PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item #26
ID# 11548

ENERGY DIVISION **RESOLUTION E-4536**
September 13, 2012

REDACTED

R E S O L U T I O N

Resolution E-4536. San Diego Gas & Electric Company (SDG&E) requests approval of a purchase agreement for renewable energy credits with Sierra Pacific Industries.

PROPOSED OUTCOME: This Resolution approves SDG&E's purchase agreement for renewable energy credits with Sierra Pacific Industries without modification.

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

By Advice Letter 2357-E filed on May 10, 2012 and 2357-E-A filed on May 17, 2012.

SUMMARY

San Diego Gas & Electric Company's proposed purchase agreement for renewable energy credits with Sierra Pacific Industries complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved without modifications.

San Diego Gas & Electric Company (SDG&E) filed Advice Letter (AL) 2357-E on May 10, 2012 and AL 2357-E-A on May 17, 2012 requesting Commission review and approval of a purchase agreement (Agreement) with Sierra Pacific Industries (SPI). The SPI Agreement is the result of SDG&E's 2011 RPS solicitation and is for unbundled renewable energy credits (RECs) from four RPS-certified facilities. The facilities are: SPI Anderson, SPI Burney, SPI Lincoln, and SPI Quincy. All four facilities are located in northern California.

The following table summarizes the Agreement:

Generating Facilities	Project Technology Type	Minimum RECs (MWh)	Contract Delivery Start Date	Project Location
SPI Anderson SPI Burney SPI Lincoln SPI Quincy	Biomass, existing	102,203	After conditions precedent are met	Anderson, Burney, Lincoln, and Quincy, CA

This resolution approves the Agreement without modification. SDG&E's execution of the Agreement is consistent with SDG&E's 2011 RPS Procurement Plan, including its resource need, which the Commission approved in Decision 11-04-030. The RECs pursuant to the Agreement are reasonably priced and fully recoverable in rates over the life of the Agreement, subject to Commission review of SDG&E's administration of the Agreement.

BACKGROUND

Overview of the Renewables Portfolio Standard (RPS) Program

The California RPS program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036, and SB 2 (1X).[1] The RPS program is codified in Public Utilities Code Sections 399.11-399.31.[2] Under SB 2 (1X), the RPS program administered by the Commission requires each retail seller to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources be an amount that equals an average of 20 percent of the total electricity sold to retail customers in

[1] SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

[2] All further references to sections refer to Public Utilities Code unless otherwise specified.

California for compliance period 2011-2013; 25 percent of retail sales by December 31, 2016; and 33 percent of retail sales by December 31, 2020.[3] Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm and http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm.

NOTICE

Notice of AL 2357-E and AL 2357-E-A was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

No protests were received.

DISCUSSION

SDG&E requests approval of a purchase agreement for renewable energy credits with Sierra Pacific Industries

SDG&E filed AL 2357-E and AL 2357-E-A on May 10, 2012 and on May 17, 2012, respectively, requesting Commission approval of a purchase agreement with Sierra Pacific Industries (SPI) for renewable energy credits (RECs) from the SPI Anderson, SPI Burney, SPI Lincoln, and SPI Quincy facilities. The facilities are located in the northern California towns of Anderson, Burney, Lincoln, and Quincy and are RPS-certified by the California Energy Commission (CEC).[4] SPI Anderson began commercial operation in 1998 and the other three facilities began commercial operation in 1986. The RECs associated with the agreement

[3] D.11-12-020 established a methodology to calculate procurement requirement quantities for the three different compliance periods covered in SB 2 (1X) (2011-2013, 2014-2016, and 2017-2020).

[4] California Energy Commission's List of RPS-certified facilities: http://www.energy.ca.gov/portfolio/documents/list_RPS_certified.html

considered herein were generated in 2010 and the associated energy was used to power the facilities' onsite sawmills.[5]

Procurement pursuant to the SPI Agreement is expected to contribute 102,203 RECs towards SDG&E's RPS requirements over the term of the Agreement.

SDG&E requests the Commission to issue a resolution that finds:

1. The SPI Agreement is consistent with SDG&E's CPUC-approved RPS Plan and procurement from the SPI Agreement will contribute towards SDG&E's RPS procurement obligation.
2. SDG&E's entry into the SPI Agreement and the terms of such agreement are reasonable; therefore, the SPI Agreement is approved in its entirety and all administrative and procurement costs associated with the SPI Agreement, including for the RECs, are fully recoverable in rates over the term of the SPI Agreement, subject to Commission review of SDG&E's administration of the SPI Agreement.
3. RECs procured pursuant to the SPI Agreement constitutes unbundled RECs from generation from eligible renewable energy resources for purposes of determining SDG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewable Portfolio Standard program (Public Utilities Code §§ 399.11, et seq. and/or other applicable law) and relevant Commission decisions.
4. Unbundled RECs purchased by SDG&E pursuant to the SPI Agreement (i) are deemed to have satisfied the product content requirements set forth in Pub. Util. Code §399.16(b)(3) ("Category 3"), as adopted in California Senate Bill 2 (1X) (Stats. 2011, Ch. 1) and implemented by D.11-12-053; and (ii) will be counted as a Category 3 product for purposes of compliance with the requirements of the California Renewables Portfolio Standard Program or other applicable Law.

[5] Electricity produced in excess of on-site load was sold to Pacific Gas and Electric Company pursuant to qualifying facilities contracts.

Energy Division Review of the Proposed Agreement

Energy Division evaluated the SPI Agreement for the following criteria:

- Consistency with SDG&E's 2011 RPS Procurement Plan (Plan);
- SDG&E's RPS Procurement Portfolio Need;
- Consistency with the SDG&E's least-cost best-fit requirements;
- Consistency with RPS standard terms and conditions (STC);
- Consistency with renewable energy credits (REC) rules;
- Consistency with long-term contracting requirements;
- Consistency with Portfolio Content Categories Requirements;
- Cost reasonableness;
- Independent Evaluator review;
- Procurement Review Group (PRG) participation;
- Consistency with the Interim Emissions Performance Standard; and
- Contract viability.

Consistency with SDG&E's 2011 RPS Procurement Plan

Pursuant to statute, SDG&E's 2011 RPS Procurement Plan (Plan) includes 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] California's RPS statute also requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.[7] The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan.[8]

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[6] Pub. Util. Code, §399.13(a)(5).

[7] Pub. Util. Code, §399.13.

[8] SDG&E's 2011 RPS Procurement Plan was approved by D.11-04-030 on April 14, 2011.

In SDG&E's 2011 RPS Plan, SDG&E expressed a commitment to contract in excess of its mandated annual procurement targets and goal of 33 percent renewables by 2020.[9] Specifically, SDG&E's 2011 RPS Plan called for SDG&E to issue a competitive solicitation for electric energy generated by eligible renewable resources that could begin delivering in 2011, 2012, 2013, 2014, and 2015 for terms of one month to 30 years in length. Proposals could be for peaking, baseload, dispatchable, or as-available deliveries. SDG&E additionally expressed preference for projects that could contribute towards SDG&E's Sunrise Powerlink commitment. Lastly, SDG&E stated in its Plan that bilateral offers would be considered if they were competitive when compared against recent RFO offers and provide benefits to SDG&E customers.
The SPI Agreement is a contract for RECs that fits SDG&E's identified renewable resource needs. Additionally, the RECs were generated by facilities that are RPS-certified and could contribute towards SDG&E's RPS requirement.

<u>The SPI Agreement is consistent with SDG&E's 2011 RPS Procurement Plan, as approved by D.11-04-030.</u>

SDG&E's RPS Procurement Portfolio Need

When adjusting SDG&E's RPS procurement portfolio to account for a certain amount of contract failure, the Commission forecasts SDG&E's primary need for additional renewable generation to be in Compliance Period 2011-2013 and Compliance Period 2017-2020.[10, 11] Figure 1 depicts the Commission's forecast of

[9] In D.08-12-058, which approved SDG&E's Sunrise Powerlink, SDG&E committed to procuring 33 percent of its electricity from renewables by 2020. Since the SDG&E's 2011 Plan was approved, the RPS requirement was raised to 33 percent by 2020 by SB 2 (1X).

[10] The Commission's forecast of SDG&E's RPS Procurement Portfolio is based on SDG&E's March 2012 RPS Progress Report, SDG&E's March 2012 Project Development Status Report, and the Commission's RPS Project Status Table. The Commission's forecast does <u>not</u> include any contracts pending Commission approval, executed - but not filed, nor contracts under negotiation.

[11] In addition to increasing California's RPS requirement to 33 percent from 20 percent, SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session) establishes three different compliance periods. In D.11-12-020 the Commission defined the compliance periods (2011-2013; 2014-2016; and 2017-2020) and the RPS procurement quantity requirements for each compliance period.

SDG&E's RPS net long/short position for each compliance period under a risk-adjusted scenario. This graphical illustration shows that SDG&E is forecasted to be over-contracted in Compliance Period 2014-2016, and that it is under-contracted in Compliance Period 2011-2013. Compliance Period 2017-2020 is also shown as under-contracted, but all or a portion of excess procurement from Compliance Period 2014-2016 could be applied towards Compliance Period 2017-2020 requirements, subject to certain limitations.[12]

[12] *See* D.12-06-038 regarding rules for applying excess procurement in one compliance period to future compliance periods

Figure 1: The Commission's Forecast of SDG&E RPS Portfolio Net Short/Long Position[13]

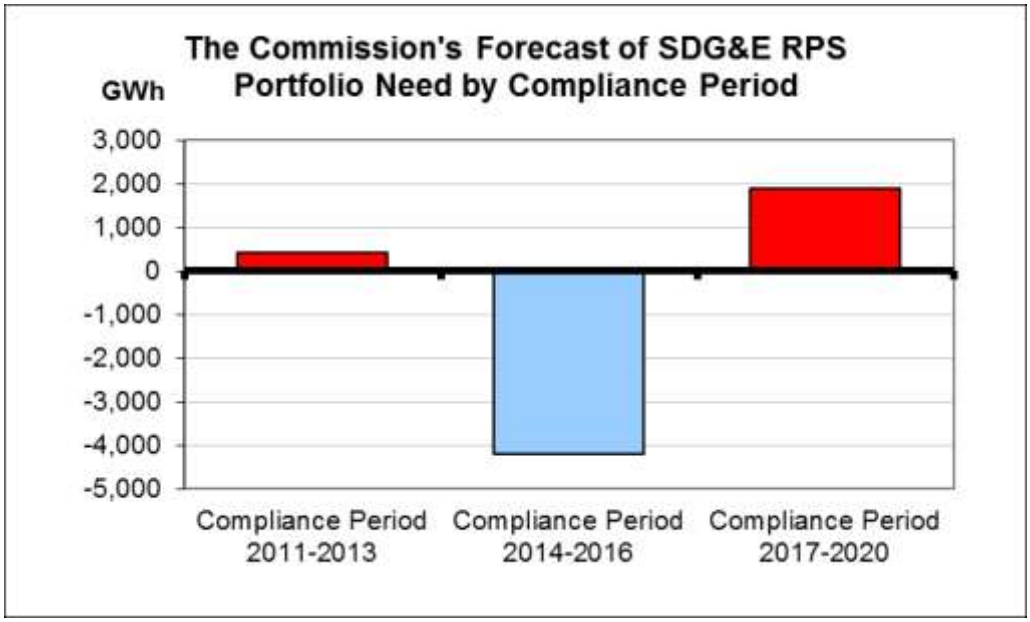

Table 1, below, provides a summary of: 1) The Commission's forecast of SDG&E's RPS procurement portfolio (includes projects currently in operation and those with CPUC-approved contracts under a risk-adjusted scenario); 2) the Commission's forecast of SDG&E's RPS procurement portfolio net long/short positions relative to the RPS compliance periods' quantity requirements; and 3) the forecasted RECs pursuant to the SPI Agreement. The SPI Agreement will

[13] Includes: operating RPS-eligible generation under CPUC-approved PPAs and RPS-eligible generation under CPUC-approved PPAs that are under development. The Commission made several assumptions in developing its forecast: 1) operational projects will generate 100% of contracted generation; 2) projects under development will have a 60 percent rate of meeting the terms and conditions of the PPAs; 3) no applying of forecasted excess generation from one compliance period to another because SDG&E may or may not choose to apply all or a portion of excess procurement towards subsequent requirements (but, if all forecasted eligible excess procurement is applied to future compliance periods, SDG&E is forecasted to have a net long position, instead of a net short position, for Compliance Period 2017-2020) ; and 4) no prior deficits that may need to be satisfied in its estimate of SDG&E's RPS target because that determination has not yet been made.

provide 102,203 RECs towards SDG&E's Compliance Period 2011-2013 RPS procurement needs.

Table 1: Expected RECs pursuant to the SPI Agreement will contribute significantly to SDG&E's RPS Portfolio Requirements in Compliance Period 2011-2013

	Compliance Period 2011-2013	Compliance Period 2014-2016	Compliance Period 2017-2020
RPS Target	10,283	12,836	23,202
Operating	7,803	6,515	6,671
Approved[a]	2,050	10,531	14,643
Subtotal	9,698	16,581	20,692
Need[b]	585	-3,744	2,510
SPI Agreement	102	0	0

Units: GWh
[a] The Commission assumes 60% success for projects under development
[b] The Commission assumes no carrying over of excess forecasted generation because SDG&E may or may not choose to apply all excess procurement towards subsequent requirements. The Commission also did not assume any prior deficits that may need to be satisfied in its estimate of SDG&E's RPS target.

Consistency with SDG&E's least-cost best-fit (LCBF) methodology

In D.04-07-029, the Commission directs the utilities to use certain criteria in their LCBF selection of renewable resources.[14] The decision offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations. In D.10-03-021, as modified by

[14] *See* §399.14(a)(2)(B)

D.11-01-025, the Commission notes that LCBF evaluation of REC-only transactions will be considered in Rulemaking (R.)11-05-005, and until such a consideration takes place the utilities should explain their methodology for evaluating REC-only contracts in their advice letters seeking approval of the contracts.

As described in its 2011 RPS Procurement Plan, SDG&E's LCBF bid evaluation includes a quantitative analysis and qualitative criteria. SDG&E's quantitative analysis or market valuation includes evaluation of price, time of delivery factors, transmission costs, congestion costs, and resource adequacy. SDG&E's qualitative analysis focuses on comparing similar bids across numerous factors, such as location, benefits to minority and low income areas, resource diversity, etc.

SDG&E executed the SPI Agreement as the result of its 2011 RPS solicitation. In AL 2357-E and 2357-E-A, SDG&E explains that it evaluated the SPI bid consistent with its LCBF methodology. See the "Cost Reasonableness" section of this resolution for a discussion of how the contract compares to SDG&E's 2011 RPS solicitation and recently executed contracts.

<u>The SPI Agreement was evaluated consistent with the LCBF methodology approved in SDG&E's 2011 RPS Procurement Plan.</u>

Consistency with RPS Standard Terms and Conditions

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, six of which are considered "non-modifiable." The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028. More recently in D.10-03-021, as modified by D.11-01-025, the Commission further refined these STCs.

<u>The SPI Agreement includes all of the Commission adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.</u>

Consistency with Commission rules regarding Renewable Energy Credits

In D.10-03-021, as modified by D.11-01-025, the Commission authorized the procurement and use of unbundled RECs for compliance with the California RPS

program. The decision also established a temporary price cap of $50/REC and requirements for advice letters requesting approval of REC contracts.[15]

The SPI Agreement price is below the temporary $50/REC price cap.

Consistency with Long-Term Contracting Requirement

In D.12-06-038, the Commission established a long-term contacting requirement that must be met in order for retail sellers to count RPS procurement from contracts less than 10 years duration for compliance with the RPS program.[16] In order for the procurement from any short-term contract(s) signed after June 1, 2010 to count for RPS compliance, the retail seller must execute long-term contract(s) in the same compliance period in which the short-term contract(s) is signed. The volume of expected generation in the long-term contract(s) must be sufficient to cover the volume of generation from the short-term contract(s).[17]

The SPI Agreement triggers the long-term contracting requirement because the contract term is less than 10 years and was signed after June 1, 2010. SDG&E's retail sales for 2010 were 16,283 GWh, and 0.25 percent of its 2010 retail sales are 40.7 GWh. SDG&E has executed a number of contracts in Compliance Period 2011-2013 that are longer than 10 years in contract term length (Table 5). In total, the listed contracts represent 3,926 GWh. Thus, SDG&E has satisfied the long-

[15] The REC price cap is a limit on the maximum that may be paid for unbundled RECs to be used for RPS compliance; it is not a REC price reasonableness benchmark. The REC price cap limit will sunset December 31, 2013 (See, Ordering Paragraphs 19 and 21 of D.10-03-021, as modified by D.11-01-025.) Advice letter requirements include information on the facilities providing the RECs, information on an IOU's REC portfolio, and price comparisons of the RECs. (See, Ordering Paragraph 32 of D.10-03-021, as modified by D.11-01-025.)

[16] For the purposes of the long-term contracting requirement, contracts of less than 10 years duration are considered "short-term" contracts. (D.12-06-038)

[17] Pursuant to D.12-06-038, the methodology setting the long-term contracting requirement is: 0.25% of Total Retail Sales in 2010 for the first compliance period; 0.25% of Total Retail Sales in 2011-2013 for the second compliance period; and 0.25% of Total Retail Sales in 2014-2016 for the third compliance period.

term contracting requirement because the contracts SDG&E executed in Compliance Period 2011-2013 exceed the minimum quantity threshold.

Table 2: List of SDG&E PPAs that are greater than 10 years in contract term length and were executed in Compliance Period 2011-2013

Project Name	Execution Date	Term (Years)	Capacity (MW)	Generation (GWh/yr)
NRG Borrego	1/25/2011	25	26	60
Ocotillo Express Wind Project	2/1/2011	20	315	1022
CSolar Imperial Valley Solar West	3/8/2011	25	150	356
Energia Sierra Juarez	4/6/2011	20	156	414
Sol Orchard San Diego 1-23	4/11/2011	25	50	47
Soitec (5 contracts)	5/17/2011	30	160	398
Arlington Valley Solar Energy II	6/3/2011	25	127	270
Catalina	6/3/2011	25	110	244
SolarGen 2	6/24/2011	25	150	361
Mt. Signal Solar I	2/3/2012	25	200	495
Manzana Wind Project	2/15/2012	20	100	259
			1,544	**3,926**

Consistency with Portfolio Content Categories

In D.11-12-052, the Commission defined and implemented portfolio content categories for the RPS program and authorized the Director of Energy Division to require the investor-owned utilities to provide information regarding the proposed contract's portfolio content category classification in each advice letter seeking Commission-approval of an RPS contract. The purpose of the information is to allow the Commission to evaluate the claimed portfolio content category of the proposed RPS contract and the risks and value to ratepayers if the proposed contract is subsequently classified as a different portfolio content category. In AL 2357-E and AL 2357-E-A, SDG&E claims that the procurement pursuant to the SPI Agreement will be classified as Portfolio Content Category 3. To support its claim, SDG&E states that the product being purchased is

unbundled RECs and that the RECs were originally associated with energy generated from a RPS-certified facility.

Consistent with D.11-12-052, SDG&E provided information in AL 2357-E and AL 2357-E-A regarding the expected portfolio content category classification of the renewable energy credits procured pursuant to the SPI Agreement.

In this resolution, however, the Commission makes no determination regarding the proposed PPA's portfolio content category classification because RPS contract evaluation process is a separate process from the RPS compliance determination and portfolio content category classification which requires consideration of several factors based on various showings in a compliance filing.[18] Thus, making a portfolio content classification determination in this resolution regarding the procurement considered herein is not appropriate. SDG&E should incorporate the procurement resulting from the SPI Agreement and all applicable supporting documentation to demonstrate portfolio content category classification in the appropriate compliance showing(s) consistent with all applicable RPS program rules.

Cost Reasonableness

The Commission's reasonableness review for RPS contract prices includes comparisons of proposed contracts to other proposed RPS projects from recent RPS solicitations and recently executed contracts. In AL 2357-E and AL 2357-E-A, SDG&E provided a number of comparisons of the SPI Agreement. Consistent with SDG&E's standard RPS procurement process it compared the SPI Agreement to its 2011 RPS shortlist. Due to the majority of the shortlist consisting of long-term energy plus REC bids, SDG&E additionally compared the SPI Agreement to its recently executed short-term contracts and recently offered short-term bilateral contracts. SDG&E further provided a comparison of the SPI Agreement price to only other unbundled REC bids from its 2011 RPS solicitation. The independent evaluator, PA Consulting, focused his evaluation of the SPI Agreement on unbundled REC market data from a broker because similar to SDG&E he recognized that the majority of SDG&E's shortlist consisted of energy plus REC bids. Applying the analyses of comparing the SPI agreement

[18] D.11-12-052, pp. 8, 12

to similar 2011 RPS bids and the REC market at the time of contract execution, the Commission determines that the SPI Agreement costs are reasonable. However, SDG&E's, the IE's, and the Commission's methodology for determining cost reasonableness of the REC transaction in this resolution is not precedent setting. As noted above in this resolution, LCBF evaluation of REC contracts is under consideration in R.11-05-005 which could provide additional or different rules for determining cost reasonableness in the future. For more information on the cost reasonableness analysis see Confidential Appendix A for a detailed discussion.

The total expected costs of the SPI Agreement are reasonable based on the Agreement's price relative to SDG&E's 2011 RPS solicitation and recently executed contracts.

Provided that the RECs are from an eligible renewable energy resource, payments made by SDG&E pursuant to the SPI Agreement are fully recoverable in rates over the life of the Agreement, subject to Commission review of SDG&E's administration of the Agreement.

Independent Evaluator Review

SDG&E retained independent evaluator (IE) Jonathan Jacobs of PA Consulting Group to oversee SDG&E's 2011 RPS solicitation and negotiations with SPI, as well as to evaluate the overall merits for CPUC approval of the Agreement. AL 2357-E and AL 2357-E-A included public and confidential independent evaluator's reports of the SPI Agreement.

In the IE report, the IE recommends that the CPUC approve the SPI Agreement because he believes that SPI was not provided any advantage over bidders that participated in SDG&E's solicitation and the SPI Agreement is priced reasonably relative to market, and will move SDG&E closer to meeting its Compliance Period 1 requirements.

Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw SDG&E's 2011 RPS solicitation and negotiations with SPI.

Procurement Review Group Participation

The Procurement Review Group (PRG) was initially established in D.02-08-071 as an advisory group to review and assess the details of the IOUs' overall

procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission.[19] SDG&E asserts that the SPI Agreement was discussed at PRG meetings in August 2011, September 2011, December 2011, January 2012, February 2012, and March 2012.

Thus, pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the SPI Agreement.

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

California Pub. Util. Code §§ 8340 and 8341 require that the Commission consider emissions 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 power plant. The EPS applies to all energy contracts for baseload generation that are at least five years in duration.[20] Generating facilities using certain renewable resources are deemed compliant with the EPS, although contracts with intermittent resources are subject to the limitation that total purchases under the contract do not exceed the expected output from the facility over the term of the contract. Moreover, the Commission has determined that RECs do not have "any value for EPS compliance."[21]

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[19] SDG&E's PRG includes representatives of the Union of Concerned Scientists, the Coalition of California Utility Employees, The Utility Reform Network, the California Public Utility Commission's Energy Division and Division of Ratepayer Advocates, and the California Department of Water Resources.

[20] "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. Util. Code § 8340 (a).

[21] D.07-01-039, pp. 21, 124

The SPI Agreement is not a long-term financial commitment subject to the EPS because the term of the agreement is less than five years.

Contract Viability
The RECs that are the subject of the Agreement considered herein have already been generated and are currently recorded in the Western Renewable Energy Generation Information System (WREGIS); thus, it is reasonable to expect that SPI will be able to meet the terms and conditions of the Agreement.

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Pub. Util. Code § 399.25, 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.[22]

The Commission requires a standard and non-modifiable clause in all RPS REC-only contracts that requires "CPUC Approval" of an agreement to include an explicit finding that "any procurement pursuant to this Agreement is procurement of Renewable Energy Credits that conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, 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."[23]

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[22] *See, e.g.* D. 08-04-009 at Appendix A, STC 6, Eligibility.

[23] *See, e.g.* D. 08-04-009 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 a seller from its obligation to obtain CEC certification or absolve the purchasing utility 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 the PSA. 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. Util. 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 deliveries begin, except 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

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

FINDINGS AND CONCLUSIONS

1. The SPI Agreement is consistent with SDG&E's 2011 RPS Procurement Plan, as approved by D.11-04-030.
2. The SPI Agreement was evaluated consistent with the LCBF methodology approved in SDG&E's 2011 RPS Procurement Plan.
3. The SPI Agreement includes the Commission-adopted RPS standard terms and conditions including those deemed "non-modifiable."
4. The SPI Agreement price is below the temporary $50/REC price cap established in D.10-03-021, as modified by D.11-01-025.
5. The SPI Agreement triggers the long-term contracting requirement because the contract term is less than 10 years and was signed after June 1, 2010.
6. SDG&E has satisfied the long-term contracting requirement.
7. Consistent with D.11-12-052, SDG&E provided information in AL 2357-E and AL 2357-E-A regarding the expected portfolio content category classification of the renewable energy credits procured pursuant to the SPI Agreement.
8. The Commission makes no determination regarding the proposed PPA's portfolio content category classification because RPS contract evaluation process is a separate process from the RPS compliance determination and portfolio content category classification.
9. SDG&E's and the Commission's methodology for determining cost reasonableness of the REC transaction in this resolution is not precedent setting because LCBF evaluation of REC contracts is under consideration in R.11-05-005.
10. The total expected costs of the SPI Agreement are reasonable based on the Agreement's price relative to SDG&E's solicitation and recently executed contracts.
11. Provided the Renewable Energy Credits are compliant with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in the SPI Agreement, payments made by SDG&E pursuant to the SPI Agreement are fully recoverable in rates over the life of the SPI Agreement, subject to Commission review of SDG&E's administration of the SPI Agreement.
12. Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw SDG&E's 2011 RPS solicitation and negotiations with SPI.

13. Pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the SPI Agreement.
14. The SPI Agreement is not subject to the EPS because the term of the agreement is less than five years.
15. It is reasonable to expect that SPI will meet the terms and conditions of the SPI Agreement.
16. Procurement pursuant to the SPI Agreement is procurement of Renewable Energy Credits that conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, for purposes of determining SDG&E's compliance with any obligation it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq*.), or other applicable law.
17. The immediately preceding finding shall not be read to absolve SDG&E 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 Agreement.
18. 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.
19. AL 2357-E and 2357-E-A should be approved without modification.

THEREFORE IT IS ORDERED THAT:

1. The request of San Diego Gas & Electric Company for Commission review and approval of a purchase agreement for renewable energy credits with Sierra Pacific Industries, as requested in Advice Letter 2357-E and AL 2357-E-A, 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 September 13, 2012; the following Commissioners voting favorably thereon:

_____
PAUL CLANON
Executive Director

Confidential Appendix A

Evaluation and Contract Summary

[Redacted]