval for two capacity agreements ("Dynegy Contracts") between PG&E and Dynegy Moss Landing LLC for capacity from Moss Landing 1, a combined-cycle electric generating facility that utilizes once-through cooling.

⁷ D.06-06-066, Appendix 1, page 15.

3. The Dynegy Contracts consist of one contract for 75 MW of System RA capacity (“Dynegy Full-Year Contract”) and one contract for an additional 300 MW of System RA capacity (“Dynegy Summer Contract”).
4. The amount of Flexible RA capacity included in the Dynegy Contracts, if any, is confidential.
5. The Dynegy Full-Year Contract will provide PG&E with resource adequacy benefits for a term beginning on January 1, 2017, and ending on December 31, 2017.
6. The Dynegy Summer Contract will provide PG&E with resource adequacy benefits for a term beginning on July 1, 2017, and ending on September 30, 2017.
7. Moss Landing 1 is subject to the SWRCB OTC policy and has a compliance deadline of December 31, 2017.
8. The Dynegy Summer Contract ends on September 30, 2017, three months prior to the SWRCB OTC deadline for Moss Landing 1.
9. The Dynegy Full-Year Contract ends on December 31, 2017, on the day of the SWRCB OTC deadline for Moss Landing 1.
10. The Dynegy Contracts meet residual capacity needs for PG&E’s bundled customers.
11. Consistent with Decision 02-08-071, PG&E’s Procurement Review Group was briefed on the forthcoming ITRFO on April 8, 2014, and notified of the Dynegy Contracts on June 10, September 8, and December 19, 2014.
12. The Dynegy Contracts do not exceed PG&E’s approved Assembly Bill 57 bundled procurement authority for 2016.

THEREFORE IT IS ORDERED THAT:

1. The request of Pacific Gas and Electric Company (“PG&E”) that the Commission approve the resource adequacy (“RA”) agreements between PG&E and Dynegy Moss Landing, LLC arising from the PG&E Intermediate-Term Request for Offers, as requested in Advice Letter AL 4496-E, is granted.
2. We expect that PG&E shall refrain from exercising market power in the resale of excess capacity.

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 on January 29, 2015; the following Commissioners voting favorably thereon:

TIMOTHY SULLIVAN
Interim Executive Director