

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

ENERGY DIVISION

Agenda Item# 4  
AGENDA ID: 18285  
RESOLUTION E-5046 (Rev. 1)  
May 7, 2020

**R E S O L U T I O N**

Resolution E-5046. Request by Pacific Gas and Electric to Modify its 2014 Conformed Bundled Procurement Plan.

PROPOSED OUTCOME:

- This Resolution approves Pacific Gas and Electric Company's request to modify its 2014 Conformed Bundled Procurement Plan without modification.
- This Resolution also makes certain clarifications in response to the record.

SAFETY CONSIDERATIONS:

- There are no safety considerations associated with this resolution

ESTIMATED COST:

- This Resolution modifies and clarifies approved procurement practices, and the Commission does not anticipate that this Resolution would result in additional costs for Pacific Gas and Electric Company's ratepayers.

By Advice Letter 5705-E, Filed on December 2, 2019.

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**SUMMARY**

This Resolution revises Pacific Gas and Electric's (PG&E) 2014 Conformed Bundled Procurement Plan ("2014 BPP") in two ways. First, it adds a new "Appendix P," which outlines a process for PG&E to sell Carbon Free Energy to other Load Serving Entities (LSE) in two periods covering 2019 and 2020. Second, it makes several changes to the existing Appendix S, which outlines a sales framework for energy and resource adequacy products and is confidential. The

Commission approves PG&E's changes without modification but makes certain clarifications regarding the application of Appendix P, in response to the record.

## **BACKGROUND**

On December 2, 2019, PG&E filed Advice Letter (AL) 5075-E, in which PG&E seeks to add a new appendix to its 2014 BPP and to make other related changes. Specifically, PG&E seeks to add a public "Appendix P," which identifies the LSEs that would be eligible to purchase "Carbon Free Energy" from nuclear and large hydroelectric resources in PG&E's portfolio, describes how PG&E would calculate the volumes of energy it would make available to these LSEs, and states the terms under which PG&E would agree to sell Carbon Free Energy. PG&E also proposes to revise Appendix S of its 2014 BPP, which is confidential and describes sales of certain energy and capacity products. The Commission approved adding Appendix S to PG&E's 2014 BPP via Resolution E-4998, on May 31, 2019. Pursuant to Resolution E-4998, PG&E subsequently made conforming modifications to Appendix S in AL 5579-E, which Energy Division approved on July 31, 2019 (effective July 1, 2019).

PG&E describes the reasoning for AL 5705-E (the subject of this Resolution) as follows:

Parties in the [Power Charge Indifference Adjustment] proceeding have raised the issue of how the value of [Greenhouse Gas] free resources that have their above market costs recovered through the [Power Charge Indifference Adjustment] should be optimized and subsequently reported for the California Energy Commission's (CEC) Power Content Label (PCL). For 2019 and 2020, prior to the Commission issuing its [Power Charge Indifference Adjustment] Phase 2 decision, PG&E developed Appendix P (Carbon Free energy) to address these issues...<sup>1</sup>

The proposed Appendix P, which appears as Attachment B to AL 5705-E, identifies two "Resource Pools" that consist of nuclear and large hydroelectric resources, respectively, and from which PG&E will make Carbon Free Energy available to certain LSEs.<sup>2</sup> PG&E proposes that it could modify either Resource

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<sup>1</sup> Advice Letter 5705-E at 2.

<sup>2</sup> Ibid., Attachment B at 3 and 8-9.

Pool via a Tier 1 advice letter filing.<sup>3</sup> An LSE will be eligible to receive an allocation of Carbon Free Energy from one or both Resource Pools (i.e., the LSE will be an “Eligible LSE”) if it

(1) has forecasted load identified in PG&E’s [Energy Resource Recovery Account] Forecast Application for the Calendar Year in which the Allocation Amount is accepted; and (2)...serves customers who pay [Power Charge Indifference Adjustment] departing load charges for the above market costs of Resources.<sup>4</sup>

PG&E proposes to make Carbon Free Energy available to LSEs in two “Allocation Periods”: Period A, which includes January 1, 2019 through the day before first delivery under the confirmation between PG&E and the given LSE; and Period B, which includes the first delivery day under the confirmation through December 31, 2020.<sup>5</sup> PG&E states that PG&E and the California Community Choice Association (CalCCA) petitioned the CEC to allow sales of Carbon Free Energy in Period A to count towards Eligible LSEs’ PCL reporting, but if the CEC were to reject this request, PG&E would retain Period A sales for its own PCL.<sup>6</sup>

PG&E proposes to determine each Eligible LSE’s allocation as follows. First, PG&E will calculate the Eligible LSE’s “Allocation Ratio” for each month of a given Allocation Period by dividing the LSE’s monthly gigawatt-hour forecast in PG&E’s Energy Resource Recovery Account (ERRA) Application by the total gigawatt-hour forecast of all customers that pay the Power Charge Indifference Adjustment (PCIA).<sup>7</sup> Next, PG&E will multiply this ratio by the corresponding monthly generation of each resource in each Resource Pool to arrive at the

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<sup>3</sup> Ibid., Attachment B at 8.

<sup>4</sup> Ibid., Attachment B at 3.

<sup>5</sup> Ibid., Attachment B at 5.

<sup>6</sup> Ibid., Attachment B at 5-6.

<sup>7</sup> Ibid., Attachment B at 2-3.

“Allocation Amount” applicable to each Eligible LSE for each Resource Pool.<sup>8</sup> PG&E also clarifies that Allocation Ratios (and therefore Allocation Amounts) would not change after their initial calculation.<sup>9</sup>

PG&E proposes to offer each Eligible LSE its Allocation Ratio as “a one-time event following the CPUC’s approval of Appendix P,” after which the Eligible LSE will have thirty days to accept or reject the offer and, if it accepts the offer, to identify the Resource Pool(s) from which it will accept Carbon Free Energy.<sup>10</sup> (PG&E will consider a non-response within thirty days as a rejection of the offer.<sup>11</sup>) PG&E and an Eligible LSE will enter a confirmation under the Edison Electric Institute Master Purchase and Sales Agreement within fifteen days of the Eligible LSE accepting an allocation (after which PG&E refers to the Eligible LSE as a “Confirmed LSE”).<sup>12</sup> PG&E will communicate a Confirmed LSE’s quarterly Allocation Amount fifty-five days after the calendar quarter ends and will communicate the final Allocation Amount for a given calendar year by May 15 of the following year.<sup>13</sup>

Finally, PG&E proposes certain conditions for sales agreements in Appendix P. PG&E states that it will not post collateral or performance assurance for any sale and that it similarly will not require an Eligible LSE to do so.<sup>14</sup> PG&E will also require each Eligible LSE to agree “that the sale and delivery of the Carbon Free Energy is a reasonable manner to manage disposition of the Carbon Free Energy”<sup>15</sup> and that the Eligible LSE will

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<sup>8</sup> Ibid., Attachment B at 2 and 4.

<sup>9</sup> Ibid., Attachment B at 5.

<sup>10</sup> Ibid., Attachment B at 6.

<sup>11</sup> Ibid., Attachment B at 6.

<sup>12</sup> Ibid., Attachment B at 7.

<sup>13</sup> Ibid., Attachment B at 7.

<sup>14</sup> Ibid., Attachment B at 8.

<sup>15</sup> Ibid., Attachment B at 8.

waive its ability to make petitions, arguments, or filings to the CPUC or the California Legislature asserting that PG&E has not offered any allocation, sale, or transfer of Carbon Free Energy or environmental attributes associated with such Carbon Free Energy for the period in which the Eligible LSE accepts the Offer.<sup>16</sup>

We take PG&E's statement to mean that contract disputes will be handled pursuant to the contract and not be brought before the Commission. As Appendix S to PG&E's 2014 BPP is confidential, we do not describe the proposed changes to Appendix S in this Resolution.

## **NOTICE**

Notice of AL 5705-E was made by publication in the Commission's Daily Calendar. Pacific Gas and Electric states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

## **PROTESTS**

Pacific Gas and Electric Advice Letter 5705-E was timely protested by Local Clean Energy Alliance (LCEA), The Utility Reform Network (TURN), and Women's Energy Matters (WEM). In addition, the Alliance for Retail Energy Markets (AREM) and the Joint CCAs<sup>17</sup> timely provided responses to AL 5705-E.

LCEA makes two specific protests to AL 5705-E. First, with respect to energy sales in the proposed Period A that may or may not receive CEC approval, LCEA states that "PG&E is asking the CPUC to approve sale of a product where the clear value is exclusively based upon the ability of [LSEs] to violate existing regulation prohibiting an LSE purchasing the product to count it as carbon free."<sup>18</sup> LCEA explains further that "[t]here could not be any other value, since

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<sup>16</sup> Ibid., Attachment B at 8.

<sup>17</sup> The Joint CCAs include CleanPowerSF, East Bay Community Energy, Monterey Bay Community Power, Peninsula Clean Energy, San José Clean Energy, and Sonoma Clean Power.

<sup>18</sup> LCEA Protest at 2.

LSEs will already have purchased all of the physical energy requirements for 2019,” and that “[i]t would not be just and reasonable to allow an [investor owned utility] to sell a product that currently does not have any claimed value.”<sup>19</sup> LCEA’s second protest is that “PG&E is trying to circumvent existing regulatory process of the Commission, and be granted permission by the Commission to do so through the instrument of an Advice Letter.”<sup>20</sup> LCEA argues that PG&E should only seek changes after the relevant issues are resolved in the PCIA proceeding and that any decision beforehand “could be inconsistent with rules and process that have not yet been decided by the Commission, or risk improperly prejudicing the future decisions of the Commission.”<sup>21</sup> Finally, with regard to the fact that AL 5705-E also proposes changes to Appendix S of PG&E’s 2014 BPP, LCEA notes that “this Advice Letter appears to include *the third version* of the Sales Framework that PG&E has submitted this year” (emphasis in original).<sup>22</sup>

TURN protests AL 5705-E on four counts, all of which are related to sales of Carbon Free Energy for the proposed Period A. First, TURN notes that the CEC Power Source Disclosure Program (PSDP) regulations adopted in December 2019 require purchase or ownership agreements to have been in place prior to sales if an entity intends to claim the sales for compliance purposes.<sup>23</sup> TURN therefore asserts that “the [CEC Power Source Disclosure Program] requirement that these transactions be structured as a forward sales agreement is not consistent with PG&E’s request to allow an assignment of attributes for Period A.”<sup>24</sup> Second, TURN argues that PG&E’s proposal to sell Carbon Free Energy in Period A “effectively seeks to create a new class of unbundled GHG-free attributes that can be traded separately from the electricity generated” and that “[t]his treatment would run afoul of both the Clean System Power methodology used in

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<sup>19</sup> Ibid. at 2.

<sup>20</sup> Ibid. at 2.

<sup>21</sup> Ibid. at 2.

<sup>22</sup> Ibid. at 1.

<sup>23</sup> TURN Protest at 2.

<sup>24</sup> Ibid. at 2-3.

the Integrated Resource Plan (IRP) proceeding and the PSDP.”<sup>25</sup> TURN is also concerned that such treatment

would invite other market participants to engage in similar arrangements whereby unbundled resource attributes generated in the past are traded after the fact based on the fiction that the buyer can retroactively procure the associated electricity.<sup>26</sup>

Third, TURN asserts that Period A sales would not affect Power Content Label reporting because the PSDP regulations adopted in December 2019 require retail suppliers to report GHG emissions intensity for generation and procurement occurring on or after January 1, 2020.<sup>27</sup> Finally, TURN asserts that the CEC likely would not change the PSDP regulations by May 15, 2020, which is the date by which PG&E anticipates such changes in order to implement sales for Period A.<sup>28</sup>

WEM’s protest centers on including Diablo Canyon in the Resource Pools. WEM asserts that doing so “suggests a ‘carbon-free energy’ laundering scam, as most [Community Choice Aggregators] are already procuring more than enough carbon-free energy to satisfy their own customers.”<sup>29</sup> WEM further asserts that AL 5705-E “ignore[s] the due process rights of many stakeholders,” including Community Choice Aggregator (CCA) Boards and members who have not been consulted on the prospect of including nuclear generation in their resource mix, as well as parties to various open proceedings related to PG&E’s procurement and Diablo Canyon’s retirement.<sup>30</sup> Finally, WEM argues that “[a]pproval of AL-5705-e would subvert consideration of other solutions to the twin issues of faltering need for Diablo Canyon’s electricity, and ever-increasing PCIA charges,” namely that “[t]he cost savings to CCAs, if Diablo Canyon were to

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<sup>25</sup> Ibid. at 3.

<sup>26</sup> Ibid. at 3.

<sup>27</sup> Ibid. at 3.

<sup>28</sup> Ibid. at 3.

<sup>29</sup> WEM Protest at 2.

<sup>30</sup> Ibid. at 2.

retire now, would far exceed the limited savings CCAs might achieve through AL-5705's questionable energy trading scheme."<sup>31</sup>

In its response to AL 5705-E, AReM asserts that it "does not generally object to the proposal"<sup>32</sup> but recommends modifications "to ensure that the proposed allocation of Carbon Free Energy provides the maximum benefits for the LSEs that get the allocations and that the program runs in an efficient manner."<sup>33</sup> First, AReM recommends that LSEs be allowed to trade their allocations of Carbon Free Energy after receiving the allocations from PG&E and that the buyer and seller be empowered to report the sale (without trade prices) in an attestation to PG&E, Energy Division, and the CEC.<sup>34</sup> Second, AReM suggests a stipulation that the restriction on Eligible LSEs making certain petitions, arguments, or filings before the CPUC or the California Legislature would only last through December 31, 2020.<sup>35</sup> Third, AReM notes that the CEC has declined to accept the petition to allow sales in Period A to count towards Eligible LSEs' PCL reporting and suggests that the CPUC Resolution should therefore eliminate language related to Period A.<sup>36</sup> Fourth, AReM recommends that PG&E offer any unallocated Carbon Free Energy that Eligible LSEs rejected to other Eligible LSEs, perhaps "pro rata to the...amount of Carbon Free Energy that [the other Eligible LSEs] accepted."<sup>37</sup> Finally, AReM recommends that PG&E "clarify the conditions under which it would seek to modify the [Resource Pools], so that LSEs...have a clear understanding of how the resources from which the allocations are being

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<sup>31</sup> Ibid. at 2.

<sup>32</sup> AReM Response at 1.

<sup>33</sup> Ibid. at 2.

<sup>34</sup> Ibid. at 2.

<sup>35</sup> Ibid. at 3.

<sup>36</sup> Ibid. at 3.

<sup>37</sup> Ibid. at 3.



made available may change over time.”<sup>38</sup> AReM specifically suggests that PG&E only remove a resource if the resource has ceased operation.<sup>39</sup>

In their response to AL 5705-E, the Joint CCAs state that they “support rapid approval of [Appendix] P.”<sup>40</sup> Referring to Appendix P as the “Interim Proposal,” the Joint CCAs assert that “the Interim Proposal is non-precedential, to be superseded by Commission action on proposals emerging in January from working group 3 in phase 2 of the PCIA rulemaking.”<sup>41</sup> The Joint CCAs also suggest that “communities can accept or reject, e.g., an allocation of nuclear power, independent of whether they accept or reject, e.g., an allocation of large hydroelectric power” and clarify that “[w]hat we endorse here is the availability of a *choice* currently not available, without taking any position on how any LSE will exercise that choice” (emphasis in original).<sup>42</sup> With regard to sales for Period A, the Joint CCAs note that the CEC did not amend PSDP regulations to support such sales and that therefore, “[t]he backward-looking component is moot.”<sup>43</sup>

PG&E replied to the protests of LCEA, TURN, and WEM and to the responses of AReM and the Joint CCAs on December 31, 2019. PG&E acknowledges that the CEC’s revised PSDR rules do not allow for sales in Period A, but PG&E argues for retaining language regarding Period A in Appendix P so that PG&E would not have to submit a new advice letter if the CEC were to amend the rules to allow such sales before May 15, 2020.<sup>44</sup> PG&E disagrees with LCEA’s assertion that Commission approval of AL 5705-E could prejudice the Commission’s eventual decision in Phase 2 of the PCIA proceeding (R.17-06-026). PG&E states that AL 5705-E “is designed to be an interim approach while the PCIA Phase 2

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<sup>38</sup> Ibid. at 3.

<sup>39</sup> Ibid. at 1 and Exhibit 1 at 11.

<sup>40</sup> Joint CCAs Response at 2.

<sup>41</sup> Ibid. at 2-3.

<sup>42</sup> Ibid. at 3.

<sup>43</sup> Ibid. at 2, Footnote 2.

<sup>44</sup> PG&E Reply at 2.

Working Group 3 develops a longer-term solution”<sup>45</sup> (emphasis in original). In response to WEM’s opposition to including Diablo Canyon in the Resource Pools, PG&E states that “retirement of [Diablo Canyon] is out of scope for this Advice Letter. Nonetheless, PG&E reiterates here that Eligible LSEs are not required to accept any allocation from the nuclear resource pool.”<sup>46</sup> PG&E requests that the Commission reject the protests of LCEA, TURN, and WEM.<sup>47</sup>

In response to AReM, PG&E asserts that a clarification that Eligible LSEs’ waiver of rights only applies through December 31, 2020 is unnecessary, since AL 5705-E “states that the waiver is ‘for the period that the eligible LSE accepts the offer,’ which for the 2020 period B allocation would be December 31, 2020.”<sup>48</sup> PG&E also opposes AReM’s request to make rejected allocation amounts available to other LSEs. PG&E claims that doing so “creates the potential for confusion and additional administrative burden” and does not make sense for an interim process in which most Eligible LSEs will probably accept their allocations and in which any rejected allocations would likely be small.<sup>49</sup> With regard to AReM’s request that Eligible LSEs be allowed to trade their allocations, PG&E notes that its “confirm with eligible LSEs explicitly does not represent or warrant that the allocation is tradeable for power content label purposes” and that “PG&E takes no position on what LSEs do with their allocation.”<sup>50</sup> Yet PG&E opposes any PG&E involvement in such trades – including recalculating allocations after trades occur – because “[s]uch an overly complicated allocation scheme would result in unjustified administrative burdens for PG&E’s customers, which do not benefit from subsequent trades among LSEs.”<sup>51</sup> Finally, with regard to AReM’s request concerning removal of resources from the Resource Pools, PG&E states that it

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<sup>45</sup> Ibid. at 3.

<sup>46</sup> Ibid. at 4.

<sup>47</sup> Ibid. at 4.

<sup>48</sup> Ibid. at 2.

<sup>49</sup> Ibid. at 2.

<sup>50</sup> Ibid. at 3.

<sup>51</sup> Ibid. at 3.

would not remove resources from the list unless the resource's power purchase agreement (PPA) expires, terminates, or for some other reason is no longer in PG&E's portfolio, or in the case of utility owned generation, that the unit ceases operation.<sup>52</sup>

PG&E suggests that a Resolution approving AL 5705-E state "that the Energy Division will only approve resource list changes if due to contract termination, expiration, or facility retirement."<sup>53</sup>

## **DISCUSSION**

The Commission has reviewed AL 5705-E, the protests and responses to AL 5705-E, and the reply of PG&E. As described in this section, we find that the modifications to PG&E's 2014 BPP described in AL 5705-E are reasonable, though we make certain clarifications in response to the record. In doing so, we reject the protests of LCEA, TURN, and WEM.

### **Power Source Disclosure Program Rules, Precedent, and Period A Transactions**

We acknowledge but disagree with TURN's assertion that allowing Period A sales could encourage similar transactions wherein other LSEs would sell energy and then later seek to sell the decoupled carbon (or other) benefits of this energy. Like the PCIA proceeding, AL 5705-E is concerned with allowing the customers of non-investor owned utility LSEs to access certain benefits of generators for which they are already paying. This is different from a transaction in which a market participant sells the resource attributes of energy (but not the energy itself) to a buyer who otherwise has no claim to those attributes. We do not agree that allowing such transactions under the conditions and for the purposes described in AL 5705-E would set a precedent for doing so under different conditions or for different purposes.

We similarly acknowledge but disagree with LCEA's assertion that approving the changes in AL 5705-E would prejudice the Commission's future decisions,

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<sup>52</sup> Ibid. at 4.

<sup>53</sup> Ibid. at 4.

particularly in Phase 2 of the PCIA proceeding. We agree with PG&E and the Joint CCAs that AL 5705-E proposes an interim solution, and the PCIA proceeding will determine this interim solution's permanent replacement. We see no reason to believe that the latter must depend upon the former. We also acknowledge the Joint CCAs' comment that "[s]upport for the Interim Proposal does not mean that the Joint CCAs will support identical details in connection to the PCIA rulemaking."<sup>54</sup>

As TURN, AReM, the Joint CCAs, and PG&E all note, the CEC's revised PSDP rules do not allow sales under Period A to count in PCL reporting.<sup>55</sup> Although the current PSDP rules do not enable Period A transactions, we agree with PG&E that it is not necessary to revise AL 5705-E on this account and that leaving the option open will enable PG&E and other LSEs to move forward in the event that the CEC does amend the rules again by May 15, 2020. Again, we do not agree that allowing such transactions under the specific circumstances – and for the specific purposes – that we consider in this Resolution will set a precedent for “copycat” transactions that may appear under different circumstances or for different purposes in the future. We also stress that the applicability of Period A transactions is dependent upon approval by the CEC. If the CEC does not amend its regulations and allow Period A transactions by May 15, 2020, then language related to Period A in Appendix P will be inactive and will not enable PG&E or Eligible LSEs to violate the Power Source Disclosure Program rules. We will clarify this point in the Ordering Paragraphs of this Resolution.

### **Timeline for Waiver of Rights**

We agree with AReM that the waiver of certain rights by Eligible LSEs who enter agreements with PG&E should only apply through December 31, 2020. However, we also agree with PG&E that there is no need to stipulate this in Appendix P, since the proposed language of Appendix P in AL 5705-E refers to “the period in

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<sup>54</sup> Joint CCAs Response at 3.

<sup>55</sup> See “Notice of Availability of 15-Day Language and Notice of New Public Hearing Date” in CEC Docket Number 16-OIR-05, available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=230849&DocumentContentId=62482>. Also see “Resolution Adopting Regulations” in CEC Docket Number 16-OIR-05, available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=231267&DocumentContentId=62923>.

which the Eligible LSE accepts the Offer,”<sup>56</sup> which could only mean Period A, Period B, or both. To avoid any confusion, we will nevertheless stipulate the December 31, 2020 expiration date in the Ordering Paragraphs of this Resolution.

### **Removing Resources from the Resource Pools**

We agree with AReM that PG&E should clarify the reasons for which PG&E might remove a Resource from a Resource Pool, “so that LSEs who will be receiving the Carbon Free Energy allocations have a clear understanding of how the resources from which the allocations are being made available may change over time.”<sup>57</sup> We accept the suggestion in PG&E’s response that the Commission stipulate reasons for removal of Resources in this Resolution, instead of requiring an update to Appendix P. Accordingly, in the Ordering Paragraphs of this Resolution, we will adopt a slight modification of PG&E’s stipulation that “PG&E would not remove resources from the list unless the resource’s power purchase agreement (PPA) expires, terminates, or for some other reason is no longer in PG&E’s portfolio, or in the case of utility owned generation, that the unit ceases operation.”<sup>58</sup>

### **Unallocated Carbon Free Energy and Trading**

We agree with PG&E that requiring PG&E to offer rejected Allocation Amounts to other Eligible LSEs in a second round of allocations would be burdensome and likely unnecessary for the interim process proposed in AL 5705-E, particularly if few Eligible LSEs reject their Allocation Amounts. On the other hand, we see no reason to prevent LSEs from trading the Allocation Amounts that they did receive. Yet our understanding of the PSDP rules is that “Retail Suppliers” have their own individual reporting requirements, and we are not convinced that PG&E should be involved in these subsequent trades. We agree with PG&E that requiring PG&E to receive sales attestations from Confirmed LSEs and to recalculate Confirmed LSEs’ Allocation Ratios accordingly would be unduly

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<sup>56</sup> AL 5705-E, Attachment B at 8.

<sup>57</sup> AReM Response at 3.

<sup>58</sup> PG&E Reply at 4.

burdensome on PG&E's ratepayers. We will not require AReM's proposed modifications to Appendix P that address reallocation and trading.

### **Inclusion of Diablo Canyon in the Resource Pools**

We acknowledge WEM's assertion that "the majority of CCAs were founded by community members with the clear intent to reject nuclear energy."<sup>59</sup> However, we agree with the Joint CCAs and PG&E that under the changes proposed in AL 5705-E, Eligible LSEs will be free to reject an allocation from the nuclear Resource Pool, if they so choose. We also agree with PG&E that the retirement of Diablo Canyon is outside the scope of this Resolution.

### **Other Modifications Made by Advice Letter 5705-E**

We have also reviewed the changes that PG&E proposes to confidential Appendix S of its 2014 BPP in AL 5705-E. We find that these changes are reasonable. In response to LCEA's comment that PG&E has made several modifications to Appendix S in the past year, we note that unless and until we undertake comprehensive revisions to the investor owned utilities' 2014 Conformed Bundled Procurement Plans in a proceeding, the advice letter process is the approved venue for PG&E to request any changes to its 2014 BPP.<sup>60</sup>

## **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. Section 311(g)(2) provides that this 30-day review period and 20-day comment period may be reduced or waived upon the stipulation of all parties in the proceeding.

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<sup>59</sup> WEM Protest at 1.

<sup>60</sup> See D.04-12-048 at FOF 106 (available at [http://docs.cpuc.ca.gov/PublishedDocs/WORD\\_PDF/FINAL\\_DECISION/43224.PDF](http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/43224.PDF)) and Resolution E-4828 at 4 (available at <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M197/K216/197216035.PDF>).

The 30-day review and 20-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, the draft resolution was mailed to parties for comments on March 25, 2020.

The Commission received comments from the Joint CCAs and from TURN on April 15, 2020. The Joint CCAs reiterate arguments in their earlier response to AL 5705-E and state that they “encourage the Commission to adopt the Draft Resolution.”<sup>61</sup> TURN states that Period A transactions “could open the door to other market participants relying on this precedent to undertake similar efforts to retroactively assign unbundled ‘carbon free’ attributes for historic generation production.”<sup>62</sup> TURN argues further that “[t]he Draft Resolution offers no specific criteria for distinguishing the proposed retroactive attribute allocation from a wide array of other ‘copycat’ transactions that could follow”<sup>63</sup> and suggests that “[t]he final Resolution can avoid such efforts by rejecting the proposal for any retroactive allocation of attributes associated with Period A.”<sup>64</sup> TURN also asserts that the CEC cannot amend its regulations by May 15, 2020 to enable Period A transactions but concludes that “[i]f the Commission is committed to approving the non-viable Period A transactions notwithstanding TURN’s objections, it should conform the findings and ordering paragraphs to the narrative text.”<sup>65</sup> Specifically, TURN proposes modifications to Finding 3 and Ordering Paragraph 2(a) to clarify that Period A would be inoperative if the CEC did not amend its regulations by May 15, 2020.<sup>66</sup>

We acknowledge but disagree with TURN’s objections. This Resolution addresses a unique situation in which another state agency would be required to amend its existing regulations in order to enable certain transactions. Even if this were to occur, this interim solution applies to the specific context described in AL

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<sup>61</sup> Joint CCAs Comments at 3.

<sup>62</sup> TURN Comments at 2.

<sup>63</sup> Ibid. at 2.

<sup>64</sup> Ibid. at 2.

<sup>65</sup> Ibid. at 3.

<sup>66</sup> Ibid. at 3-4.

5705-E and would not automatically apply to transactions made under different circumstances. Thus, we do not agree that enabling Period A transactions to move forward, *pending CEC approval by May 15, 2020*, will set a precedent for “copycat” transactions in the future. We have included additional language in the final Resolution to make this point clear, and we have also incorporated TURN’s proposed modifications to Finding 3 and Ordering Paragraph 2(a). Finally, we have made several minor spelling and grammatical edits in the final Resolution.

## **FINDINGS**

1. Allowing transactions for Period A, under the conditions and for the purposes described in Advice Letter 5705-E, would not set a precedent for approving similar transactions under different conditions or for different purposes.
2. Approval of the changes proposed in Advice Letter 5705-E would not prejudice future Commission decisions.
3. The provisions in Advice Letter 5705-E regarding Period A transactions will be inoperative unless the California Energy Commission revises the Power Source Disclosure Program regulations by May 15, 2020.
4. Under no circumstances should the waiver of certain rights by Eligible Load Serving Entities who enter agreements with Pacific Gas and Electric under the provisions in Advice Letter 5705-E apply past December 31, 2020.
5. Pacific Gas and Electric should only remove a Resource from a Resource Pool if the Resource’s power purchase agreement has expired or terminated, if the Resource is no longer in Pacific Gas and Electric’s portfolio for some other reason, or, in the case of utility owned generation, if the Resource has ceased operation.
6. Requiring Pacific Gas and Electric to offer rejected Allocation Amounts to other Eligible Load Serving Entities in a second round of allocations would be burdensome and likely unnecessary for the interim process proposed in Advice Letter 5705-E.



7. Requiring Pacific Gas and Electric to receive sales attestations from Confirmed Load Serving Entities and to recalculate Confirmed Load Serving Entities' Allocation Ratios accordingly would be unduly burdensome on Pacific Gas and Electric's ratepayers.
8. Eligible Load Serving Entities will be free to accept or reject an allocation from either Resource Pool under the provisions of Advice Letter 5705-E.
9. The retirement of Diablo Canyon is outside the scope of this Resolution.
10. The modifications to Pacific Gas and Electric Company's 2014 Conformed Bundled Procurement Plan identified in Advice Letter 5705-E, including confidential modifications not described in this Resolution, are reasonable.

**THEREFORE IT IS ORDERED THAT:**

1. The request of Pacific Gas and Electric to amend its 2014 Conformed Bundled Procurement Plan as requested in Advice Letter 5705-E is approved.
2. Whereas we do not require Pacific Gas and Electric to modify Advice Letter 5705-E, the following stipulations will apply to implementation of Appendix P of Pacific Gas and Electric's 2014 Conformed Bundled Procurement Plan, as adopted by this Resolution:
  - a. The provisions regarding Period A transactions will be inoperative unless the California Energy Commission revises the Power Source Disclosure Program regulations by May 15, 2020.
  - b. Under no circumstances should the waiver of certain rights by Eligible Load Serving Entities who enter agreements with Pacific Gas and Electric apply past December 31, 2020.
  - c. Pacific Gas and Electric should only remove a Resource from a Resource Pool if the Resource's power purchase agreement has expired or terminated, if the Resource is no longer in Pacific Gas and Electric's portfolio for some other reason, or, in the case of utility owned generation, if the Resource has ceased operation.

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 May 7, 2020; the following Commissioners voting favorably thereon:

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ALICE STEBBINS  
Executive Director