PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

AGENDA ID 14341
RESOLUTION E-4741
October 22, 2015

REDACTED

R E S O L U T I O N

Resolution E-4741. San Diego Gas & Electric Company (SDG&E) requests approval of a sales agreement with the TGP Energy Management LLC to resell renewable generation and the associated renewable energy credits.

PROPOSED OUTCOME: This resolution approves SDG&E's sales agreement with TGP Energy Management LLC without modification.

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

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

By Advice Letter 2771-E filed on August 7, 2015 and Advice Letter 2771-E-A on September 4, 2015.

SUMMARY

San Diego Gas & Electric Company's proposed sales agreement with the TGP Energy Management LLC complies with the Renewables Portfolio Standard (RPS) program guidelines and is approved.

San Diego Gas & Electric Company (SDG&E) filed Advice Letter (AL) 2771-E on August 7, 2015 and AL 2771-E-A on September 4, 2015, requesting Commission review and approval of a sales agreement with the TGP Energy Management

LLC (TGP). The proposed agreement is a short-term, bilateral agreement for the resale of renewable generation and associated renewable energy credits (RECs). The generation and associated RECs are to come from various operating, RPS-certified facilities that are under contract to SDG&E.

This resolution approves the sales agreement without modification. SDG&E's execution of this agreement is consistent with SDG&E's 2014 RPS Procurement Plan, including its resource need, which the Commission approved in Decision (D.)14-11-042. Sales from SDG&E to TGP are reasonably priced and payments received by SDG&E pursuant to the sales contracts shall be credited to SDG&E's ratepayers via SDG&E's Energy Resource Recovery Account (ERRA).

The following table summarizes the agreement:

Table 1: Summary of the TGP Agreement

Buyer	Technology Type	Term	Minimum Energy (GWh)	Contract Start Date	Location
TGP Energy Management LLC	Various, existing RPS-eligible technologies	2 months	100	Later of CPUC approval or November 1, 2015	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

[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.

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 2771-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.

DISCUSSION

San Diego Gas & Electric Company (SDG&E) requests approval of a sales agreement with the TGP Energy Management LLC.

On August 7, 2015, SDG&E filed AL 2771-E requesting approval of a bilaterally negotiated short-term sales agreement with the TGP Energy Management LLC (TGP). In AL 2771-E, SDG&E asserts that the executed sales agreement lowers costs to ratepayers while optimizing the value of its RPS portfolio. On September 4, 2015, SDG&E filed AL 2771-E-A to submit documents that were inadvertently omitted in AL 2771-E.

[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).

Pursuant to the sales agreement, SDG&E will sell 100 gigawatt-hours (GWh) of RPS-eligible energy and associated RECs to TGP. The RPS-eligible generation and associated RECs will come from facilities that are currently operating and providing deliveries to SDG&E pursuant to CPUC-approved contracts. The facilities from which SDG&E may re-sell RPS-eligible energy and associated RECs to TGP are listed in Table 2 (below). All facilities are located in California and interconnected into the California Independent System Operator (CAISO) balancing authority.

Table 2: List of Facilities under contract to SDG&E that may provide RPS-eligible energy and associated RECs to TGP

CEC RPS Certification ID	Facility Name	CAISO Resource ID	WREGIS ID	Location/County
60441A	Olivenhain Municipal Water District	SDG&E meter only	W710	Encinitas, CA
61211A	NRG Solar Borrego I LLC	BREGGO6SOLAR	W2874	Borrego Springs, CA
60652A	Campo Verde Solar (Southern Company)	CPVERD2SOLAR	W3591	Imperial Valley, CA
60850A	Cascade SunEdison (RAM 2)	DEVERS1SOLAR	W3862	Sun Fair, CA
61590A	Catalina Solar (EDF)	CATLNA2SOLAR	W2785	Mojave,CA
60837A	Centinela Solar Energy	CNTNLA2SOLAR1	W3805, W3961, W3964, W4011, W3880	Calexico, CA
60837A	Centinela Solar Energy Expansion	CNTNLA2SOLAR2	W4132, W4133, W4134	Calexico, CA
60029A	Coram Energy, LLC	MIDWD7CORAMB	W317	Tehachapi, CA
61657A	Imperial Solar Energy Center-South	CSLR4S2SOLAR	W3278, W3553, W3620, W3511, W3531	Calexico, CA
62046A	Desert Green Solar Farm LLC	BREGGO6DEGRSL	W4365	Borrego Springs, CA
61292A	Mount Signal Solar Farm	IVSLRP2SOLAR1	W3592, W3931, W3994	Imperial Valley, CA
61671A	Manzana Wind	MANZNA2WIND	W3105	Tehachapi, CA
60481A	MM San Diego Energy (Miramar)	MSHGTS6MMARLF	W424	San Diego, CA
61400A	Ocotillo Wind Energy Facility	OCTILO5WIND	W3259, W3692	Imperial Valley, CA
60433A	Otay Landfill I	OTAY6UNITB1	W558	Chula Vista, CA
60434A	Otay Landfill II	OTAY6UNITB1	W559	Chula Vista, CA
62328A	Otay Landfill V	OTAY6LNDFL5	W3535	Chula Vista, CA
62329A	Otay Landfill VI	OTAY6LNDFL6	W3536	Chula Vista, CA
61555A	Pacific Wind, LLC	ROSMDW2WIND1	W2779	Tehachapi, CA
62898A	San Gorgonio Westwinds II (RAM3)	GARNET2WIND1	W235	Palm Springs, CA
60435A	San Marcos Energy LLC	SMRCOS6LNDFIL	W707	San Marcos, CA
61840A	Sol Orchard San Diego 20 LLC	CRELMN6RAMON1	W3863	Ramona, CA
62435A	Sol Orchard San Diego 21 LLC	CRELMN6RAMON2	W3846	Ramona, CA
61839A	Sol Orchard San Diego 22 LLC	VLCNTR6VCSLR1	W3865	Valley Center, CA
62436A	Sol Orchard San Diego 23 LLC	VLCNTR6VCSLR2	W3866	Valley Center, CA
60011A	Sycamore Energy 1	CHILLS1SYCENG	W730	Santee, CA
60374A	Oak Creek Wind Power, LLC	OAKWD6ZEPHWD	W495	Mojave, CA
60486A	Sycamore Energy 2	CHILLS7UNITA1	W731	Santee, CA

SDG&E requests the Commission issue a resolution that finds[4]:

1. The proposed sales agreement with TGP is consistent with SDG&E's CPUC-approved RPS Procurement Plan and the sale of the bundled renewable electricity and green attributes under the proposed agreement with TGP is reasonable and in the public interest.
2. SDG&E's entry into the proposed agreement with TGP and the terms of such agreement is reasonable; therefore, the proposed agreement is approved in its entirety and all costs of the proposed agreement are fully recoverable in rates over the life of the proposed agreement, subject to Commission review of SDG&E's administration of the proposed agreement.
3. The total expected revenue of the proposed agreement is reasonable based on the estimated costs to SDG&E ratepayers and the proposed agreement's price relative to market data.
4. Payments received by SDG&E pursuant to the proposed agreement shall be credited to SDG&E ratepayers through SDG&E's Energy Resource Recovery Account over the life of the proposed agreement, subject to Commission review of SDG&E's administration of the proposed agreement.
5. Any other and further relief as the Commission finds just and reasonable.

Energy Division Review Of The Proposed Agreement

Energy Division evaluated the proposed agreement using the following criteria:

- Consistency with bilateral contracting guidelines
- Consistency with SDG&E's 2014 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

[4] AL 2771-E, p. 10.

- Public Safety

Consistency With Bilateral Contracting Guidelines

The TGP agreement is considered a bilateral contract because it was not the result of a solicitation. In AL 2771-E, SDG&E asserts that the TGP agreement is consistent with the Commission's bilateral contracting requirements.[5] Specifically, SDG&E adhered to the bilateral contracting rules because the TGP 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 TGP agreement is reasonably priced, as discussed in more detail below.

<u>The TGP agreement is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050</u>.

Consistency with SDG&E's 2014 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.[6]

California's RPS statute also requires that the Commission review renewable energy contracts for consistency with an investor owner utility's (IOU's) Commission-approved procurement plan.[7] In SDG&E's 2014 RPS Plan, SDG&E expressed a commitment to meet its RPS requirements in a cost-effective manner. SDG&E's 2014 RPS Plan stated that in optimizing its RPS portfolio it would consider issuing competitive solicitations for the sale of RPS-eligible energy and/or RECs and that bilateral offers if they were competitive and provide benefits to SDG&E customers.

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[5] SDG&E AL 2771-E, p. 7

[6] Pub. Util. Code § 399.13(a)(5).

[7] Pub. Util. Code § 399.13(a)(d).

The TGP agreement is for the sale of renewable generation and associated RECs and is consistent with SDG&E's renewable resource needs as identified in its 2014 RPS Plan. Therefore, it is consistent with SDG&E's 2014 RPS Procurement Plan, as approved by D.14-11-042.

SDG&E's RPS Procurement Portfolio Need

In AL 2771-E, SDG&E states that, as shown in its 2014 RPS Procurement Plan, it would be able to meet its Compliance Period 2014-2016 RPS requirements without additional procurement.[8] Further, on August 25, 2015, SDG&E stated that it delivered 33 percent renewables over the last 12 months.[9] Thus, while the sales agreement with TGP would decrease the amount of forecasted excess generation, it would not decrease SDG&E's RPS portfolio to an amount below SDG&E's forecasted RPS compliance need for Compliance Period 2014-2016.

Consistency with RPS Standard Terms and Conditions

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, five of which are considered "non-modifiable." The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028, D.10-03-021, as modified by D.11-01-025, and D.13-11-024.

The TGP sales agreement is based on the EEI Master Power Purchase Agreement and includes the Commission adopted RPS "non-modifiable" standard terms and conditions. Therefore, it is consistent with D.08-04-009, D.08-08-028, D.10-03-021, as modified by D.11-01-025, and D.13-11-024.

Portfolio Content Categories and Resale

In D.11-12-052, the Commission defined and implemented portfolio content categories for the RPS program. D.11-12-052 also adopted a set of conditions for allowing the resale of a part of or all of a contract for RPS procurement.

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[8] AL 2771-E, p. 5 and SDG&E's Final 2014 RPS Procurement Plan (December 9, 2014), p. 14.

[9] www.sdge.com/newsroom/press-releases/2015-08-25/sdge-reaches-new-milestone-renewable-power-delivery

In AL 2771-E, SDG&E claims that it is procuring Portfolio Content Category 1 product and reselling the product to TGP as Portfolio Content Category 1 product pursuant to the TGP sales agreement. To support its claim, SDG&E states that the product being sold will be from RPS-certified facilities that have their first point of interconnection with the CAISO.

In this resolution, however, the Commission makes no determination regarding the proposed agreement's portfolio content category classification or if resale conditions are met 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.[10] Thus, making a portfolio content classification determination in this resolution regarding the procurement considered herein is not appropriate.

Independent Evaluator Review

SDG&E retained Accion Group, LLC as the independent evaluator (IE) to oversee SDG&E's bilateral negotiations with TGP and to evaluate the overall merits of the agreement. AL 2771-E-A included a confidential independent evaluator report regarding the TGP sales agreement.

In the TGP IE report, the IE states that it believes that the TGP sales agreement merits Commission approval. Specifically, the IE notes that the contract terms are similar to SDG&E's previously Commission approved sales contracts and includes industry recognized terms and conditions. Additionally, the IE believes that the price is reasonable based on his knowledge of recent market transactions.

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

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

[10] D.11-12-052, pp. 8, 12.

procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission.[11] SDG&E asserts that the TGP sales agreement was discussed with the PRG on June 17, 2015 and July 17, 2015. Thus, pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the TGP agreement.

Cost Reasonableness

In AL 2771-E, SDG&E stated that the sales agreement is intended to "optimize" SDG&E's RPS portfolio. SDG&E made this determination by analyzing the cash flows related to the costs and revenues of the TGP sales agreement. Specifically, SDG&E considered: revenue realized from the sale of renewable power; the replacement cost of null power at the time of delivery coincident with the sale; the replacement cost of any banked RECs that had been carried forward as a result of procurement in excess of the annual RPS targets; and the year in which SDG&E's RPS procurement position (after banking) is less than the RPS procurement target.

In reviewing requests for contract approval, the Commission compares contract prices to the most recent solicitation and recently executed contracts.[12] However, SDG&E did not hold a solicitation and has not recently executed any other RPS sales agreements. Thus, the Commission compared the sales agreement's price to market data. In addition, the Commission considered the ratepayer value of the contract. Based on this analysis and the confidential analysis provided by SDG&E in AL 2771-E, we determine that the sales agreement's price is reasonable. We note, however, that this analysis differs from the Commission's established rules for price reasonableness and that the analysis of the sales agreement's price reasonableness here is not precedential. Confidential Appendix A includes a discussion of the contractual pricing terms and the analysis of the reasonableness of the contract's price.

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[11] 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 Office of Ratepayer Advocates, and the California Department of Water Resources.

[12] D.14-11-042: *Decision Conditionally Accepting 2014 Renewables Portfolio Standard Procurement Plans and an Off-Year Supplement to 2013 Integrated Resource Plan*

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

Payments received by SDG&E under the sales agreement shall be credited to SDG&E's ratepayers through SDG&E's ERRA over the life of the sales agreement, subject to Commission review of SDG&E's administration of the sales agreement.

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 least-cost dispatch obligations). SDG&E shall record the transaction authorized in this Resolution in its ERRA Balancing Accounts, and this transaction shall be subject to the Commission's ERRA Review processes.

Contract Viability

The generation to be delivered pursuant to the TGP agreement is from a large portfolio of facilities, all of which have already been certified by the California Energy Commission (CEC) as RPS-eligible and are generating RPS-eligible energy. Thus, it is reasonable that SDG&E will be able to meet the terms and conditions of the sales 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. The TGP agreement is for the sale of renewable generation and associated RECs from RPS-eligible facilities. The proposed sales agreement does not alter existing power purchase agreements or any facility operations. As this agreement does not require a change in facility operations, there are no incremental safety implications associated with approval of this contract beyond the status quo. Based on the information before us, this agreement does not appear to result in any adverse safety impacts on the facilities or operations of SDG&E.

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Section 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 RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.[13]

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 "<u>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.*), D.11-12-020 and D.11-12-052, or other applicable law.</u>"[14]

Notwithstanding this language, given that the Commission has no jurisdiction to determine whether a project is an "Eligible Renewable Energy Resource" for RPS purposes, this finding and the effectiveness of the non-modifiable "eligibility" language is contingent on CEC's certification of a project as an "Eligible Renewable Energy Resource." The contract language that procurement pursuant to the TGP contract "is procurement from an eligible renewable energy resource" must be a true statement at the time of the first delivery of energy, not at the signing of the contract or at the issuance of this Resolution.

While we include the required finding here, <u>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 absent CEC certification. 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</u>. Such contract enforcement activities shall be reviewed pursuant to the Commission's authority to review the utilities' administration of such contracts.

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[13] *See, e.g.* D. 08-04-009 at Appendix A, STC 6, Eligibility.

[14] *See, e.g.* D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

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 contract will be public one year after the contract expires.

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 TGP Energy Management LLC (TGP) agreement is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.
2. The TGP agreement is consistent with SDG&E's 2014 RPS Procurement Plan, approved by D.14-11-042.
3. The TGP agreement includes the Commission adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, D.10-03-021, as modified by D.11-01-025, and D.13-11-024.
4. The Commission makes no determination regarding the proposed TGP agreement's portfolio content category classification because the RPS contract evaluation process is a separate process from the RPS compliance determination and portfolio content category classification.
5. Consistent with D.06-05-039 an independent evaluator oversaw SDG&E's negotiations with TGP.

6. SDG&E's Procurement Review Group participated in the review of the TGP sales agreement consistent with D.02-08-071.
7. The analysis of the TGP agreement's price reasonableness is not precedential.
8. The total expected revenues of the TGP agreement are reasonable based on the estimated costs to SDG&E ratepayers and the sales contract's price relative to market data.
9. Payments received by SDG&E pursuant to the TGP sales agreement shall be credited to SDG&E ratepayers through SDG&E's Energy Resource Recovery Account (ERRA) over the life of the sales agreement, subject to Commission review of SDG&E's administration of the TGP sales agreement.
10. 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 least-cost dispatch operations). SDG&E shall record the transaction authorized in this Resolution in its ERRA Balancing Accounts, and this transaction shall be subject to the Commission's ERRA Review processes.
11. It is reasonable that SDG&E will be able to meet the terms and conditions of the TGP agreement.
12. 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.
13. AL 2771-E and 2771-E-A should be approved effective today.

THEREFORE IT IS ORDERED THAT:

1. San Diego Gas & Electric Company's Advices Letter 2771-E and 2771-E-A, requesting Commission review and approval of a sales agreement with the TGP Energy Management LLC, are 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 October 22, 2015; the following Commissioners voting favorably thereon:

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TIMOTHY J. SULLIVAN
Executive Director

Confidential Appendix A

Evaluation Summary of the TGP Agreement

[Redacted]