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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ITEM 18

ID #11996

RESOLUTION E-4579

April 4, 2013

REDACTED

RESOLUTION

Resolution E-4579. San Diego Gas & Electric Company (SDG&E) requests approval of a purchase agreement for renewable energy credits with Finerty Group LLC and a sales agreement with Noble Americas Energy Solutions LLC.

PROPOSED OUTCOME: This Resolution approves SDG&E's purchase agreement for renewable energy credits with Finerty Group LLC and SDG&E's sales agreement with Noble Americas Energy Solutions LLC without modification.

SAFETY CONSIDERATIONS: The agreements approved by this resolution will not alter existing agreements or any facility operations. Because these agreements do not require a change in facility operations there are no incremental safety implications associated with approval of these agreements beyond the status quo.

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

By Advice Letter 2441-E filed on December 28, 2012.

SUMMARY

San Diego Gas & Electric Company's proposed purchase agreement for renewable energy credits with Finerty Group LLC and proposed sales agreement with Noble Americas Energy Solutions LLC comply with the Renewables Portfolio Standard (RPS) procurement guidelines and are approved.

San Diego Gas & Electric Company (SDG&E) filed Advice Letter (AL) 2441-E on December 28, 2012 requesting Commission review and approval of two agreements – a renewable energy credit (REC) purchase agreement executed with Finerty Group LLC (Finerty) and a renewable power sales agreement executed with Noble Americas Energy Solutions LLC (Noble). Both agreements are short-term, bilateral agreements. The Finerty REC agreement is for RECs generated in December 2012 by RPS-eligible facilities located in California. The Noble sales agreement is for the resale of renewable generation from various operating, RPS-certified facilities that are under contract to SDG&E. The Noble sales agreement is for eight months.

This resolution approves the Finerty REC purchase agreement and Noble sales agreement without modification. SDG&E’s execution of these agreements is consistent with SDG&E’s 2012 RPS Procurement Plan, including its resource need, which the Commission approved in Decision 12-11-016. Procurement under the Finerty agreement and sales from SDG&E to Noble pursuant to the agreement are reasonably priced. Costs pursuant to Finerty agreement fully recoverable in rates over the life of the agreement, subject to Commission review of SDG&E’s administration of the agreements. Payments received by SDG&E under the sales contract shall be credited to SDG&E’s ratepayers via SDG&E’s Energy Resource Recovery Account (ERRA).

The following table summarizes the agreements:

Table 1: Summary of the Finerty Agreement and Noble Sales Agreement

Seller	Buyer	Technology Type	Term (month)	Minimum Capacity (MW)	Minimum Energy (MWh)	Contract Start Date	Location
Finerty Group	SDG&E	Unbundled RECs from (geothermal and biogas)	1	N/A	124,000 – 140,000	Upon CPUC approval	California
SDG&E	Noble Americas Energy Solutions	Various, existing RPS-eligible technologies	8	8.5	49,980	5/1/13	California

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 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 2441-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 3.14 of General Order 96-B.

PROTESTS

No protests were filed.

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.

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).

DISCUSSION

SDG&E requests approval of a purchase agreement for renewable energy credits with Finerty and a sales agreement with Noble

On December 28, 2012, SDG&E filed AL 2441-E requesting Commission approval of two bilaterally negotiated short-term agreements. In AL 2441-E, SDG&E reasons that together the two simultaneously executed agreements optimize the value of its RPS portfolio by lowering near-term ratepayer costs.

The Finerty agreement provides that after CPUC approval, SDG&E will procure renewable energy credits (RECs) that were generated by RPS-eligible facilities in December 2012. Pursuant to the Noble sales agreement SDG&E will provide renewable energy and associated RECs from California, RPS-eligible facilities that are currently operating and under contract to provide RPS-eligible generation to SDG&E. The net result of the two contracts is a net increase of approximately 90,000 RECs to SDG&E's RPS portfolio.

The RECs to be procured pursuant to the Finerty agreement were generated at the facilities listed in Table 2.

Table 2: RPS-eligible facilities that generated the RECs that SDG&E will procure from Finerty

Facility Name/Owner	Location (all CA)	Technology	Capacity (MW)	Online Date
Calpine Geothermal Unit 16	Middletown	Geothermal	119.0	January 1, 1985
Calpine Geothermal Unit 18	Middletown	Geothermal	119.0	January 1, 1983
JWPCP Total Energy Facility	Carson	Digester Gas	29.7	January 1, 1986
Puente Hills Phase II	City of Industry	Landfill Gas	9.3	January 1, 2006

Pursuant to the sales agreement, SDG&E will sell RPS-eligible energy and associated RECs from a number of facilities that are currently delivering generation to SDG&E pursuant to CPUC-approved power purchase agreements. The facilities are listed in Table 3 (below) and are all RPS-certified, located in California, and interconnected into California balancing authorities.

Table 3: List of Facilities under contract to SDG&E that may provide RPS-eligible energy to Noble

Name of Facility	Technology	Location	Estimated Annual Energy (MWh)
Blue Lake Power	Biomass	Humboldt	89,760
Calpine Geysers	Geothermal	Sonoma & Lake County	212,430
Coram Energy, LLC	Wind	Tehachapi	26,937
AES Delano Inc.	Biomass	Delano	364,854
Catalina Solar, LLC.	Solar PV	Kern County	223,900
Sycamore Landfill	Landfill Gas	Santee	11,784
Mountain View III	Wind	Riverside County	70,231
Phoenix West	Wind	Riverside County	19,200
Kumeyaay Wind	Wind	Boulevard	167,900
Manzana Wind	Wind	Tehachapi	259,296
Mesa Wind Farm	Wind	Riverside County	55,270
MM Prima Deshecha	Landfill Gas	San Juan Capistrano	46,984
Borrego PV Solar I	Solar PV	Borrego Springs	59,400
Oasis Power Partners	Wind	Mojave	178,704
Covanta Otay 3 Company	Landfill Gas	Chula Vista	24,000
Pacific Wind	Wind	Tehachapi	392,448
Ocotillo Wind Energy	Wind	Imperial Valley	789,276
Rancho Penasquitos	Conduit Hydro	San Diego	20,000
FPL Energy Green Power	Wind	Palm Springs	23,954

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

1. The proposed agreements are consistent with SDG&E's CPUC-approved RPS Plan and procurement from Finerty will contribute towards SDG&E's RPS procurement obligation and sale of the bundled renewable electricity and green attributes under the proposed agreement with Noble is reasonable and will benefit utility ratepayers.
2. SDG&E's entry into the proposed agreements and the terms of such agreements are reasonable; therefore, the proposed agreements are approved in their entirety and all administrative and procurement costs associated with the proposed agreements, including for energy and green attributes are fully recoverable in rates over the life of the proposed agreements, subject to Commission review of SDG&E's administration of the proposed agreements.
3. Procurement pursuant to the Finerty agreement constitutes renewable energy credits 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.

Energy Division Review Of The Proposed Agreements

Energy Division evaluated both agreements for the following criteria:

- Consistency with bilateral contracting guidelines
- Consistency with SDG&E's 2012 RPS Procurement Plan (Plan)
- Consistency with RPS standard terms and conditions (STC)
- Independent Evaluator review
- Procurement Review Group (PRG) participation
- Price and Cost reasonableness
- Contract viability
- Public Safety

Additionally, Energy Division evaluated the Finerty agreement for the following criteria:

- Consistency with SDG&E's least-cost, best-fit requirements
- Consistency with renewable energy credits (REC) rules
- Compliance with the long-term contracting requirement
- Consistency with Portfolio Content Categories requirements
- Consistency with the Interim Emissions Performance Standard

Consistency With Bilateral Contracting Guidelines

Finerty Agreement:

According to SDG&E, the bilateral offer from Finerty was received subsequent to SDG&E's 2011 RPS solicitation, but prior to its 2012 RPS solicitation. SDG&E states that it executed the Finerty agreement because it was competitively priced and an opportunity to "optimize" its RPS portfolio in terms of lower ratepayer costs.

In D.06-10-019, 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 Finerty Agreement is longer than one month in duration, the agreement was filed by advice letter, and the agreement is reasonably priced, as discussed in more detail below.

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 in more detail below, the Finerty agreement was compared to other RPS offers received in SDG&E's most recent RPS solicitation, bilateral offers, and recently executed agreements; the proposed agreements were reviewed by SDG&E's Procurement Review Group; and an independent evaluator oversaw the contract evaluations and agreement negotiations.

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

Noble Agreement

SDG&E adhered to the bilateral contracting rules because: the Noble Agreement is longer than one month in duration, the agreement was filed by advice letter,

was reviewed by SDG&E's Procurement Review group, negotiations were overseen by an independent evaluator, and the Noble agreement is reasonably priced, as discussed in more detail below.

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

Consistency with SDG&E's 2012 RPS Procurement Plan

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; description of potential RPS compliance delays; status update of projects within its RPS portfolio; an assessment of the project failure and delay risk within its RPS portfolio; and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.⁴ California's RPS statute also 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.⁶

In SDG&E's 2012 RPS Plan, SDG&E expressed a commitment to meet its RPS requirements in a cost-effective manner. SDG&E's 2012 RPS Plan called for SDG&E to issue competitive solicitations for the purchase and sale of RPS-eligible energy and/or RECs. SDG&E also stated in its Plan that bilateral offers would be considered if they were competitive when compared against recent solicitation offers and provide benefits to SDG&E customers. SDG&E further stated that it would consider short-term contracts when it is short in the most immediate Compliance Period, but long in the subsequent Compliance Period. In addition, SDG&E noted that it would consider procurement strategies that maximize the product category limitations in order to optimize ratepayer value across compliance periods. Lastly, SDG&E's Plan discussed utility plans to pursue renewable energy generation development partnerships and utility-owned resources.

⁴ Pub. Util. Code § 399.13(a)(5).

⁵ Pub. Util. Code § 399.13(d).

⁶ SDG&E's 2012 RPS Procurement Plan was approved by D.12-11-016 on November 8, 2012.

The Finerty and Noble agreements are for renewable generation that fit SDG&E's identified renewable resource needs. The short-term, bilateral Finerty REC purchase agreement is for RECs from operating renewable energy facilities that generated RECs in Compliance Period 2011-2013 and will contribute towards SDG&E's RPS requirement. The short-term, bilateral Noble sales agreement is for the sale of renewable energy and associated RECs.

The Finerty and Noble agreements are consistent with SDG&E's 2012 RPS Procurement Plan, as approved by D.12-11-016.

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. 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 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 2012 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 Finerty agreement bilaterally, and therefore, it did not compete directly with other RPS offers. In AL 2441-E, SDG&E explains that it evaluated the bilateral agreement using the same LCBF evaluation methodology it will employ for evaluating bids from its 2012 solicitation. See the "Cost Reasonableness" section of this resolution for a discussion of how the Finerty agreement cost compares to recent bilateral offers, recently executed contracts, and market quotes. In addition, see Confidential Appendix A for SDG&E's LCBF evaluation of the project.

The Finerty agreement was evaluated consistent with the LCBF methodology identified in SDG&E's 2012 RPS Procurement Plan.

SDG&E's RPS Procurement Portfolio Need

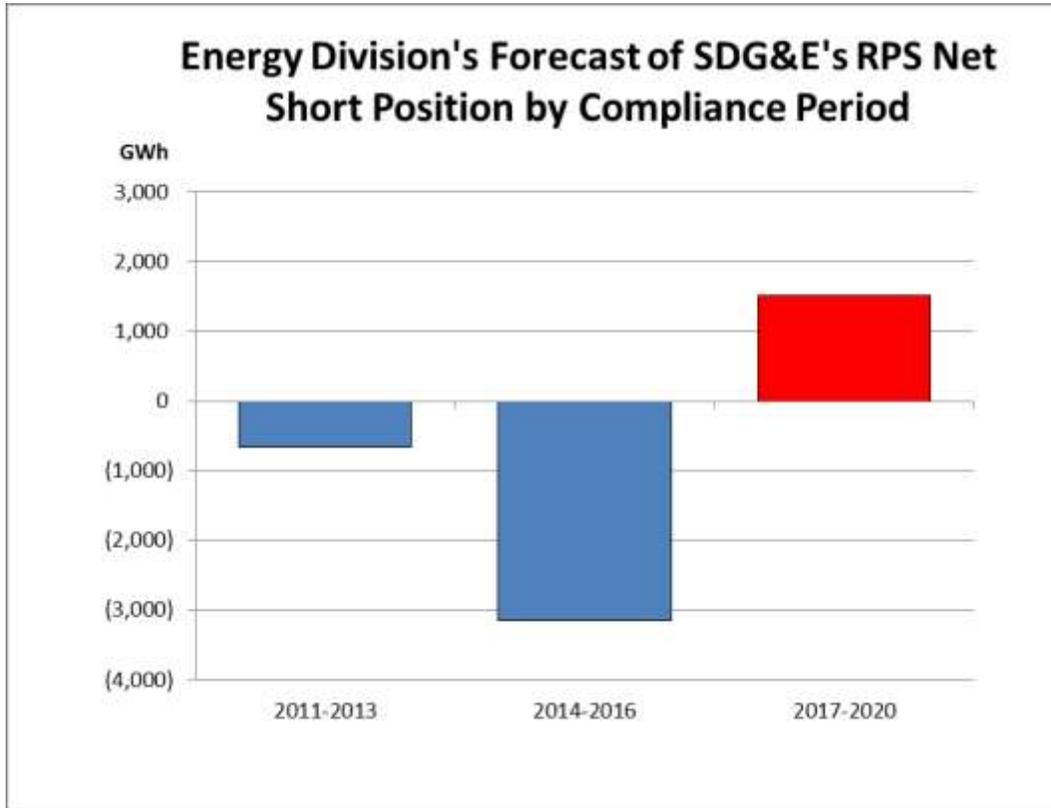
Energy Division forecasts SDG&E's primary need for incremental renewable generation to be in the third compliance period (2017-2020).⁷ This Energy Division forecast takes into account a certain amount of contract failure with SDG&E's RPS procurement portfolio. Figure 1 below depicts Energy Division's forecast of SDG&E's RPS net long/short position for each compliance period under a risk-adjusted scenario.⁸ This graphical illustration shows that prior to the proposed contracts 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 2014-2016.⁹ 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.

⁷ 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.

⁸ Energy Division staff's forecast of SDG&E's RPS Procurement Portfolio is based on SDG&E's 2011 Preliminary Annual 33% RPS Compliance Report and the Commission's RPS Project Status Table. The Energy Division's forecast does not include any contracts pending Commission approval, executed - but not filed, nor contracts under negotiation.

⁹ 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 66 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) prior deficits will need to be satisfied.

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



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. The Commission further refined these STCs in D.10-03-021, as modified by D.11-01-025.

The Finerty and Noble agreements include 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 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.¹⁰ The Finerty agreement's 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 contracting requirement that must be met in order for retail sellers to count RPS procurement from contracts less than 10 years in duration for compliance with the RPS program.¹¹ 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).¹²

The Finerty 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 an expected 3,926 GWh. Thus, SDG&E has satisfied the long-term contracting requirement because the contracts SDG&E executed in Compliance Period 2011-2013 exceed the requirement (i.e. 3,926 GWh is greater than 40.7 GWh).

¹⁰ 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.)

¹¹ 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)

¹² 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.

Table 4: 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 2441-E, SDG&E claims that the procurement pursuant to the Finerty 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 2441-E regarding the expected portfolio content category classification of the renewable energy credits procured pursuant to the Finerty agreement.

In this resolution, however, the Commission makes no determination regarding the proposed agreement'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.¹³ 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 Finerty 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.

Independent Evaluator Review

SDG&E retained independent evaluator (IE) Jonathan Jacobs of PA Consulting Group to oversee SDG&E's bilateral negotiations with Finerty and Noble and to evaluate the overall merits for CPUC approval of the agreement. AL 2441-E included public and confidential independent evaluator's reports for both the Finerty and Noble agreements.

In the IE report, the IE states that he believes that the Finerty and Noble agreements merit Commission approval. Specifically, the IE notes that the pricing of the agreements are "at market" and that they do not appear to pose much risk to SDG&E's RPS compliance position or SDG&E's ratepayers.

Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw SDG&E's negotiations with Finerty and Noble.

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

¹³ D.11-12-052, pp. 8, 12.

other procurement processes prior to submitting filings to the Commission.¹⁴ SDG&E asserts that both the Finerty and Noble agreements were discussed at PRG meetings in September, October, November, and December 2012. Thus, pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the Finerty and Noble agreements.

Cost Reasonableness

Finerty Agreement:

In AL 2441-E, SDG&E provided numerous comparisons of the Finerty agreement to different cohorts. Due to the majority of SDG&E's 2011 RPS shortlist consisting of long-term energy and associated REC bids, SDG&E compared the Finerty agreement to its recently executed short-term contracts, 2011 RPS solicitation, recent Renewable Auction Mechanism solicitations, and recently executed short-term bilateral contracts. The independent evaluator, PA Consulting, focused his evaluation of the Finerty agreement on unbundled REC market data and found the agreement's pricing to be "at the market."

Applying the analyses of comparing the Finerty agreement to similar recently executed contracts and the REC market at the time of contract execution, the Commission determines that the Finerty 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 Finerty agreement are reasonable based on the Agreement's price relative to SDG&E's recently executed contracts, and market quotes.

¹⁴ 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.

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

Noble Agreement:

In AL 2441-E, SDG&E stated that it considered the Finerty REC agreement and Noble sales agreement in tandem since together they are intended to "optimize" SDG&E's RPS portfolio. Specifically, SDG&E analyzed the cash flows related to the costs and revenues of the two agreements.¹⁵

For the review of the sales contract's price reasonableness, the Commission examined SDG&E's cash flow analysis and compared the sales contract price to market data. Based on this analysis and the confidential analysis provided by SDG&E in AL 2441-E, we determine that the sales contract's price is reasonable. We note, however, that the Commission has not established rules for price reasonableness review of contracts for RPS sales by IOUs and that the analysis of the sales contract's price reasonableness here is not precedent setting. Confidential Appendix A includes a detailed discussion of the contractual pricing terms and the analysis of the reasonableness of the contract price.

The total expected revenues of the sales contract are reasonable based on the estimated costs to SDG&E ratepayers and the sales contract's price relative to market data.

Payments received by SDG&E under the sales contract shall be credited to SDG&E's ratepayers through SDG&E's Energy Resource Recovery Account (ERRA) over the life of the sales contract, subject to Commission review of SDG&E's administration of the sales contract.

SDG&E is required to demonstrate in its ERRA Review Proceedings that its least-cost dispatch processes, operations and related spot market transactions comply with all applicable Standards of Conduct (SOC) (including SOC No. 4 concerning cost dispatch obligations). SDG&E shall record the transactions authorized in

¹⁵ The negative cash flows SDG&E included in its analysis are: the costs to purchase the Finerty RECs, replacement costs for the null power sold to Noble, and replacement costs for the banked RECs sold to Noble. The positive cash flows were the revenues from the Noble agreement.

this Resolution in its ERRA Balancing Accounts, and these transaction shall be subject to the Commission's ERRA Review Proceeding.

Contract Viability

Finerty Agreement:

The RECs that are the subject of the Finerty agreement considered herein have already been generated; thus, it is reasonable to expect that Finerty will be able to meet the terms and conditions of the agreement.

Noble Agreement:

The generation to be delivered pursuant to the Noble agreement is from operating facilities that have been certified by the CEC as RPS-eligible; thus, it is reasonable that SDG&E will be able to meet the terms and conditions of the agreement.

Public Safety

California Public Utilities Code Section 451 requires that every public utility maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment and facilities to ensure the safety, health, and comfort of the public. This resolution approves two contracts. The Finerty agreement is for the purchase of RECs that have already been generated. The Noble agreement is for the sale of RPS-eligible generation from operating facilities. Neither the Finerty purchase agreement nor the Noble sales agreement alters existing power purchase agreements or any facility operations. As these agreements do not require a change in facility operations, there are no incremental safety implications associated with approval of these contracts beyond the status quo. Based on the information before us, these contracts do not appear to result in any adverse safety impacts on the facilities or operations of SDG&E.

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.¹⁶ 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.

The Finerty agreement is not a long-term financial commitment subject to the EPS because the terms of the Finerty agreement is less than five years in term length.

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.¹⁷

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.”¹⁸

¹⁶ “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).

¹⁷ See, e.g. D.08-04-009 at Appendix A, STC 6, Eligibility.

¹⁸ 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 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 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 energy deliveries begin or one year after expiration, whichever comes first, except contracts between IOUs and their affiliates, which are public. In this case, the contracts will be public one year after they terminate.

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 Finerty agreement is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.
2. The Noble agreement is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050
3. The Finerty and Noble agreements are consistent with SDG&E's 2012 RPS Procurement Plan, approved by D.12-11-016.
4. The Finerty agreement was evaluated consistent with the LCBF methodology identified in SDG&E's 2012 RPS Procurement Plan.
5. The Finerty and Noble agreements include the Commission-adopted "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.
6. The price of the Finerty agreement is below the temporary \$50/REC price cap.
7. The Finerty agreement triggers the long-term contracting requirement because the contract term is less than 10 years and was signed after June 1, 2010.
8. SDG&E has satisfied the long-term contracting requirement.
9. Consistent with D.11-12-052, SDG&E provided information in AL 2441-E regarding the expected portfolio content category classification of the renewable energy credits procured pursuant to the Finerty agreement.
10. The Commission makes no determination regarding the proposed Finerty agreement's portfolio content category classification because RPS contract evaluation process is a separate process from the RPS compliance determination and portfolio content category classification.
11. Consistent with D.06-05-039 an independent evaluator oversaw SDG&E's negotiations with Finerty and Noble.
12. SDG&E's Procurement Review Group participated in the review of the Finerty and Noble agreements consistent with D.02-08-071.
13. The analysis of the REC agreement's price reasonableness is not precedent setting.
14. The total expected costs of the Finerty agreement are reasonable based on the Agreement's price relative to SDG&E's recently executed contracts and market quotes.

15. Provided that the Finerty RECs are from an eligible renewable energy resource, payments made by SDG&E pursuant to the Finerty agreement are fully recoverable in rates over the life of the Finerty agreement, subject to Commission review of SDG&E's administration of the agreement.
16. Procurement pursuant to the Finerty agreements is procurement for renewable energy credits 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.
17. The immediately preceding finding shall not be read to allow generation from a non-RPS-eligible renewable energy resource under the REC agreement to count towards an RPS compliance obligation. Nor shall that finding absolve SDG&E of its obligation to enforce compliance with this agreement.
18. The analysis of the sales contract's price reasonableness is not precedent setting.
19. The total expected revenues of the Noble agreement are reasonable based on the estimated costs to SDG&E ratepayers and the sales contract's price relative to market data.
20. Payments received by SDG&E pursuant to the Noble sales contract shall be credited to SDG&E ratepayers through SDG&E's Energy Resource Recovery Account (ERRA) over the life of the sales contract, subject to Commission review of SDG&E's administration of the Noble sales contract.
21. SDG&E is required to demonstrate in its ERRA Review Proceedings that its least-cost dispatch processes, operations and related spot market transactions comply with all applicable Standards of Conduct (SOC) (including SOC No. 4 concerning cost dispatch operations). SDG&E shall record the transactions authorized in this Resolution in its ERRA Balancing Accounts, and these transactions shall be subject to the Commission's ERRA Review Proceeding.
22. It is reasonable to expect that Finerty will be able to meet the terms and conditions of the Finerty agreement.
23. It is reasonable that SDG&E will be able to meet the terms and conditions of the Noble agreement.

24. The Finerty agreement is not a long-term financial commitment subject to the Emissions Performance Standard because the term of the Finerty agreement is less than five years.
25. 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.
26. AL 2441-E should be approved effective today.

THEREFORE IT IS ORDERED THAT:

1. San Diego Gas & Electric Company's Advice Letter 2441-E, requesting Commission review and approval of a purchase agreement with Finerty Group LLC and a sales agreement with Noble Americas Energy Solutions LLC, is approved.

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 April 4, 2013; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Evaluation Summary of the Finerty and Noble Agreements

[Redacted]