

**Dissent of Commissioner Mark J. Ferron on Resolution E-4521, Pacific Gas and Electric Company's Amended and Restated Power Purchase Agreement With Bottle Rock Power LLC (Item 26/26a)**

My primary reason for voting to reject this amendment is that compares poorly on price and value compared to other geothermal projects offered to PG&E at the time the Bottle Rock PPA was negotiated.

The Commission has twice approved contract amendments increasing the price, in 2007 and again in 2010, and now approval is being sought for a third amendment increasing the price of the PPA by 56%. Part of the justification is to help Bottle Rock to obtain financing for additional improvements to support continued operations. I am sympathetic to the fact that the current owners of this project took over an existing facility with the hope that, after making further investments, they could make it work at the price they agreed to with PG&E. For a variety of reasons, the current owner could not make the agreed economics work and have now come back with this third amendment, asking for a significantly higher price to cover their higher-than-expected costs. But based on prices available to PG&E at the time they were renegotiating the PPA in 2011, PG&E had much better options available – not only more cost effective options using different renewable technologies, but also cheaper geothermal projects.

We have talked many times about the situation where prices have fallen in the period between when a contract is signed and when it comes before the Commission for approval. In those instances, my view is that we should not reject a contract as being unreasonable simply because the current market price is lower. I believe the converse principle should also be true. Once a contract has been awarded based on a competitive process, if the cost of providing service later increases, that risk should be borne by the seller who should be held to the terms of the original contract. Here, the rate-paying customers of PG&E are in effect being asked to take on project development risk by dipping into their wallets to bail out a struggling project with a history of being unable to meet its performance obligations.

There are some who might argue that failing to approve this contract after the owners invested significant amounts of money in the project would send a “chilling” message to developers about the investor-friendliness of California’s regulatory regime. I disagree. I believe that the denial of the contract amendments in this case demonstrates consistency in our regulatory approach: developers should expect that if they successfully win a contract in a competitive process, and if they deliver on the agreed terms, the Commission will uphold the contract. I believe this makes for a procurement process that is transparent and fair to all parties. Such an approach should discourage speculative “bid to win” projects from crowding out genuine “bid to build” projects and, I believe, will improve the investment climate in California.

To be clear, I am not against all contract amendments; we need to be flexible and there might well be situations where it is in the interest of the people of California to approve changes in response to new circumstances. In this instance, however, I don’t see the benefits to the rate-paying public that justify approving the amendments to the existing contract. While there is a minimal expansion of the existing site and the promise for additional investment in the project,

I do not see that as sufficient justification for the Commission to approve a ratepayer subsidy for a contract that is well outside of market values.

With that, I will be voting to deny the contract amendments.

Dated September 27, 2012

Mark J. Ferron  
Commissioner