

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

ENERGY DIVISION

ID # 11826  
RESOLUTION E-4565  
January 24, 2013

REDACTED

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

Resolution E-4565. San Diego Gas & Electric Company requests approval of a renewable energy power purchase agreement, as amended by the Fourth Amendment, with SolarGen 2 LLC.

PROPOSED OUTCOME: This Resolution approves cost recovery for the long-term renewable energy power purchase agreement, as amended, between San Diego Gas & Electric Company and SolarGen 2 LLC. The power purchase agreement, as amended, is approved without modifications.

ESTIMATED COST: Costs of the power purchase agreement, as amended, are confidential at this time.

By Advice Letter 2423-E filed on November 30, 2012.

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**SUMMARY**

**San Diego Gas & Electric Company's renewable energy power purchase agreement, as amended, with Solar Gen 2 LLC complies with the Renewables Portfolio Standard procurement guidelines and is approved without modification.**

San Diego Gas & Electric Company (SDG&E) filed Advice Letter 2423-E on November 30, 2012, requesting California Public Utilities Commission (Commission) review and approval of a renewable energy power purchase agreement, as amended by a fourth amendment, between SDG&E and SolarGen LLC. The bilaterally negotiated 25-year power purchase agreement is for generation from three solar photovoltaic facilities that are being developed in Calapatria, California and will be 150 megawatts in total. The facilities are expected to achieve commercial operation in 2014.

This resolution approves the Solar Gen 2 LLC power purchase agreement, as amended by a fourth amendment, without modification. SDG&E's execution of this power purchase agreement and fourth amendment is consistent with SDG&E's 2011 RPS Procurement Plan, which the Commission approved in Decision 11-04-030.

Deliveries under the Solar Gen 2 LLC power purchase agreement, as amended by the fourth amendment, are reasonably priced and fully recoverable in rates over the life of the power purchase agreement, subject to Commission review of SDG&E's administration of the power purchase agreement, as amended.

The following table provides a summary of the Solar Gen 2 LLC power purchase agreement:

Generating Facilities	Technology Type	Term (Years)	Capacity (MW)	Energy (GWh/year)	Online Date	Location
Arkansas, Alhambra, and Sonora	Solar PV	25	150	390	One year after CPUC approval	Calapatria, Imperial County, CA

## **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).<sup>1</sup> The RPS program is codified in Public Utilities Code Sections 399.11-399.20.<sup>2</sup> Under SB 2 (1X),<sup>3</sup> the RPS program administered by the Commission requires each retail seller to increase its total procurement of eligible renewable energy resources so that the

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<sup>1</sup> 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).

<sup>2</sup> All further references to sections refer to Public Utilities Code unless otherwise specified.

<sup>3</sup> SB 2 (1X) becomes effective on December 10, 2011; 90 days after the close of the Legislatures 2011 Extraordinary Session.

amount of electricity generated per year from eligible renewable resources be increased to an amount that equals an average of 20% of the total electricity sold to retail customers in California for the period 2011-2013; 25% of retail sales by December 31, 2016; and 33% of retail sales by December 31, 2020. <sup>4</sup>

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 Advice Letters 2423-E was made by publication in the Commission's Daily Calendar. SDG&E states that copies of the Advice Letter were mailed and distributed in accordance with Section IV of General Order 96-B.

## **PROTESTS**

SDG&E Advice Letter 2423-E was not protested.

## **DISCUSSION**

**San Diego Gas & Electric Company requests approval of a renewable energy power purchase agreement, as amended by a fourth amendment, with Solar Gen 2 LLC.**

On August 23, 2011, San Diego Gas and Electric Company (SDG&E) filed Advice Letter (AL) 2279-E requesting California Public Utilities Commission (Commission) approval of a long-term power purchase agreement (PPA) with SolarGen 2 LLC (SolarGen). On December 1, 2011, the Commission approved the PPA without modification.<sup>5</sup> On November 20, 2012, SDG&E filed AL 2423-E requesting Commission approval of the SolarGen PPA, as amended by a fourth

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<sup>4</sup> See SB 2 (1X) § 399.15(b)(2)(B).

<sup>5</sup> E-4437:

[http://docs.cpuc.ca.gov/PublishedDocs/WORD\\_PDF/FINAL\\_RESOLUTION/154747.PDF](http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_RESOLUTION/154747.PDF).

amendment. The amendment is the result of SDG&E and SolarGen participating in the Commission's Alternative Dispute Resolution (ADR) process, which SDG&E and SolarGen entered into to resolve outstanding issues between SDG&E and SolarGen.

The Fourth Amendment (i) reduces the PPA price; (ii) establishes a later guaranteed commercial operation date ("GCOD") which shall be within twelve months from CPUC approval instead of September 30, 2012; and (iii) contains non-price changes, such as revised financing condition precedent, delay damages, and construction period security terms, as well as a revised milestone schedule. Other than the changes contained in the previous three amendments, all other terms of the PPA originally filed on August 24, 2011, in AL 2279-E and approved by the Commission on December 1, 2011, in Resolution E-4437, are unchanged and continue in full force and effect.

The SolarGen PPA, as amended, concerns generation from three new solar photovoltaic (PV) facilities – Arkansas, Alhambra, and Sonora (collectively, the SolarGen 2 project) located in Calapatria, Imperial County, California.<sup>6</sup> The SolarGen 2 project will interconnect within the Imperial Irrigation District (IID) system. The power from the facilities will be exported into CAISO through the Imperial Valley substation.

The facilities are expected to come online in 2014; thus, generation from the facilities could count towards SDG&E's RPS requirements in the second compliance period.<sup>7</sup> The Solar Gen 2 project is expected to annually generate approximately 390 gigawatt-hours (GWh) of RPS-eligible generation. The Commission's approval of the PPA and proposed fourth amendment will authorize SDG&E to accept future RPS-eligible generation that will contribute towards SDG&E's 33 percent RPS requirement.

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<sup>6</sup> Solar Gen 2 website: <http://www.solargen2.com/>.

<sup>7</sup> In addition to raising California's RPS requirement to 33% from 20%, SB 2 (1X) (Stats. 2011 (Simitian)) establishes three different compliance periods, 2011-2013, 2014-2016, and 2017-2020.

**SDG&E requests that the Commission issue a resolution that:**

1. The proposed fourth amendment is reasonable; the SolarGen PPA, as amended, is consistent with SDG&E's CPUC-approved RPS Plan; and procurement from the SolarGen PPA, as amended, will contribute towards SDG&E's RPS procurement obligation.
2. SDG&E's entry into the SolarGen PPA, as amended, and the terms of such agreement are reasonable; therefore, the SolarGen PPA, as amended, is approved in its entirety and all costs of the purchase associated with the SolarGen PPA, as amended, including for energy, green attributes, and resource adequacy are fully recoverable in rates over the life of the SolarGen PPA as amended subject to Commission review of SDG&E's administration of the SolarGen PPA, as amended.
3. Generation procured pursuant to the SolarGen PPA, as amended, constitutes generation from an eligible renewable energy resource 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. The SolarGen PPA, as amended, will contribute to SDG&E's minimum quantity requirement established in D.12-06-038.

**Energy Division Evaluated the SolarGen PPA, as amended by the proposed fourth amendment, on the following criteria:**

- Consistency with bilateral contracting rules;
- Consistency with SDG&E's 2011 RPS Procurement Plan;
- Consistency with SDG&E's Least-Cost, Best-Fit requirements;
- RPS Procurement Portfolio Need;
- Cost Reasonableness and Net Market Value;
- Consistency with RPS Standard Terms and Conditions;
- Consistency with Portfolio Content Categories Requirements;
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard;

- Independent Evaluator review;
- Procurement Review Group participation;
- Long-Term Contracting Requirement; and
- Project Viability Assessment and Development Status.

### **Consistency with Bilateral Contracting Rules**

The original SolarGen PPA was negotiated bilaterally. According to SDG&E, the parties pursued bilateral negotiations because the timing of the next RPS solicitation was unknown at the time.

In D.06-10-019, modified by D.07-07-025, the Commission established rules pursuant to which the IOUs could enter into bilateral RPS contracts. SDG&E adhered to these bilateral contracting rules because the amended SolarGen PPA is longer than one month in duration, was filed by advice letter, and was subject to the use of an Independent Evaluator (IE) pursuant to D.04-12-048.

In D.09-06-050, this Commission determined that bilateral agreements should be reviewed according to the same processes and standards as projects that come through a solicitation. Accordingly, as described below, the amended SolarGen PPA was compared to other RPS offers received in SDG&E's 2011 RPS solicitation and recently executed contracts; the proposed agreement was reviewed by SDG&E's Procurement Review Group; and an Independent Evaluator oversaw the project evaluation and original PPA negotiation. Also, the contract is reasonably priced, as discussed in more detail below.

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

### **Consistency with SDG&E's 2011 RPS Procurement Plan<sup>8</sup>**

Pursuant to statute, SDG&E's 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.<sup>9</sup>

California's RPS statute also requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.<sup>10</sup> The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan.<sup>11</sup>

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.<sup>12</sup> 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. SDG&E also 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. Last of all, SDG&E's Plan discussed utility plans to pursue renewable energy generation development partnerships and utility-owned resources.

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<sup>8</sup> While SDG&E's 2012 RPS Procurement Plan was accepted by the Commission on November 8, 2012 in D.12-11-016, the proposed fourth amendment was executed on November 16, 2012 prior to SDG&E filing its final, conforming 2012 RPS Procurement Plan on November 29, 2012. Thus, the Commission reviewed the SolarGen PPA, as amended by the proposed fourth amendment, to SDG&E's 2011 RPS Procurement Plan.

<sup>9</sup> Pub. Util. Code § 399.14(a)(3).

<sup>10</sup> Pub. Util. Code § 399.14.

<sup>11</sup> SDG&E's 2011 RPS Procurement Plan was approved by D.11-04-030 on April 14, 2011.

<sup>12</sup> 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.

The amended PPA is a contract for renewable generation that fits the requirements SDG&E identified in its 2011 RPS Procurement Plan. The amended PPA is for as-available generation pursuant to a 25-year contract from renewable energy facilities. Additionally, the facilities are expected to provide renewable energy deliveries beginning in 2014, which will contribute towards SDG&E's RPS requirement. Lastly, the facilities will be located in the Imperial Valley, and thus likely will contribute to SDG&E's Sunrise Powerlink commitment. The SolarGen PPA, as amended, is consistent with SDG&E's 2011 RPS Procurement Plan, as approved by D.11-04-030.

### **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.<sup>13</sup> 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. 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 negotiated the original SolarGen PPA bilaterally and the fourth amendment was the result of an alternative dispute resolution process; therefore, the amended PPA did not compete directly with other RPS projects. In AL 2423-E, SDG&E explains that it evaluated the SolarGen PPA, as amended by the fourth amendment, using the same LCBF evaluation methodology it employs for evaluating bids from its annual RPS solicitations. Thus, SDG&E used its LCBF methodology to evaluate the amended SolarGen PPA. See the "Cost Reasonableness and Net Market Value" section of this resolution for a discussion of how the amended SolarGen PPA compares to SDG&E's 2011 RPS solicitation and recently executed contracts. In addition, see Confidential Appendix A for SDG&E's LCBF evaluation of the project.

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<sup>13</sup> See § 399.14(a)(2)(B).

The SolarGen PPA, as amended, was evaluated consistent with the LCBF methodology identified in SDG&E's 2011 RPS Procurement Plan

### **SDG&E's RPS Procurement Portfolio Need**

Energy Division forecasts SDG&E's primary need for incremental renewable generation to be in the third compliance period (2017-2020).<sup>14</sup> This Energy Division forecast takes into account a certain amount of contract failure with SDG&E's RPS procurement portfolio. Figure 1 below depicts Energy Division's forecast of SDG&E's RPS net long/short position for each compliance period under a risk-adjusted scenario.<sup>15</sup> This graphical illustration shows that SDG&E is forecasted to have a need for incremental RPS procurement in the third compliance period, but has more than sufficient RPS resources under contract during the second compliance period 2014-2016.<sup>16</sup> All or a portion of the forecasted excess procurement from the second compliance period could potentially be applied towards future RPS requirements, and thus could reduce SDG&E's RPS needs in compliance period three or later.

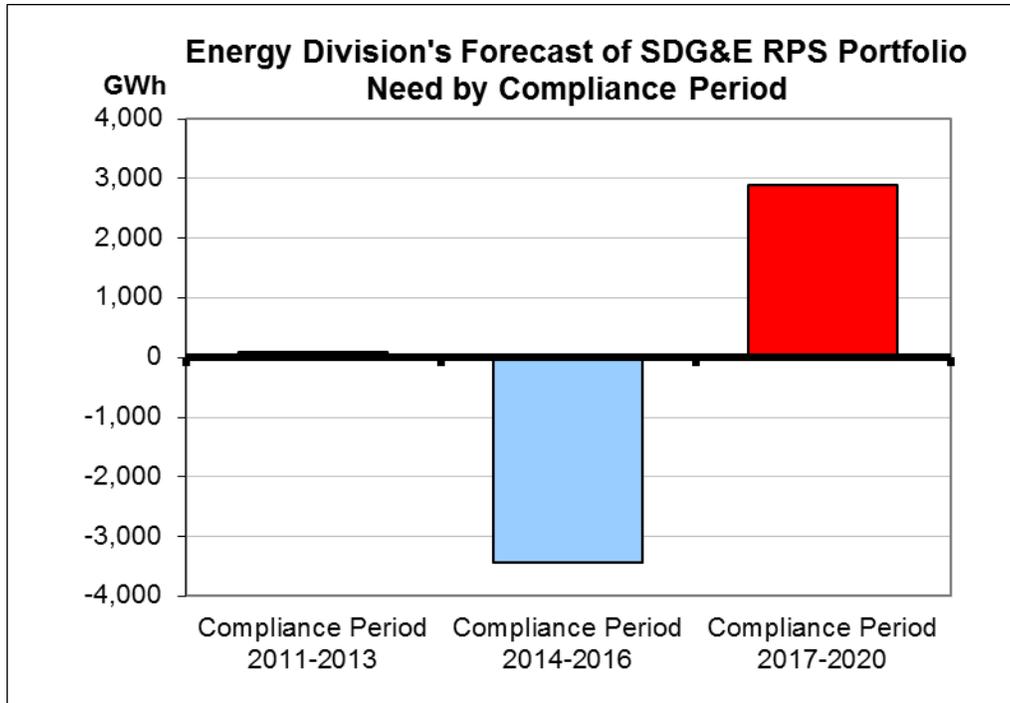
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<sup>14</sup> In addition to increasing California's RPS requirement to 33 percent from 20 percent, SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session) establishes three different compliance periods. In D.11-12-020 the Commission defined the compliance periods (2011-2013; 2014-2016; and 2017-2020) and the methodology for calculating the RPS procurement quantity requirements for each compliance period.

<sup>15</sup> Energy Division staff'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 not include any contracts pending Commission approval, executed - but not filed, nor contracts under negotiation.

<sup>16</sup> Energy Division staff 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 carrying over of forecasted excess generation from one compliance period to another because SDG&E may or may not choose to apply all 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.

**Figure 1: Energy Division forecasts that SDG&E may have a need for incremental RPS procurement in the third compliance period, 2017-2020**



### **Cost Reasonableness and Net Market Value**

The Commission's reasonableness review for RPS PPAs includes a comparison of the proposed PPA's price and net market value (the result of the LCBF calculation) relative to other RPS offers received in recent RPS solicitations and to contracts executed in the 12 months prior to the proposed PPA's execution date. Using this methodology and the confidential analysis provided by SDG&E in AL 2423-E, the Commission determines that the net market value of the SolarGen PPA, as amended by the fourth amendment, is comparable to other RPS offers and that the costs of the SolarGen PPA, as amended, are reasonable. (See Confidential Appendix A for a discussion of the contractual pricing terms.)

The SolarGen PPA, as amended, reasonably compares from a price and net market value basis to the results of SDG&E's 2011 RPS solicitation and other recently executed contracts.

Payments made by SDG&E under the SolarGen PPA, as amended, are fully recoverable in rates over the life of the PPA and amendments, subject to Commission review of SDG&E's administration of the PPA and amendments.

### **Consistency with RPS Standard Terms and Conditions**

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, four 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.

The SolarGen PPA, as amended, includes 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.

### **Consistency with Portfolio Content Category Requirements**

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 PPA and the risks and value to ratepayers if the proposed PPA ultimately results in renewable energy credits in another, less preferred, portfolio content category.

In AL 2423-E, SDG&E claims that its procurement resulting from the SolarGen PPA, as amended, will be classified as Portfolio Content Category 1. To support its claim, SDG&E asserts that the PPA requires SolarGen to provide both the energy and renewable energy certificates associated with generation from the 150 MW SolarGen 2 project and SDG&E states that the Arkansas, Alhambra, and Sonora facilities will interconnect with the Imperial Irrigation District transmission system, a California balancing authority area.

Consistent with D.11-12-052, SDG&E provided information in AL 2423-E regarding the expected portfolio content category classification of the renewable energy credits to be procured pursuant to the amended SolarGen PPA.

In this resolution, the Commission makes no determination regarding the SolarGen PPA’s portfolio content category classification. The RPS contract evaluation process is separate from the RPS compliance and portfolio content category classification process, which requires consideration of several factors

based on various showings in a compliance filing. Thus, making a portfolio content category classification determination in this resolution regarding the procurement considered herein is not appropriate. SDG&E should incorporate the procurement resulting from the amended SolarGen PPA and all applicable supporting documentation to demonstrate portfolio content category classification in the appropriate compliance showing(s) consistent with all applicable RPS program rules.

### **Compliance with the Interim Greenhouse Gas Emissions Performance Standard**

California Pub. Util. Code §§ 8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) baseload power contracts procured on behalf of California ratepayers.<sup>17</sup>

D.07-01-039 adopted an interim Emissions Performance Standard (EPS) that establishes an emission rate for obligated facilities at levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. Generating facilities using certain renewable resources are deemed compliant with the EPS.<sup>18</sup>

The SolarGen PPA, as amended, meets the conditions for EPS compliance because it is for intermittent generation with a capacity factor of less than 60 percent.

### **Independent Evaluator Review**

SDG&E retained independent evaluator (IE) Jonathan Jacobs of PA Consulting Group to oversee SDG&E's original bilateral negotiations with SolarGen and to evaluate the overall merits for CPUC approval of the PPA. In Resolution E-4437 the Commission found that consistent with D.06-05-039 and D.09-06-050, an IE

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<sup>17</sup> "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).

<sup>18</sup> D.07-01-039, Attachment 7, p. 4.

oversaw SDG&E's procurement process. Due to the fourth amendment being the result of an alternative dispute resolution process an IE was not involved.

### **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.<sup>19</sup> SDG&E asserts that the SolarGen PPA and fourth amendment were discussed at PRG meetings in August, September, October, and November of 2012.

Pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the SolarGen PPA and the fourth amendment.

### **Long-Term Contracting Requirement**

In D.12-06-038, the Commission established a long-term contracting 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.<sup>20</sup> 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).<sup>21</sup>

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<sup>19</sup> 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.

<sup>20</sup> 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)

<sup>21</sup> 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.

Because the SolarGen PPA, as amended, is greater than 10 years in length, the PPA will contribute to SDG&E's long-term contracting requirement established in D.12-06-038.

### **Project Viability Assessment and Development Status**

SDG&E asserts that the SolarGen 2 project is viable and will be developed according to the terms and conditions in the PPA, as amended. SDG&E bases its assertion on its evaluation of the project's viability using the Commission-approved project viability calculator, which uses standardized criteria to quantify a project's strengths and weaknesses in key areas of renewable project development. Additionally, SDG&E provided the following information about the project's developer and development status.

#### Developer experience

Solar Gen 2 LLC is the developer of the project. The SolarGen development team has various experiences in developing utility projects including generation plants and transmission facilities.

#### Site control and permitting status

The proposed facilities are to be located on private lands. On March 31, 2011, SolarGen executed an option agreement for the purchase of land and transmission rights owned by Green Light Corporation for the three project sites. SolarGen is pursuing the permits required for the project's development. The Conditional Use Permits for the three sites have been approved by the Imperial County Board of Supervisors. All other permits are expected to be obtained in a timely manner to achieve the conditions precedent in the PPA, as amended. Additionally, SolarGen has received CEC Pre-Certification for three facilities.

#### Interconnection and transmission

The SolarGen 2 project will interconnect to the Imperial Irrigation District transmission system. SolarGen will build the infrastructure required to interconnect the facilities to IID. SolarGen has finalized three Generator Interconnection Agreements (GIA) with IID for the three facilities to interconnect

the full 150 MW of the project. The IID Board approved the GIAs on April 3, 2012.<sup>22</sup>

### Financing Plan

The project is expected to be financed through a combination of debt and equity. Additionally, the developer plans to pursue a cash grant under Section 1603 of ARRA (Payments for Specified Energy Property in Lieu of Tax Credits). SolarGen asserts that it has already acquired the solar panels necessary for meeting eligibility for the grant.

### **RPS Eligibility and CPUC Approval**

Pursuant to Pub. Util. 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 uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.<sup>23</sup>

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.”<sup>24</sup>

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<sup>22</sup> IID Board Minutes for April 3, 2012:  
<http://www.iid.com/Modules/ShowDocument.aspx?documentid=5658>.

<sup>23</sup> See, e.g. D.08-04-009 at Appendix A, STC 6, Eligibility.

<sup>24</sup> 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, neither 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 finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract enforcement activities shall be reviewed pursuant to the Commission’s authority to review the utilities’ administration of 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 energy 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**

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 SolarGen PPA, as amended, is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.
2. The SolarGen PPA, as amended, is consistent with SDG&E's 2011 RPS Procurement Plan, as approved by D.11-04-030.
3. The SolarGen PPA, as amended, was evaluated consistent with the least-cost best-fit methodology identified in SDG&E's 2011 RPS Procurement Plan.
4. The SolarGen PPA, as amended, reasonably compares from a price and net market value basis to the results of SDG&E's 2011 RPS solicitation and recently executed contracts.
5. Payments made by SDG&E under the SolarGen PPA, as amended, are fully recoverable in rates over the life of the PPA and amendments, subject to Commission review of SDG&E's administration of the PPA and amendments.
6. The SolarGen PPA includes 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 amended by D.11-01-025.
7. Consistent with D.11-12-052, SDG&E provided information in AL 2423-E regarding the expected portfolio content category classification of the renewable energy credits procured pursuant to the amended SolarGen PPA.
8. The SolarGen PPA, as amended, meets the conditions for EPS compliance because it is for intermittent generation with a capacity factor of less than 60 percent.
9. Pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the SolarGen PPA and fourth amendment.
10. Because the SolarGen PPA, as amended, is greater than 10 years in length, the PPA will contribute to SDG&E's long-term contracting requirement established in D.12-06-038.
11. SDG&E asserts that the SolarGen 2 project is viable and will provide renewable energy according to the terms and conditions in the SolarGen PPA, as amended.

12. Procurement pursuant to the amended SolarGen PPA is procurement 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 Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.
13. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under this amended PPA to count towards an RPS compliance obligation. Nor shall that finding absolve SDG&E of its obligation to enforce compliance with this amended PPA.
14. 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.
15. AL 2423-E should be approved effective today without modification.

**THEREFORE IT IS ORDERED THAT:**

1. San Diego Gas & Electric Company's Advice Letter 2423E, requesting Commission review and approval of a renewable power purchase agreement, as amended by the proposed Fourth Amendment, with SolarGen 2 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 24, 2013; the following Commissioners voting favorably thereon:

\_\_\_\_\_  
PAUL CLANON  
Executive Director

## **Confidential Appendix A**

### Evaluation Summary of the Solar Gen 2 PPA

[Redacted]