

Decision PROPOSED DECISION OF ALJ MINKIN (Mailed 11/5/12)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U338E) for Approval of an Amendment to a Power Purchase Agreement between the Utility and Desert View Power and for Authority to Recover the Costs of Any Purchases Under the Amendment in Rates.

Application 12-06-017
(Filed June 29, 2012)

DECISION APPROVING AMENDMENT TO POWER PURCHASE AGREEMENT WITH DESERT VIEW POWER

1. Summary

In this decision, we approve without modification an amendment to Southern California Edison Company's (SCE) power purchase agreement with Desert View Power. The amendment we approve today is consistent with our policy to promote the use of renewable energy, reduce greenhouse gas emissions, and increase ratepayer value. To the extent that SCE exercises its option to procure power from Desert View Power, we will allow recovery of these purchases in rates, but we require SCE to file a Tier 1 Advice Letter at such time SCE chooses to exercise this option.

2. Procedural Background

Southern California Edison Company (SCE) filed this application on June 29, 2012, seeking an expedited order, in order to avoid termination of its agreement with Desert View Power. No protests were filed. In response to the assigned Administrative Law Judge's (ALJ) directive to more thoroughly and

carefully review whether the redacted testimony was indeed confidential material, SCE served revised testimony on August 31, 2012. While SCE revised little in the way of redacted testimony, it did ensure that the testimony was internally consistent and provided a more thorough explanation of why the redacted material requires confidential treatment, pursuant to the requirements of Decision (D.) 06-06-066. We hereby affirm the ALJ's directive.

In this decision, we consider whether the proposed amendment is reasonable and whether the Commission should therefore approve the amendment to the Desert View Power Purchase Agreement (PPA). We also consider the ratemaking methodologies applicable to the costs of the amended contract.

3. Desert View Power Procurement Agreement

Desert View Power¹ is a 45 megawatt (MW) biomass facility, which is located in Mecca, CA. Desert View Power rents the land for a term of 50 years from the Cabazon Band of Mission Indians. Desert View Power has been providing power (both capacity and energy) to SCE since 1991 pursuant to a Qualifying Facilities (QF) Interim Standard Offer 4 (ISO4) contract. SCE first entered into a contract with Desert View Power in April 1985 under an ISO4 Agreement.

3.1. Capacity

Under the terms of the ISO4 Agreement, Desert View Power was obligated to deliver 45 MW of firm capacity to SCE during at least 80% of the summer on-peak hours each year for 30 years, at a price of \$170 per kilowatt year, later

¹ Desert View Power was formerly known as Colmac Energy, Inc.

amended to \$198 per kilowatt year. Desert View Power was under no obligation to provide capacity during the rest of the year. If Desert View failed to meet its capacity obligations, SCE could place Desert View on probation for 15 months. The 30-year term began on February 4, 1992 when Desert View achieved firm operation. SCE states that Desert View has been a reliable and consistent power provider, meeting its summer on-peak capacity obligation each year and maintaining a capacity factor close to 90% each year.

3.2. Energy

Desert View Power was to be paid for energy during the first 10 years of the term at a rate based on the forecast of SCE's annual marginal price of energy. After the tenth term year, Desert View Power was to be paid at SCE's published short-run avoided cost of energy. SCE and Desert View entered into an agreement for delivery of energy at a fixed price in June 2001 and May 2006. The first fixed price agreement provided, among other things, that QFs electing this agreement would be paid a fixed energy price of 5.37 cents per kilowatt-hour (kWh) for the five-year fixed price period. The Commission approved this agreement in D.01-06-015. The second fixed price agreement ran from May 1, 2007 to April 30, 2012 and expired on May 1, 2012. The energy price paid during this five-year period was set at 6.15 cents per kWh, with an escalation factor of 1% and included environmental benefits, capacity attributes, and resource adequacy benefits that were expressly conveyed to SCE. SCE consulted with its Procurement Review Group (PRG) before making the second fixed price agreement available to QFs who had previously executed the first fixed price agreement.

3.3. Recent Negotiations

Desert View Power competed unsuccessfully in SCE's Fixed Price Request for Offers for QFs seeking to change the energy price within their existing QF PPAs from Short-Run Avoided Cost-based energy payments to a fixed energy price. Desert View Power also competed unsuccessfully in SCE's Request for Proposals (RFP) from Eligible Renewable Energy Resource Suppliers for Renewable Products. Desert View Power attempted to enter into a bilateral contract with SCE to settle on a price that would sustain Desert View Power's operations and also provide sufficient value for SCE's ratepayers. Again, such efforts were unsuccessful. SCE and Desert View Power were not able to find a way to terminate the PPA that was agreeable to both parties because of the significant capacity obligation due to SCE.

In this application, SCE states that SCE and Desert View Power have devised an approach whereby Desert View Power will continue to operate and may sell power to a third-party during a ten-year suspension period. During the suspension period, SCE will make no purchases of energy or capacity from Desert View Power and will make no payments to Desert View Power. At the conclusion of the suspension period, SCE has the option to require Desert View Power to resume deliveries at a fixed price. SCE contends that this approach is reasonable because it provides commensurate benefits to ratepayers, is consistent with Commission policy and prior decisions, and is consistent with SCE's Renewables Portfolio Standard (RPS) Procurement Plans for 2011 and 2012.

4. Proposed Amendment

Although much of the testimony that SCE submitted in support of this application is confidential, SCE states that the amendment maintains many of the provisions in the original Desert View Power PPA. For example, even during the

suspension period and as long as the PPA remains in effect, the provisions related to insurance, taxes, liability, technology, capacity, delivery point, and remaining length of the term remain the same.

SCE also maintains that the proposed amendment is consistent with the RPS program goals set forth in Pub. Util. Code § 399.15(b)(1)-(2) and related Commission decisions. Desert View Power meets the definition of both a QF and an RPS-eligible resource. SCE does not anticipate a need to procure additional renewable resources until the third compliance period, which begins in 2017 and states that this amendment, with its 10-year suspension period, is a reasonable approach that both locks in ratepayer benefits and reduces SCE's near-term excess capacity of renewable energy. SCE explains that it has entered into certain transactions where SCE is the seller of RPS-eligible energy and such transactions have been approved by the Commission.² Here, SCE has calculated net present value savings during the suspension period by assuming that it would replace the energy, capacity, and green attributes from the Desert View Power PPA with a comparable project from SCE's 2011 Renewable RFP.

SCE represents that the amendment complies with the requirements of D.04-06-014, in which the Commission clarified certain standard terms and conditions to be used by Load Serving Entities when contracting for RPS-eligible resources. Although the non-modifiable standard terms and conditions were revised in D.07-11-025, the proposed amendment includes the six non-modifiable standard terms and conditions for bundled contracts although SCE explains that it retained the terminology used in the original contract with Desert View Power.

² See, e.g., Resolution E-4449.

5. The Amendment Provides Ratepayer Benefits and Should be Approved

We conclude that the amendment is reasonable and provides sufficient ratepayer benefits. Pursuant to D.99-02-085, amendments to QF contracts are permitted when commensurate concessions are made by the QF to the benefit of the ratepayers.³ Prior to its execution, SCE presented the amendment to its PRG, including representatives from the Commission's Energy Division, the Division of Ratepayer Advocates (DRA), and The Utility Reform Network (TURN). None of these entities have raised public concerns regarding the amendment, and indeed, no party has protested the application.

Here, we concur with SCE that this amendment retains savings for ratepayers in the form of avoided above-market payments, required collateral from Desert View Power during the suspension period, which may be retained by SCE if SCE does not exercise its option to recommence deliveries, and increased performance obligations on Desert View Power's part, if SCE does exercise this option. It is reasonable to allow a third-party to purchase energy from Desert View Power, a biomass facility that recycles wood waste and meets the emissions performance standards established pursuant to D.07-01-039 and Senate Bill 1368 (Ch. 598, Stats. 2006). Based on the commensurate benefits provided to ratepayers, we conclude that this amendment is reasonable and should be approved without modification. If SCE determines that it is prudent to execute its option to require Desert View Power to resume deliveries of energy at a fixed price, we require SCE to file a Tier 1 advice letter to ensure that the Commission is apprised of its actions.

³ D.99-02-085 at 15-16 (citing D.88-02-032 at Conclusion of Law 3).

6. Need for Hearings

In Resolution ALJ-176-3297, dated July 15, 2012, the Commission preliminarily determined that this is a ratesetting proceeding and that evidentiary hearings would be required. No protests have been filed, therefore, there is no need to hold evidentiary hearings. We affirm the ratesetting categorization but modify the preliminary determination regarding hearings. We find that hearings are not required.

7. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2) and Rule 14.3(c)(2), the Commission may reduce or waive the otherwise applicable 30-day period for public review and comment. Here, we reduce the comment period to 10 days. SCE filed timely comments, supporting the proposed decision.

8. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Angela K. Minkin is the assigned ALJ in this proceeding.

Findings of Fact

1. Desert View Power is a 45 MW biomass facility, which is located in Mecca, CA. Desert View Power rents the land for a term of 50 years from the Cabazon Band of Mission Indians.

2. Desert View Power delivers both capacity and energy to SCE as a QF. Under the original ISO4 Agreement, Desert View Power was obligated to deliver 45 MW of firm capacity to SCE during at least 80% of the summer on-peak hours each year for 30 years, at a price of \$170 per kilowatt year, later amended to \$198 per kilowatt year.

3. Desert View Power was to be paid for energy during the first 10 years of the term at a rate based on the forecast of SCE's annual marginal price of energy. After the tenth term year, Desert View Power was to be paid at SCE's published short-run avoided cost of energy.

4. SCE and Desert View entered into an agreement for delivery of energy at a fixed price in June 2001 and May 2006. The first fixed price agreement provided, among other things, that QFs electing this agreement would be paid a fixed energy price of 5.37 center/kWh for the five-year fixed price period. The Commission approved this agreement in D.01-06-015.

5. The second fixed price agreement ran from May 1, 2007 to April 30, 2012 and expired on May 1, 2012. The energy price paid during this five-year period was set at 6.15 cents/kWh, with an escalation factor of 1% and included environmental benefits, capacity attributes, and resource adequacy benefits that were expressly conveyed to SCE.

6. Desert View Power competed unsuccessfully in SCE's Fixed Price Request for Offers for QFs seeking to change the energy price within their existing QF PPAs from Short-Run Avoided Cost-based energy payments to a fixed energy price.

7. Desert View Power competed unsuccessfully in SCE's RFP from Eligible Renewable Energy Resource Suppliers for Renewable Products. Desert View Power also attempted to enter into a bilateral contract with SCE to settle on a price that would sustain Desert View Power's operations and also provide sufficient value for SCE's ratepayers, but such efforts were unsuccessful.

8. SCE and Desert View Power were not able to find a way to terminate the PPA that was agreeable to both parties because of the significant capacity obligation due to SCE.

9. SCE and Desert View Power have devised an approach whereby Desert View Power will continue to operate and may sell power to a third-party during a ten-year suspension period.

10. During the suspension period, SCE will make no purchases of energy or capacity from Desert View Power and will make no payments to Desert View Power.

11. At the conclusion of the suspension period, SCE has the option to require Desert View Power to resume deliveries at a fixed price for energy.

12. SCE represents that it will not exercise this option unless it is prudent to do so, based on commensurate benefits to ratepayers and applicable pricing at the time.

13. Although much of the testimony that SCE submitted in support of this application is confidential, SCE represents that the amendment maintains many of the provisions in the original Desert View Power PPA.

14. Even during the suspension period and as long as the PPA remains in effect, the provisions related to insurance, taxes, liability, technology, capacity, delivery point, and remaining length of the term remain the same as in the original PPA.

15. SCE does not anticipate an RPS-related need until the third compliance period, which begins in 2017 and contends that this amendment, with its 10-year suspension period, reduces SCE's near-term excess capacity of renewable energy.

16. This amendment retains savings for ratepayers in the form of avoided above-market payments, required collateral from Desert View Power during the suspension period, which may be retained by SCE if SCE does not exercise its option to recommence deliveries, and increased performance obligations on Desert View Power's part, if SCE does exercise this option.

17. DRA and TURN have participated in the PRG process, during which SCE presented the proposed amendment to the Desert View PPA.

Conclusions of Law

1. The proposed amendment appears to be consistent with SCE's current RPS Procurement Plans for 2011 and 2012 and is also consistent with the RPS program goals set forth in Pub. Util. Code § 399.15(b)(1)-(2) and related Commission decisions.

2. Pursuant to D.99-02-085, amendments to QF contracts are permitted when commensurate concessions are made by the QF to the benefit of the ratepayers.

3. It is reasonable to require SCE to file a Tier 1 Advice Letter, including the applicable analysis and workpapers, to inform the Commission if SCE determines to exercise its option to require Desert View Power to resume deliveries at a fixed price for energy at the conclusion of the suspension period.

4. It is reasonable to allow the information presented in the confidential testimony submitted by SCE to remain confidential for three years or until one year following expiration of the amended contract, whichever occurs earlier, pursuant to D.06-06-066.

5. To the extent that the amended contract and related appendices are made public in any forum, it is reasonable to require SCE to file a motion to unseal the amended contracts and related appendices, within 30 days of the date the contract or appendices are made public.

6. The designation of this proceeding should be changed so that hearings are no longer necessary.

7. This decision should be effective immediately.

8. Application 12-06-017 should be closed.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company's proposed amendment to the power purchase agreement with Desert View Power is approved.

2. We grant Southern California Edison Company (SCE) the authority to exercise its option to resume the delivery term of the Power Purchase Agreement at the conclusion of the ten-year suspension period. If SCE exercises this option, SCE must file a Tier 1 Advice Letter so informing the Commission no less than 30 days prior to exercising this option. SCE shall include the applicable analysis and workpapers that provide the basis for exercising this option.

3. Southern California Edison Company (SCE) may recover payments made to Desert View Power in rates, subject to review with respect to the reasonableness of SCE's administration of the Desert View Power Purchase Agreement, as amended by this application.

4. The information presented in the confidential testimony submitted by Southern California Edison Company (SCE) shall remain confidential for three years or until one year following expiration of the amended contract, whichever occurs earlier, pursuant to Decision 06-06-066. To the extent that the amended contract or any of the associated appendices are made public in any forum, SCE shall file a motion to unseal the documents within 30 days of the date the contract or appendices are made public.

5. The hearing designation is changed to no hearings necessary.

6. Application 12-06-017 is closed.

This order is effective today.

Dated _____, at San Francisco, California.