

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**Item 9
Agenda ID 13675
RESOLUTION E-4710 (Rev. 1)
February 26, 2015**

REDACTED
RESOLUTION

Resolution E-4710. Southern California Edison Company seeks approval of an agreement with ACE Cogeneration Company to terminate its power purchase agreement and shut down the coal-fired facility.

PROPOSED OUTCOME:

- Approve without modification the termination agreement between SCE and ACE pursuant to the terms of the Combined Heat and Power Program Settlement Agreement.

SAFETY CONSIDERATIONS:

- This resolution terminates an existing power purchase agreement from a coal-fired CHP Facility, which will reduce emissions of greenhouse gases and local criteria air pollutants.

ESTIMATED COST:

- Actual costs are confidential at this time, but the termination agreement is expected to result in net savings to ratepayers.

By Advice Letter 3114-E Filed on October 7, 2014.

SUMMARY

This resolution approves the Termination Agreement which will amend the Power Purchase Agreement between Southern California Edison Company (SCE) and ACE Cogeneration Company (ACE), and authorizes SCE to recover in rates the costs of any payments made pursuant to the Termination Agreement. This resolution also authorizes SCE to count, subject to verification by the Commission's Energy Division, the 0.287 million metric tons (MMT) carbon dioxide equivalent of greenhouse gas emissions (GHG) reductions resulting from

the Termination Agreement toward SCE's Combined Heat and Power Procurement (CHP) GHG emissions reduction targets pursuant to the Qualifying Facilities/CHP Settlement Agreement approved by the Commission in Decision (D.)10-12-035.

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 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 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 (CARB) Scoping Plan, currently set at 4.8 million metric tonnes (MMT) by the end of 2020.

Per Section 4.3 of the Settlement Term Sheet, bilaterally negotiated and executed CHP PPAs are included among the procurement options in the CHP Program. Pricing, terms, and conditions will be determined according to the executed and approved PPA.

Background on AL 3114-E

ACE is a 108 MW coal-fired topping cycle cogeneration facility located in Trona, CA that provides steam to Searles Valley Minerals for industrial processing. In 1985, SCE and ACE executed a 25-year Interim Standard Offer 4 Power Purchase Agreement (ISO4 or Legacy Contract) for 96 MW of firm capacity at a price of \$185/kW-yr. The Legacy Contract had an online date of 1990 and was scheduled to expire in November 2015.

On August 14, 2014, SCE and ACE executed an agreement that terminates the Legacy Contract 11 months early and requires the permanent shut-down of the

cogeneration facility. While the Termination Agreement will become effective subject to CPUC approval, ACE ceased operations on December 1, 2014. The parties request final and non-appealable approval of the Termination Agreement by April 15, 2015, in advance of ACE's permanent dismantling and decommissioning.

SCE requests that the CPUC find that the executed agreement will count 0.287 MMT toward the GHG Target.

NOTICE

Notice of AL 3114-E was made by publication in the Commission's Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

Advice Letter 3114-E was timely protested on October 27, 2014 by the Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC). The protest was limited solely to the determination of the eligible GHG emission's reduction credit that SCE was claiming in its Advice Letter. CAC/EPUC does not protest the termination agreement and supports the prompt approval of the agreement, subject to clarification of the GHG Accounting.¹

SCE replied to the protest on November 3, 2014 and claimed that it had correctly applied the GHG Credit counting rules from the CHP Settlement specifically pursuant to Sections 6.4.2.2 and 7.3.1.4 of the Settlement Term Sheet. SCE stated that the Commission's data request and review processes are sufficient to validate the information provided in the confidential appendices to the AL.²

¹ Protest of CAC/EPUC, October 27, 2014 at 1.

² Reply of SCE, November 3, 2014 at 2.

DISCUSSION

On October 7, 2014, SCE filed Advice Letter (AL) 3114-E which requests Commission approval of a termination agreement with ACE Cogeneration Company.

Specifically, SCE requested that the Commission:

1. Approve the Agreement in its entirety;
2. Find that the Agreement, and SCE's entry into the Agreement is reasonable and prudent for all purposes, subject to further review with respect to the reasonableness of SCE's administration of the Agreement;
3. Apply 0.287 MMT associated with the Agreement toward SCE's GHG Emissions Reductions Target;
4. Find that the costs of the Agreement shall be recovered through SCE's Energy Resources Recovery Account;

Energy Division evaluated the agreement based on the following criteria:

- Consistency with D.10-12-035, which approved the QF/CHP Program Settlement including:
 - Consistency with Definition of CHP Facility and Qualifying Cogeneration Facility
 - 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 respectively require Procurement Review Group (PRG) participation

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 Definition of CHP Facility and Qualifying Cogeneration Facility

ACE operated as an Existing Qualifying Cogeneration Facility and will be shut down as a result of the Termination Agreement. Section 7.3.1.4 of the Settlement Term Sheet permits shutdowns as an eligible pathway for the procurement of GHG Credits.

As an Existing CHP Facility undergoing a shutdown, ACE meets the eligibility requirement for a bilaterally-negotiated agreement under the QF/CHP Settlement.

Consistency with Settlement MW Counting Rules

As a shutdown, the Agreement does not count toward the MW Target.

Consistency with Settlement Greenhouse Gas Accounting Methodology

While CAC/EPUC filed a protest, its issue with the Advice Letter was not the substance of the Agreement, which CAC/EPUC does not oppose, but concerns the verification of the GHG accounting. CAC/EPUC stated its support for the approval of the agreement subject to clarification of the GHG accounting.³ Therefore, we address CAC/EPUC's accounting concern in this Resolution.

CAC/EPUC argues that the calculation of GHG credits for ACE should not be determined solely by Term Sheet Section 7.3.1.4.1. Instead, SCE should use a different Double Benchmark to account for coal instead of natural gas, and SCE should have to disclose the contract for the alternative supply of electricity and thermal energy for ACE's host, identify the fuel source for the alternative energy supply to establish the proper calculation under the Double Benchmark; perform

³ CAC/EPUC Protest at 1 and 5.

a holistic GHG emissions assessment; and net the emissions from the alternative generation from its calculation of GHG credits.⁴

Per Settlement Term Sheet Sections 6.4.2.2 and 6.4.2.3, the Existing CHP Facilities that shut down during the Initial Program Period will have their previous two years of GHG emissions evaluated against the Double Benchmark. This evaluation will determine if the cessation of the Facility's operations will add to the three IOUs' total GHG ERT as a "shortfall" or subtract from it as a "surplus. Since ACE was in operation prior to the Settlement Effective Date and will shut down before November 23, 2015, its GHG reductions will be calculated against the previous two calendar years of data compared to the Double Benchmark.

Settlement Term Sheet Section 7.3 sets forth the rules for counting GHG Credits toward their GHG Targets. As a coal-burning CHP facility that increases emissions compared to the Double Benchmark, ACE is "inefficient" for purposes of GHG emissions calculation under Term Sheet Section 7.1.3. SCE states that ACE's thermal host will continue its operations after ACE shuts down.⁵ Accordingly, the GHG emissions effects of the Termination Agreement are counted toward SCE's GHG target in accordance with Term Sheet Sections 7.3.1.4 and 7.3.1.4.1. These sections state that if an existing inefficient CHP Facility shuts down and the thermal need continues the shutdown will count as a GHG Credit toward the CARB CHP RRM of the IOU that previously contracted with the CHP calculated by comparing the Double Benchmark to the previous two calendar years of operational data. There is no requirement in the Term Sheet that would require SCE to consider the GHG emissions of the replacement resource in counting the GHG Credits produced by the shutdown of an inefficient facility.

Furthermore, the Double Benchmark does not depend on the identity of the alternative energy supply. Instead it is based on a fixed industry standard defined in the Term Sheet as a Heat Rate of 8,300 BTU/kWh and a thermal efficiency of 80%.⁶ After the Commission approved the QF/CHP Settlement Agreement, the Settling Parties, including CAC/EPUC representatives,

⁴ CAC/EPUC Protest at 4.

⁵ AL 3114-E at 4.

⁶ Settlement Term Sheet Sections 7.2.1. and 7.2.2

participated in the Energy Division's development of the GHG counting reporting template. The Settling Parties agreed to use natural gas as the default fuel type for Double Benchmark calculations as is implemented in the formulas embedded within the reporting template.

Accordingly, the Commission rejects CAC/EPUC's attempts to modify the calculation of the GHG Credits for ACE. While we agree that SCE's assessment appears reasonable and should be approved, the GHG Credit must be verified by the Commission's Energy Division in accordance with Section 8.1.3 of the Settlement Term Sheet which states, in part, that Energy Division is "responsible for verifying the accuracy of the data and collating the data to develop publicly-available reports." CAC/EPUC's concerns over the GHG counting will be addressed when the Commission's Energy Division conducts its verification in the reporting template.

Subject to verification, SCE is authorized to count 0.287 MMT associated with the shutdown of the facility as a GHG Credit toward its Settlement GHG Emissions Reduction Target.

Need for Procurement

SCE's total MW procurement goal for the CHP Program is 1,402 MW, with 378 MW allocated to Target B. A procurement shortfall from CHP RFO 1 resulted in a Net MW Target B of 392 MW for solicitation in CHP RFO 2. SCE's 2020 GHG Emissions Reduction Target is 2.15 MMT.

SCE calculated that the Termination Agreement contributes 0.287 MMT to the GHG Target. Subject to verification by the Commission's Energy Division, the Termination Agreement will count as a GHG Credit applicable to SCE's GHG Emissions Reduction Target.

The need for procurement of the ACE Termination Agreement is justified based on SCE's remaining need to procure emissions reductions pursuant to the CHP/QF Settlement.

Cost Reasonableness

The agreement will result in net benefits to customers. SCE assessed an overall cost savings in the millions of dollars by evaluating:

- Costs: termination agreement costs, energy and capacity replacement
- Benefits: foregone future contract payments, future CHP procurement costs

This evaluation contains market sensitive information which, if revealed, would unfairly disadvantage SCE and therefore warrants confidential treatment.⁷ Detailed explanations of the contract costs and benefits are in Confidential Appendix A.

The cost associated with the ACE Termination Agreement is just and reasonable because it will result in net savings to SCE's customers.

Cost Recovery

Per Section 13.2.1 of the Settlement Term Sheet, the Commission determined that the utilities should recover the cost of all payments made pursuant to PPAs and PPA Amendments executed under the CHP Program in their Energy Resources Recovery Accounts (ERRA). In AL 3114-E, SCE requests to recover the costs of the Termination Agreement through their ERRA.

SCE is authorized to recover costs in accordance with Section 13.2.1 of the Settlement Term Sheet through their Energy Resources Recovery Account.

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.

⁷ Public Utilities Code section 454.5(g) and General Order 66-C Section 2.2(b)

The Termination Agreement requires that ACE submit an application detailing a Decommissioning Plan to the California Energy Commission and comply with such requirements.

Energy Division requested information from SCE on any safety violations found at the facilities according to government, industry-based, or internal standards or requirements. SCE states that ACE recorded and resolved a single “incident” (which was an internal record, not a violation subject to government or external industry reporting).

The dismantling and decommissioning of the coal-fired facility will result in multiple environmental benefits including the avoidance of greenhouse gas emissions from high-carbon intensity electricity generation, the reduction of criteria air pollutants in the Mojave Desert Air Quality Management District,⁸ and eliminating the storage of onsite fuel, coal ash, and combustion residue.

The Termination Agreement includes requirements to ensure that the shutdown of the existing coal-fired cogeneration facility will be subject to a California Energy Commission-approved decommissioning plan, which will result in public safety and environmental benefits.

Project Viability

Under the Termination Agreement the existing ACE facility must be dismantled and decommissioned. SCE negotiated with and mutually agreed upon a termination payment for ACE as part of the agreement, which stipulates terms for the successful completion of the shutdown. In addition, the Agreement requires ACE to comply with indemnification and insurance requirements.

The shutdown of the existing ACE facility 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.

⁸ Trona and San Bernardino County, CA are classified to have moderate to severe non-attainment of multiple Federal Clean Air Act standards for criteria pollutants including Particulate Matter of <10 micrometers and Ozone.

www.epa.gov/oaqps001/greenbk/ancl.html

The Emissions Performance Standard does not apply to the Agreement as it terminates an existing power purchase agreement with the coal-fired ACE facility.

Consistent with D.02-08-071 and D.07-12-052, SCE's Procurement Review Group ("PRG") and Cost Allocation Mechanism ("CAM") Group were notified of the CHP PPA.

SCE presented information about the proposed Termination Agreement to its CAM on July 29, 2014 and to its PRG on August 13 and October 8, 2014.

SCE has complied with the Commission's rules for involving the PRG and CAM groups.

Independent Evaluator Review

Per Section 4.3 of the Settlement Term Sheet, the use of an independent evaluator (IE) is required for bilateral negotiations between an IOU and its affiliate, but the use of an IE is elective for other negotiations. ACE is not affiliated with SCE and therefore did not use an IE in this bilateral negotiation.

SCE has complied with the Commission's rules for review bilateral negotiations.

COMMENTS

As discussed above, this is a largely uncontested matter in which the Resolution grants the relief requested. Even the protesting parties, CAC/EPUC, are not opposed to the expedited treatment of this Advice Letter, and the Resolution does resolve CAC/EPUC's concern regarding the GHG counting issues. Accordingly, pursuant to Section 311(g)(2) of the Pub. Util. Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

A second independent reason for waiving the comment period in order to expedite a determination of this Advice Letter is that ACE needs to know whether the Termination Agreement is effective or not early in 2015 so it will know if can avoid undertaking certain commercial commitments for fuel and rail

deliveries.⁹ Thus, there is a positive environmental goal can be gained by the swift resolution of this Advice Letter.

FINDINGS

1. Commission Decision 10-12-035 directed Southern California Edison (SCE) to procure 1,402 megawatts (MW) of combined heat and power (CHP) capacity by November 2015 and 2.17 million metric tons of greenhouse gas reductions (GHG) from CHP contracts by 2020.
2. On October 7, 2014, Southern California Edison Company (SCE) filed Advice Letter (AL) 3114-E, seeking approval of a Termination Agreement of its existing Legacy Power Purchase Agreement with ACE Cogeneration Company (ACE), an 108 MW coal-fired topping cycle Qualifying Cogeneration Facility.
3. Subject to verification, SCE is authorized to count 0.287 MMT associated with the shutdown of the facility as a GHG Credit toward its Settlement GHG Emissions Reduction Target.
4. The cost associated with the ACE Termination Agreement is just and reasonable because it will result in net savings to SCE's customers.
5. SCE is authorized to recover costs in accordance with Section 13.2.1 of the Settlement Term Sheet through their Energy Resources Recovery Account.
6. The Termination Agreement includes requirements to ensure that the shutdown of the existing coal-fired cogeneration facility will be subject to a California Energy Commission-approved decommissioning plan, which will result in public safety and environmental benefits.
7. In its execution of the Termination Agreement, SCE has complied with the Commission's requirements regarding bilateral negotiations and consulting with the Procurement Review Group and Cost Allocation Mechanism Group.

⁹ Data request from Energy Division to ACE Cogeneration Co.

THEREFORE IT IS ORDERED THAT:

1. The request of Southern California Edison Company to approve its termination agreement with ACE Cogeneration Company and to recover costs via the Energy Resources Recovery Account as proposed in AL 3114-E 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 February 26, 2015; the following Commissioners voting favorably thereon:

TIMOTHY J. SULLIVAN
Executive Director

Confidential Appendix A

Summary and Analysis of the Agreement with
ACE Cogeneration

[REDACTED]