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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item #29
ID #9125

ENERGY DIVISION

RESOLUTION E-4295
January 21, 2010

REDACTED

RESOLUTION

Resolution E-4295. Southern California Edison (SCE) requests approval of a renewable power purchase agreement with Sierra SunTower, LLC (Sierra)

PROPOSED OUTCOME: This Resolution approves cost recovery for a short-term bilateral renewable energy power purchase agreement (PPA) with Sierra. The PPA is approved without modification.

ESTIMATED COST: Costs of this contract are confidential at this time

By Advice Letter 2383-E filed on September 18, 2009.

SUMMARY

SCE's proposed PPA with Sierra complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved.

SCE filed Advice Letter (AL) 2383-E on September 18, 2009 requesting Commission review and approval of a renewable energy PPA executed with Sierra Suntower, LLC (Sierra), wholly-owned by eSolar. The PPA is a short-term, bilateral contract for as-available output from a test facility that eSolar built in Lancaster, California to evaluate and demonstrate its solar tower technology. The Sierra Suntower facility is a qualifying facility pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA).

The following tables summarize the agreement:

Generating Facility	Technology Type	Term (Years)	Capacity (MW)	Energy (GWh)	Contract Delivery Start Date	Location
Sierra SunTower	Solar thermal	1	5	8.5	July 2009	Lancaster, CA

The contract price is below the market price referent, and the contract is reasonable as compared to the results of SCE's 2008 renewables solicitation. Deliveries from this PPA are reasonably priced and fully recoverable in rates over the life of the contract, subject to Commission review of SCE's administration of the contract.

AL 2383-E is approved without modification.

NOTICE

Notice of AL 2383-E was made by publication in the Commission's Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

Advice Letter 2383-E was not protested.

DISCUSSION

Overview of RPS Program

The RPS Program administered by the Commission requires each utility to increase its total procurement of eligible renewable energy resources by at least 1% of retail sales per year so that 20% of the utility's retail sales are procured from eligible renewable energy resources no later than December 31, 2010.[1] Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at

[1] *See* Pub. Utils. Code § 399.15(b)(1).

http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm and http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm.

SCE requests approval of a renewable energy contract with Sierra

On September 18, 2009, SCE filed AL 2383-E requesting Commission review and approval of a power purchase agreement with Sierra Suntower, a Delaware limited liability company that is wholly-owned by eSolar. The Sierra facility is a 5 MW test facility that eSolar built in Lancaster, California to demonstrate its solar tower technology that will be used for large-scale projects, such as the Gaskell project.[2] The PPA is based on the utilities' submitted version of the standard QF contract[3], which is pending approval before the Commission, plus two amendments to comply with the RPS standard terms and conditions.

The contract term begins on July 1, 2009, and the Sierra facility began operation on July 23, 2009. The PPA is for as-available output, so while SCE expects to take delivery of 8.5 GWh during the year, actual deliveries may be lower.

SCE requests that the Commission issue a resolution no later than December 17, 2009, containing:

1. Approval of the Sierra Contract in its entirety;
2. A finding that any electric energy sold or dedicated to SCE pursuant to the Sierra Contract constitutes procurement by SCE from an ERR for the purpose of determining SCE's compliance with any obligation that it may have to procure from ERRs pursuant to the RPS Legislation[4] or other applicable law concerning the procurement of electric energy from renewable energy resources;

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[2] Resolution E-4188 approved a PPA between SCE and Gaskell SunTower, LLC.

[3] SCE AL 1958-E-B

[4] As defined by SCE, "'RPS Legislation' refers to the State of California Renewable Portfolio Standard Program, as codified at California Pub. Utils. Code Section 399.11 *et seq.*"

3. A finding that all procurement under the Sierra Contract counts, in full and without condition, towards any annual procurement target established by the RPS Legislation or the Commission which is applicable to SCE;
4. A finding that all procurement under the Sierra Contract counts, in full and without condition, towards any incremental procurement target established by the RPS Legislation or the Commission which is applicable to SCE;
5. A finding that all procurement under the Sierra Contract counts, in full and without condition, towards the requirement in the RPS Legislation that SCE procure 20% (or such other percentage as may be established by law) of its retail sales from ERRs by 2010 (or such other date as may be established by law);
6. A finding that the Sierra Contract, and SCE's entry into the Sierra Contract, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the Sierra Contract, subject only to further review with respect to the reasonableness of SCE's administration of the Sierra Contract; and
7. Any other and further relief as the Commission finds just and reasonable.

Energy Division Review of the Proposed PPA

Energy Division evaluated the PPA for the following criteria:

- Consistency with SCE's 2008 RPS Procurement Plan (Plan)
- Consistency with the resource needs identified in SCE's Plan
- Consistency with RPS standard terms and conditions (STC)
- Consistency with bilateral contracting guidelines
- Consistency with RPS delivery rules
- Project viability
- Compliance with the minimum quantity condition
- Consistency with the Interim Emissions Performance Standard
- Procurement Review Group (PRG) participation
- Comparison to the results of SCE's 2008 solicitation

- Cost reasonableness
- Ratepayer impacts of procurement prior to Commission approval of the PPA

Consistency with SCE's 2008 RPS Procurement Plan and Resource Needs

California's RPS statute requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.[5] The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan. SCE's 2008 RPS Procurement Plan (Plan) was approved by D.08-02-008 on February 14, 2008. SCE's 2009 RPS Plan was approved by D.09-06-018 on June 4, 2009. SCE subsequently amended both Plans consistent with the requirements in the authorizing decisions. Pursuant to statute, SCE's Plans include an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.[6]

Specifically, SCE's Plan states that SCE intends to secure resources from its 2009 solicitation, as necessary, to ensure that it meets the 20% RPS goal as soon as possible, and with a reasonable margin of safety. SCE requested proposals based upon standard term lengths of 10, 15 or 20 years or a non-standard delivery term of no less than 1 month. SCE also requested proposals with a minimum capacity of 1.5 MW. SCE indicated a preference for projects:

- With near-term deliveries
- Located in California or outside of California if the seller complies with all requirements pertaining to "Out-of-State Facilities" as set forth in the California Energy Commission (CEC) Guidebook for RPS eligibility

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[5] Pub. Utils. Code, Section §399.14.

[6] Pub. Utils. Code, Section §399.14(a)(3).

- Delivered within the CAISO Control Area, but considered proposals for facilities interconnected to the Western Electricity Coordinating Council (WECC) transmission system

SCE states that the Sierra PPA was compared to its most recently identified portfolio needs in SCE's 2009 Plan, but because the 2009 bids have not been fully evaluated yet, Sierra was compared to its 2008 solicitation bids. SCE asserts that the Sierra PPA satisfies its resource needs because it will provide near-term RPS-eligible energy and it complies with SCE's requested delivery and locational preferences.

The proposed PPA is consistent with SCE's 2009 RPS Procurement Plan, approved by D.08-02-008.

Consistency with RPS Standard Terms and Conditions (STCs)

The proposed PPA is comprised of the utilities' submitted version of the standard QF contract and two amendments. The amendments bring the PPA into compliance with the Commission's decisions requiring STCs for RPS contracts.

The PPA includes the Commission-adopted RPS standard terms and conditions, including those deemed "non-modifiable", as required by D.08-04-009, as modified by D.08-08-028.

Consistency with Bilateral Contracting Guidelines

In D.09-06-050 the Commission determined that bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation. This includes review by the utility's Procurement Review Group (PRG) and its Independent Evaluator (IE). Additionally, D.06-10-019 established three other requirements for bilateral contracts.

1. The PPA will not be applied to SCE's cost limitation.[7]

[7] The PPA is ineligible for the cost limitation because it did not result from a competitive solicitation. Pub. Utils. Code §399.15(d)(2).

2. The PPA must be submitted by advice letter.[8]
3. The PPA must be at least one month in duration.[9]

As discussed below, the PRG was briefed on the PPA, the IE reviewed the PPA, and the Sierra PPA compares favorably to the bids in SCE's 2008 renewables solicitation.

The PPA is consistent with the bilateral contracting guidelines established in D.09-06-050 and D.06-10-019.

Procurement Review Group (PRG) Participation

SCE's PRG consists of representatives from: the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), California Utility Employees, the Union of Concerned Scientists, the California Department of Water Resources, and the Commission's Energy and Legal Divisions.

SCE asserts that its PRG was consulted during each step of the renewable procurement process. On May 13, 2009, SCE briefed the PRG on the terms of the Sierra contract and discussed its intent to execute the PPA. Although Energy Division is a member of the PRG, it reserved judgment until the AL was filed. Energy Division reviewed the transaction independently of the PRG, and allowed for a full protest period before concluding its analysis.

With regard to this PPA, SCE has complied with the Commission's rules for involving the PRG.

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[8] "For now, utilities' bilateral RPS contracts, of any length, must be submitted for approval by advice letter." D.06-10-019 at 31.

[9] "All RPS-obligated LSEs are also free to enter into bilateral contracts of any length with RPS-eligible generators, as long as the contracts are at least one month in duration, to enable the CEC to verify RPS procurement claims." D.06-10-019 at 29.

Independent evaluator (IE) Review

SCE retained an IE, Merrimack Consulting[10], to report to SCE's procurement review group about the 2009 RPS solicitation and to ensure that the solicitation was conducted fairly and that the best resources were acquired. Pursuant to D.09-06-050, SCE also retained Merrimack to review this bilateral contract.

The IE's contract-specific evaluation of the Sierra project is attached as confidential Appendix B to this resolution.

Consistent with D.09-06-050, an independent evaluator (IE) reviewed the proposed bilateral PPA.

Comparison to the Results of SCE's 2008 Solicitation

The Commission's Least Cost Best Fit (LCBF) decisions direct the utilities to use certain criteria in their bid ranking and provide guidance regarding the process by which the utility ranks bids in order to "shortlist" the bids eligible for contract negotiations.[11] The bid evaluation includes a quantitative and qualitative analysis. The quantitative analysis results in relative benefit-to-cost (B/C) ratios for each bid and the qualitative review assesses a project's technical viability, its overall viability and its developer experience.

D.09-06-050 requires that bilateral contracts are reviewed according to the same standards as contracts that come through a solicitation. Conducting a LCBF analysis on a bilateral contract allows an apples-to-apples comparison to the most recent solicitation.

SCE compared the Sierra contract to its 2008 offers, since its analysis of the 2009 offers was not complete when this PPA was being negotiated. SCE states that the Sierra contract provides significant value to ratepayers and that Sierra's B/C ratio was "favorable as compared to the proposals SCE received in its 2008 solicitation."[12] In addition, the project's qualitative attributes, such as near-term

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[10] http://merrimackconsulting.com/

[11] D.04-07-029

[12] Al 2383-E, page 8

delivery and high viability, compare favorably to SCE's 2008 offers. The IE concurs with SCE's findings.

Confidential Appendix A to this resolution provides a more detailed comparison to SCE's short list bids.

The PPA compares favorably to the results of SCE's 2008 solicitation.

Project Viability

The Sierra project has begun operations and is already delivering energy to SCE. SCE asserts that "eSolar is working with Sierra on improvements to the technology to make deliveries more efficient and more reliable".[13] The project has full site control, access to transmission, and all necessary permits.

Accordingly, SCE represents that the project has few viability concerns.

Compliance with the Minimum Quantity Condition

D.07-05-028 established a "minimum quantity" condition on the ability of utilities to count an eligible contract of less than 10 years duration with a facility that commenced commercial operations prior to January 1, 2005 for compliance with the RPS program.[14] In the calendar year that a short-term contract with an existing facility is executed, the utility must also enter into long-term contracts with new facilities equivalent to at least 0.25% of the utility's previous year's retail sales.

The Sierra facility began commercial operation after January 1, 2005. Thus, the minimum quantity condition does not apply.

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[13] AL 2383-E, page 13

[14] For purposes of D.07-05-028, contracts of less than 10 years duration are considered "short-term" contracts and facilities that commenced commercial operations prior to January 1, 2005 are considered "existing".

Compliance With The Interim Greenhouse Gas Emissions Performance Standard (EPS)

California Pub. Utils. Code §§ 8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers.

D.07-01-039 adopted an interim EPS that establishes an emission rate quota for obligated facilities to levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine powerplant. The EPS applies to all energy contracts for baseload generation that are at least five years in duration.[15] Renewable energy contracts are deemed compliant with the EPS except in cases where intermittent renewable energy is firmed and shaped with generation from non-renewable resources.

The PPA is not a long-term financial commitment subject to the EPS because the term is less than five years.

Cost Reasonableness

Confidential Appendix A includes a discussion of the contract price.

The total expected costs of the PPA are reasonable based on their relation to bids received in response to SCE's 2008 solicitation.

Provided the generation is from an eligible renewable energy resource, or Seller is otherwise compliant with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in the terms of the PPA, payments made by SCE under the PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of SCE's administration of the PPA.

Ratepayer Impacts of Procurement Prior to Commission Approval of the PPA

SCE began procuring energy under the agreement on July 23, 2009, prior to obtaining Commission approval of the PPA. In general, CPUC approval is

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[15] "Baseload generation" is electricity generation at a power plant "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." Pub. Utils. Code § 8340 (a).

required to obtain cost recovery for payments made under a PPA. SCE accordingly placed itself and/or Sierra at risk by incurring costs under the PPA before Commission approval was obtained, as the Commission could potentially deny or condition approval of the PPA.

In this instance, SCE discussed the PPA with its PRG, the PPA otherwise complies with Commission decisions, and we have determined that the price is reasonable. However, approval of this PPA, with deliveries prior to Commission approval, is not precedential, and does not constitute any change in standard Commission procedures or practices.

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Pub. Utils. Code § 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable "eligibility" language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an "Eligible Renewable Energy Resource," that the project's output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller use commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.[16]

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires "CPUC Approval" of a PPA to include an explicit finding that "any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer'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.*), Decision 03-06-071, or other applicable law."[17]

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[16] *See, e.g.* D. 80-04-009 at Appendix A, STC 6, Eligibility.

[17] *See, e.g.* D. 80-04-009 at Appendix A, STC 1, CPUC Approval.

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission determine, prior to final CEC certification of a project, that "any procurement" pursuant to a specific contract will be "procurement from an eligible renewable energy resource."

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS eligible resource to count towards an RPS compliance obligation. Nor shall such a finding absolve any contracting party of its obligation to obtain CEC certification and/or to pursue remedies for breach of contract to ensure that only RPS-eligible generation is delivered and paid for under a Commission-approved contract. Such contract enforcement activities shall be reviewed pursuant to the Commission's authority to review the administration of such contracts.

CONFIDENTIAL INFORMATION

The Commission, in implementing Pub. Utils. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as price, is confidential for three years from the date the contract states that energy deliveries begin, except for contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

COMMENTS ON THIS RESOLUTION

Pub. Utils. Code § 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, a draft resolution was mailed to parties for comment and placed on the Commission's January 21, 2010 agenda.

SCE filed timely comments on January 11, 2010 seeking minor clarifications which have been made to the final resolution. No other comments were filed.

FINDINGS AND CONCLUSIONS

1. The PPA is consistent with the resource needs identified in SCE's 2009 Procurement Plan.
2. The PPA includes the Commission-adopted RPS standard terms and conditions including those deemed "non-modifiable".
3. The PPA is consistent with the bilateral contracting guidelines established in D.06-10-019.
4. SCE asserts that there is minimal project viability risk associated with the PPA because the facility is online and generating electricity.
5. The facility that is to deliver energy pursuant to the PPA began commercial operation after January 1, 2005. Thus, the minimum quantity condition does not apply.
6. The PPA is not long-term financial commitments subject to the EPS because the term of the PPA is less than five years.
7. Pursuant to D.02-08-071, SCE's Procurement Review Group (PRG) participated in the review of the PPA.
8. Consistent with D.09-06-050, an independent evaluator (IE) reviewed the proposed bilateral PPA.
9. The PPA compares favorably to the results of SCE's 2008 solicitation.
10. The total expected cost of the PPA is reasonable based on its relation to bids received in response to SCE's 2008 solicitation.
11. Provided the generation is from an eligible renewable energy resource, or Seller is otherwise compliant with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in the terms of the PPA, payments made by SCE under the PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of SCE's administration of the PPA.
12. Approval of this PPA, with deliveries prior to Commission approval, is not precedential and does not constitute any change in standard Commission procedures or practices.

13. Procurement pursuant to the PPA is procurement from eligible renewable energy resources for purposes of determining SCE'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 and D.06-10-050, or other applicable law.
14. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under this PPA to count towards an RPS compliance obligation. Nor shall that finding absolve SCE of its obligation to enforce compliance with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009, and included in this PPA.
15. The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
16. AL 2383-E should be approved effective today.

THEREFORE IT IS ORDERED THAT:

1. Southern California Edison Advice Letter 2383-E, requesting Commission review and approval of a power purchase agreement with Sierra Suntower, LLC, is approved without modification.

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 21, 2009; the following Commissioners voting favorably thereon:

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Paul Clanon
Executive Director

Confidential Appendix A
Contract evaluation
[REDACTED]