

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**RESOLUTION E-4698
December 4, 2014**

**REDACTED
RESOLUTION**

Resolution E-4698. San Diego Gas and Electric Company requests approval of an amendment and restatement of its agreement for power purchase with Oceanside Refrigeration/Goal Line LP.

PROPOSED OUTCOME:

- Approve without modification the amendment to the existing Power Purchase Agreement (PPA) between San Diego Gas and Electric Company and Oceanside Refrigeration, Inc. with Goal Line, L.P.
- The combined heat and power (CHP) facility will be converted to a dispatchable Utility Prescheduled Facility under the QF/CHP Settlement.
- SDG&E may count 49.9 megawatts of capacity and 6,218 metric tons of GHG reduction toward its respective CHP Settlement targets.
- Deny the requested shareholder incentive payment.

SAFETY CONSIDERATIONS:

- This Resolution approves amendments to a PPA for an existing CHP facility. Because facility operations will either remain unchanged or scale back, there are no new safety risks associated with the approval of these contracts.

ESTIMATED COST:

- The amendments to this PPA will result in ratepayer savings of an estimated \$7.19 million in net present value over the remainder of the PPA term.

By Advice Letter 2600-E Filed on May 8, 2014.

SUMMARY

This Resolution approves, without modification, the amended PPA that San Diego Gas and Electric Company (SDG&E) executed with Goal Line, a combined heat and power (CHP) facility with which the utility has had an existing PPA since 1990. The amended PPA, filed via Advice Letter (AL) 2600-E, was executed in July 2013 as a result of bilateral negotiations beginning in December 2011.

The Goal Line CHP facility is currently under contract to deliver “must-take” power. Under the amended PPA, the facility will be converted to a dispatchable Utility Prescheduled Facility (UPF) under the QF/CHP Settlement. Other benefits of the amended PPA include energy and other cost savings and incremental local capacity.

This Resolution finds that the costs of the amended PPA are reasonable, and SDG&E is authorized to recover these costs. The amended PPA will contribute greenhouse gas (GHG) reductions and 49.9 megawatts (MW) towards SDG&E’s respective targets in those areas.

BACKGROUND

Background on Relevant Terms of the CHP/QF Settlement

On December 16, 2010, the Commission adopted the Qualifying Facility and Combined Heat and Power Program Settlement Agreement (Settlement) with the issuance of D.10-12-035. The Settlement resolves a number of longstanding issues regarding the contractual obligations and procurement options for facilities operating under legacy and qualifying facility contracts.

The Settlement establishes MW procurement targets and GHG Emissions Reduction Targets the investor-owned utilities (IOUs) are required to meet by entering into contracts with eligible combined heat and power (CHP) Facilities, as defined in the Settlement. Pursuant to D.10-12-035, the three large electric IOUs must procure a minimum of 3,000 MW of CHP and reduce GHG emissions consistent with the California Air Resources Board Scoping Plan,¹ currently set at

¹ Initial AB 32 Climate Change Scoping Plan Document. 2009.
<http://www.arb.ca.gov/cc/scopingplan/document/scopingplandocument.htm>.

4.8 million metric tons (MMT) by the end of 2020. For the initial program period, the Settlement allocates to SDG&E 211 MW of the procurement target.

In addition, the Commission defined several procurement options for the IOUs within the Settlement. One of these contracting options allows the IOUs to change the operations of an existing CHP to convert to a dispatchable generation facility, known as a Utility Prescheduled Facility (UPF).² Per Section 4.8.1.1 of the Settlement, CHP Facilities that met certain efficiency standards and convert to UPFs are eligible to obtain a PPA through bilateral negotiations. This conversion to a UPF can provide significant operational flexibility to facilitate the integration of intermittent renewable resources as well as provide other system benefits.

Background on the Amended Power Purchase Agreement

On December 4, 1990, SDG&E and Goal Line executed a Restatement of Agreement for Power Purchase with a Firm Capacity Qualifying Facility. This currently in-effect agreement was based on the Standard Offer 2 (SO2) and expires in February 2025. Negotiations leading to the currently proposed amended PPA began in 2011 and the parties finalized the terms and conditions between January 2012 and June 2013. SDG&E provided reports on the status of the negotiations as part of its regular CHP program updates to the Procurement Review Group (PRG) at the Commission. The amended PPA was executed on July 2, 2013. The amended PPA contract ends on the same date as the SO2: midnight on February 14, 2025. In addition to its transition to a UPF, the amended PPA changes the fuel terms for the facility (SDG&E will pay for and manage fuel) and increases resource adequacy to an expected 49.9 MW, among other changes.

Located in San Diego County, California, Goal Line has operated as a Qualifying Facility³ supplying electricity to SDG&E and steam to a nearby ice skating rink

² D.10-12-035 at 45-46.

³ Per Section 17 of the Settlement, a Qualifying Facility is an electric energy generating facility that complies with the qualifying facility definition established by PURPA and any FERC rules as amended from time to time implementing PURPA and has filed with FERC (i) an application for FERC certification, pursuant to 18 CFR Part 292,

Footnote continued on next page

since the 1990s. The facility consists of a natural gas-fired combustion turbine and a heat recovery steam generator (HRSG). The combustion turbine has a nameplate capacity of 42 MW, and HRSG-generated steam powers a 10.2 MW generator. The generator is used to power compressors for the ice rink, with a backup boiler for when the CHP generator is not operating. Under the amended PPA, Goal Line is expected to operate less often; accordingly, the amended PPA stipulates Goal Line will install a new gas line for the backup boiler.

NOTICE

Notice of AL 2600-E was made by publication in the Commission's Daily Calendar. San Diego Gas and Electric Company states that a copy of the AL was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

Advice Letter 2600-E was timely protested by the Office of Ratepayer Advocates (ORA). The protest, filed on May 28, 2014, made the following overall statements and recommendations:

- 1) ORA does not oppose or object to the amended PPA or its terms;
- 2) ORA protests SDG&E's request for an incentive payment to shareholders of 10 percent of the expected savings of the amended PPA, recommending that the Commission reject this request;
- 3) ORA states that the proposed rate recovery treatment does not comply with the CHP/QF settlement, recommending the Commission require a supplemental advice letter filing proposing Cost Allocation Mechanism (CAM) treatment.

ORA's protest gives the following reasons for its objection to the requested incentive payment to SDG&E shareholders. First, it states that the Commission's Restructuring Advice Letter Filing (RALF) streamlined process created in

Section 292.207(b)(1), which FERC has granted, or (ii) a notice of self-certification pursuant to 18 CFR Part 292, Section 292.207(a).

D.98-12-066 does not apply here. Under RALF, a utility provides ORA with a draft advice letter, and if ORA agrees the letter is reasonable, it provides the utility a Qualifying Facility Restructuring Reasonableness Letter (QFRRL). ORA did not provide SDG&E a QFRRL for this AL because ORA disagreed with SDG&E's request for a shareholder incentive. Thus, ORA states that the RALF process cannot be used in this case.

ORA further states that the incentive is unnecessary because the Settlement GHG and MW targets provide a sufficient reason and motivation for the utility to restructure its existing contracts. SDG&E is deficient in meeting its targets therefore this amended PPA already provides the benefit of contributing towards them. Finally, ORA states that Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) have each restructured QF contracts without requesting or receiving shareholder incentives, and again states SDG&E did not provide any justification for why it should be treated differently.

ORA also protested the proposed rate recovery treatment, stating that the Settlement requires restructured QF contracts to go through the CAM process. ORA recommends the Commission require SDG&E to file a supplemental advice letter specifying CAM rate recovery treatment.

SDG&E's reply states that ORA's denial of a QFRRL should not prevent the Commission from awarding a shareholder incentive because ORA essentially acknowledges the amendment is reasonable, rendering its withholding of the QFRRL a technicality; SDG&E states the Commission may still award the incentive upon its independent judgment. SDG&E further states that its proposed cost recovery treatment is appropriate per Section 13.1.5 of the Settlement.

DISCUSSION

On May 8, 2014, SDG&E filed AL 2600-E, which requests Commission approval of an amended PPA with Goal Line. This CHP Facility will be converted to a dispatchable Utility Prescheduled Facility under the QF/CHP Settlement. The facility currently delivers baseload energy under an existing contract with SDG&E.

SDG&E requests a Commission resolution no later than August 31, 2014 that:

- 1) Approves the Amendment, including the Amendment to Appendix 9.3, without modification as just and reasonable;
- 2) Authorizes continued recovery of the costs associated with the Amendment through SDG&E's ERRA and recovery of stranded costs consistent with D.02-12-074 and D.02-11-022;
- 3) Determines that any GHG reductions associated with the Amendment count toward SDG&E's GHG Emissions Reduction target included in the QF/CHP Settlement;
- 4) Find that because the expected annualized capacity factor of the Facility under the Amendment is below 60 percent, the Amendment is not a covered procurement subject to the EPS adopted in D.07-01-039;
- 5) Find that the Goal Line capacity counts toward SDG&E's CHP MW Target per 4.8.1.2 of the CHP/QF Settlement;
- 6) Allocate SDG&E shareholders 10% of the projected cost savings from the Amendment in accordance with the Restructuring Advice Letter Filing process and D.98-12-066.

The Commission evaluated the amended Goal Line PPA based on the following criteria:

- Consistency with D.10-12-035, which approved the QF/CHP Program Settlement including:
 - Consistency with Eligibility Requirements for Bilaterally Negotiated PPAs
 - Consistency with MW Counting Rules
 - Consistency with GHG Accounting Methodology
 - Consistency with Cost Recovery Requirements
- Need for Procurement
- Cost Reasonableness
- Public Safety
- Project Viability
- Consistency with the Emissions Performance Standard

- Consistency with D.02-08-071 and D.07-12-052, which require Procurement Review Group participation

In considering these factors, the Commission also considers the analysis and recommendations of an Independent Evaluator, which is not required for CHP bilateral contracts but was conducted and included with the AL.

Consistency with D.10-12-035, which approved the QF/CHP Program Settlement

On December 16, 2010, the Commission adopted the QF/CHP Program Settlement with the issuance of D.10-12-035. The Settlement Term Sheet establishes criteria for contracts with Facilities including:

Consistency with Eligibility Requirements for Bilaterally Negotiated PPAs

Per Section 4.3 of the Settlement Term Sheet, bilaterally negotiated and executed CHP PPAs are a procurement option for the CHP Program. Per Section 4.8.1.1 of the Settlement, CHP Facilities that met the Public Utility Regulatory Policies Act of 1978 (PURPA) efficiency requirements as of September 20, are eligible to obtain a PPA through bilateral negotiations. A CHP Facility that converts to a Utility Prescheduled Facility is eligible to participate in the CHP RFOs. As detailed in the confidential appendix, the Goal Line Facility met PURPA efficiency requirements as of September 2007.

As a CHP facility converting to a Utility Prescheduled Facility, the Goal Line Facility was eligible to bilaterally negotiate the amended PPA.

Consistency with Settlement Megawatt Counting Rules

Per Term Sheet Section 4.8.1.2, SDG&E procurement of any UPF counts toward its MW targets regardless of the expiration date of the existing PPA. Goal Line is currently selling to SDG&E under an existing SO2 agreement. The amended PPA changes Goal Line's operations into a UPF. Per Section 5.2.3.1 of the Settlement, "MWs counted for New PPAs executed with Existing CHP Facilities will be the published Contract Nameplate value..." The nameplate capacity for Goal Line is 49.9 MW.

Per the Settlement, the Goal Line Facility is eligible to count towards the MW target, and the total nameplate capacity of the facility shall count towards the target. The amended PPA will contribute 49.9 MW to the target.

Consistency with Greenhouse Gas Accounting Methodology

Per Term Sheet Section 7.3.1.3, a CHP Facility that converts to a Utility Prescheduled Facility counts as a GHG credit for the IOUs' GHG Emissions Reduction Targets. Measurement is based on the baseline year emissions⁴ minus the projected PPA emissions and emissions associated with replacing 100% of the decreased electric generation at a time differentiated heat rate.

Additional information about the GHG emissions accounting is included in Confidential Appendix A. The facility's operations under the amended PPA as a Utility Prescheduled Facility will be reduced compared to the current operations, yielding 6,218 metric tons (MT) of greenhouse gas emissions reductions that will be credited toward the QF/CHP Settlement GHG Emissions Reduction Target.

Consistency with Cost Recovery Requirements

Section 13.1.5 of the Settlement states, "In recognition of the new cost recovery mechanisms contemplated by this Settlement, the Parties agree to advocate exclusion from the Competition Transition Charge (CTC) of any above-market costs associated with purchases of power from a CHP Facility via a PPA entered into pursuant to this Settlement. However, the above-market costs of QF procurement via Legacy PPAs may continue to be recovered through CTC for the life of those contracts."

As an amendment to an existing Legacy PPA that does not increase capacity, the pursuant costs may continue to be recovered through CTC. Above-market costs shall be recovered appropriately from all benefiting customers in the CTC.

Need for Procurement

SDG&E's total MW procurement target for the CHP Program 211 MW, and SDG&E's estimated 2020 GHG Emissions Reduction Target is 500,000 MT. The amended PPA will contribute 6,218 MT GHG reductions and 49.9 MW. SDG&E will still need 493,782 MT additional GHG reductions and an additional 161.1 MW to meet its goals. The Goal Line Facility's contributions to SDG&E's MW and GHG reductions targets justify this procurement.

⁴ The baseline year emissions are the average of the previous two years of operational data.

Cost Reasonableness

A detailed explanation of the contract cost is in Confidential Appendix A. The costs associated with the Goal Line PPA are just and reasonable.

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.

As part of its review of the amended PPA, the Commission issued SDG&E a data request to determine the following:

1. What terms in the amended PPA address the safe operation, construction and maintenance of the Project? Are there any other conditions, including but not limited to conditions of any permits or potential permits, that the IOU is aware of that ensure such safe operation, construction and decommissioning?
2. What has SDG&E done to ensure that the PPA and the Project's operation are: consistent with Public Utilities Code Section 451; do not interfere with the IOU's safe operation of its utility operations and facilities; and will not adversely affect the public health and safety?
3. All safety violations at the facility found by any entity, whether government, industry-based or internal, with an indication of the issue and if the resolution of that alleged violation is pending or resolved and what the progress or resolution was/is.
4. Will the amended PPA lead to any changes in the structure or operations of the facility? Any change in the safety practices at the facility? If so, with what federal, state and local agencies did the developer confer or seek permits or permit amendments for these changes?

In its response, SDG&E provided detail regarding the contract terms and provisions as relate to safety; information about permitting; a record of safety inspections for the facility; and stated that to the best of its knowledge, the facility maintains all proper permits to continue operating safely.

Based on the information before the Commission, the Goal Line Facility will decrease its on-site generation and will not add any new capacity. There are no known safety concerns associated with approval of this contract.

Project Viability

The Goal Line Facility is currently operating under a PPA with SDG&E. The facility is fully permitted, has site control, and has served its steam host for a number of years. The Goal Line Facility is an existing CHP facility and therefore is a viable project.

Consistency with the Emissions Performance Standard

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

D.07-01-039 adopted an interim Emissions Performance Standard (EPS) that establishes an emissions rate for obligated facilities to levels no greater than the greenhouse gas emissions of a combined-cycle gas turbine power plant. Pursuant to Section 4.10.4.1 of the CHP Program Settlement Term Sheet, for PPAs greater than five years that are submitted to the Commission in a Tier 2 or Tier 3 advice letter, the Commission must make a specific finding that the PPA is compliant with the EPS.

The EPS applies to all energy contracts that are at least five years in duration for baseload generation, which is defined as a power plant that is designed and intended to provide electricity at an annualized plant capacity factor greater than 60 percent. The annualized plant capacity factors for the Goal Line Facility is expected to be significantly below the 60 percent baseload threshold. Therefore, the EPS does not apply to the Goal Line Facility.

Consistency with D.02-08-071 and D.07-12-052, which respectively require Procurement Review Group participation

SDG&E consulted with its Cost Allocation Mechanism (CAM) Group, which consists of its Procurement Review Group (PRG) participants, plus one member representing community choice aggregator customers and one member representing direct access customers. SDG&E has complied with the Commission's rules for involving the PRG.

The Commission also evaluated SDG&E's request for a shareholder incentive of \$719,000, or 10 percent of the expected savings from the amended PPA, which was established by D. 98-12-066 as part of the Restructuring Advice Letter Process (RALF). SDG&E attempted to follow the RALF process but was denied a QFRRL from ORA, rendering the process incomplete.

Moreover, the amendment already provides a range of tangible benefits to SDG&E, including the conversion of the facility to a UPF and contribution towards its MW and GHG targets. The amendment is a qualifying procurement under the CHP procurement mandates and targets applicable to SDG&E and as such, SDG&E is already required to pursue contracts such as the Amended Agreement. Therefore, in light of the lack of other justification, the other benefits provided to SDG&E by this amended agreement, the regulatory requirement for SDG&E to pursue contracts that count toward its CHP Settlement targets, and the lack of precedent in providing utilities a shareholder incentive in similar cases,⁵ the request for a shareholder incentive is denied. SDG&E shall not pay any portion of the savings from this agreement to its shareholders as an incentive.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this Resolution was neither waived nor reduced. Accordingly, this draft Resolution was mailed to parties for comments on October 30, 2014. SDG&E filed comments on November 19, 2014.

SDG&E's comments argue that "the Draft Resolution must be reconsidered because it:

- Conflicts with recent Commission precedent in Resolution E-4627 and results in undue discrimination by treating similarly-situated utilities dissimilarly;
- Unlawfully delegates the Commission's ratemaking authority to ORA by permitting ORA's failure to follow the procedural mechanism of providing a QFRRL to result in denial of SDG&E's substantive right to

⁵ ORA Protest of AL 2600-E, page 3.

- receive a shareholder incentive consistent with D.98-12-066 and Resolution E-4627; and
- Improperly relies on the QF/CHP Settlement, approved in D.10-12-035, as grounds for disallowing the Shareholder Incentive. The Settlement is silent on this matter and the Commission has taken no action to diminish the force and effect of D.98-12-066 and Resolution E-4627.”

The Commission rejects each of these arguments. We address them here in order of their importance and relevance to our decision to reject the request for the shareholder incentive.

First, we object to SDG&E’s mischaracterization of the RALF process and ORA’s role in that process. Completion of the RALF process established in D.98-12-066 requires that the Advice Letter include a QFRRL from ORA, which is granted the ability to review the materials filed and the discretion to issue a QFRRL.⁶ ORA’s decision to not issue a QFRRL⁷ does not constitute an unlawful delegation of our authority. It is unreasonable for SDG&E to characterize ORA’s decision not to issue a QFRRL as “an attempt to circumvent” Commission policy, a “failure to follow the procedural mechanism,” and as a “refusal to cooperate.”⁸

Additionally, D.98-12-066, which SDG&E references to justify an incentive, in fact makes no mention of an incentive; and conversely D.95-12-063, which established an incentive for the divestment of utility-owned fossil-fuel generation, makes no mention of the RALF process. The Commission rejects SDG&E’s attempt to cobble together a justification for an incentive while also filing this amendment under the more-recent and comprehensive Settlement resolving long-disputed QF/CHP issues.

Furthermore, contrary to SDG&E’s arguments, this Resolution does not improperly rely on the Settlement. The Commission adopted the contentiously-negotiated and broad Settlement as a balance of ratepayer, utility, and CHP

⁶ D.98-12-066, page 17.

⁷ Email correspondence from ORA to SDG&E of March 13, 2014

⁸ SDG&E November 19, 2014 Comments, pages 3 and 4.

interests and, at the request of the Settling parties, adopted the Term Sheet as precedential.⁹ Consistent with the Commission's prior Resolutions disposing of contested issues among the parties and the Settlement's precedential status, the Commission relies on the plain language of the Term Sheet. However, contrary to SDG&E's dependence on the fact that the Term Sheet is silent on the issue of a shareholder incentive, its absence in no way implies that they are permissible. In fact, the Settlement endeavors to achieve benefits to electricity customers in a cost-effective manner.¹⁰ Aside from the fact that this procurement contributes to SDG&E's compliance with a regulatory mandate, diverting the restructuring's cost savings from ratepayers to shareholders would conflict with the stated objectives of the CHP Program.

Finally, with regard to Resolution E-4627, we find there is no conflict or precedent therein that affects our decisions in this Resolution. The two situations are entirely different. E-4627 resolved a PG&E AL that completed the RALF process "because PG&E consulted with ORA and received a QFRRL"¹¹ whereas SDG&E's AL did not complete the RALF process. Second, PG&E did not request or receive an incentive, which is what is at issue here.

FINDINGS

1. Pursuant to the QF/CHP Settlement, SDG&E is permitted to amend its Power Purchase Agreements with the Goal Line Facility through bilateral negotiations because the facility met the efficiency requirements under the Public Utility Regulatory Policies Act of 1978 (PURPA).
2. Pursuant to the QF/CHP Settlement, the total contract nameplate capacity of the facility (49.9 MW) counts towards SDG&E's MW target, and the 6,218 MT GHG reductions count towards those targets.

⁹ D.10-12-025, page 59 and Conclusion of Law 20.

¹⁰ Settlement Term Sheet Sections 1.2.2.8, 1.2.5, and D.10-12-035 Finding of Fact 17.

¹¹ E-4627, page 7.

3. SDG&E's request to recover costs in accordance with Section 13.1.5 of the QF/CHP Settlement Term Sheet is consistent with the directives of the Settlement.
4. Commission Decision 10-12-035 directed SDG&E to procure 211 MW of CHP capacity by November 2015 and 0.50 MMT of GHG reductions from CHP contracts by 2020. The amended PPA with the Goal Line Facility would help SDG&E to meet both of these goals, justifying the need for the amended PPA.
5. The costs of the amended PPA are just and reasonable.
6. The change in operations to a Utility Prescheduled Facility will not result in any foreseeable new safety risks.
7. Goal Line is an existing CHP facility and therefore a viable project.
8. The amended PPA is not subject to the EPS under D.07-01-039 as the facility will be operating with an annualized plant capacity factor of less than 60 percent.
9. SDG&E has complied with the Commission's rules for involving the Procurement Review Group.
10. Because the amended PPA is executed as part of SDG&E's obligation to comply with the CHP/QF Settlement Agreement, and because SDG&E did not successfully complete the Restructured Advice Letter Process, the cost savings resulting from this contract do not qualify for a shareholder incentive under D. 98-12-066.

THEREFORE IT IS ORDERED THAT:

1. The request of San Diego Gas & Electric Company in Advice Letter 2600-E for the Commission to approve without modification the amended Power Purchase Agreement (PPA) with Oceanside Refrigeration, Inc. with Goal Line, L.P. is approved.
2. SDG&E may count 49.9 MW of capacity and 6,218 MT of GHG reduction toward its respective CHP Settlement targets.
3. The request of San Diego Gas & Electric Company in Advice Letter 2600-E for the Commission to approve a shareholder incentive of \$719,000 pursuant to D.98-12-066 is denied.
4. SDG&E is authorized to recover the costs associated with the amended PPA through the cost recovery mechanisms set forth in D.10-12-035 (as modified by D.11-07-010), in Section 13.1.5 of the QF/CHP Settlement Term Sheet.

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 December 4, 2014; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON
PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
MICHAEL PICKER
Commissioners

Confidential Appendix A

Summary and Analysis of the Goal Line Amended PPA

APPENDIX REDACTED

End Appendix A