

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

AGENDA ID 14660
RESOLUTION E-4767
March 17, 2016

REDACTED
RESOLUTION

Resolution E-4767. San Diego Gas & Electric Company requests approval of a Settlement Agreement and Release of Claims with Maricopa West Solar PV, LLC.

PROPOSED OUTCOME

- Approve acceptance of payment pursuant to the proposed settlement and release agreement between San Diego Gas & Electric Company (SDG&E) and Maricopa West Solar PV, LLC. The proposed settlement and release agreement is approved 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:

- Actual costs of the settlement and claims agreement are confidential at this time.

By Advice Letter 2848-E, filed on January 14, 2016.

SUMMARY

San Diego Gas & Electric Company's (SDG&E) proposed settlement agreement and release of claims with Maricopa West Solar PV, LLC (Maricopa) is approved without modification.

SDG&E filed Advice Letter 2848-E (Maricopa AL) on January 14, 2016, requesting California Public Utilities Commission (Commission) review and

approval of a Settlement Agreement and Release of Claims (Settlement). The Settlement was executed pursuant to the dispute resolution terms in the existing power purchase agreement (Maricopa PPA) between SDG&E and Maricopa.¹ Pursuant to the Settlement, SDG&E agrees to accept the amount of installed direct current capacity in exchange for a payment from Maricopa. The payment is to compensate SDG&E ratepayers for future additional costs due to the increased direct current capacity at the Maricopa facility.

This resolution approves the Settlement. SDG&E's execution of this Settlement is fair and reasonable and payments received by SDG&E pursuant to the Settlement shall be credited to SDG&E's ratepayers via SDG&E's Energy Resource Recovery Account.

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) and SB 350.² The RPS program is codified in Public Utilities Code Sections 399.11-399.31.³ The RPS program requires each retail seller to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources is 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; 33 percent of retail sales by December 31, 2020 and corresponding increases up to 50% by December 31, 2030.

¹ As a result of SDG&E's third Renewable Auction Mechanism, it executed a PPA with Maricopa West Solar PV, LLC. The Commission approved the Maricopa PPA via a disposition letter dated July 2, 2013.

² 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); and SB 350 (De León, Chapter 547, Statutes of 2015).

³ All further statutory references are to the Public Utilities Code unless otherwise specified.

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 the Maricopa AL was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Maricopa AL was mailed and distributed to the R.15-02-020 service list and GO 96-B service lists in accordance with Section 4 of General Order 96-B.

PROTEST

No protests were filed.

DISCUSSION

SDG&E requests approval of a settlement and release agreement with Maricopa West Solar PV, LLC

The Maricopa facility is located in Kern County and achieved commercial operation in December 2015. E. ON Climate and Renewables North America was the project developer and Dominion Resources owns the Maricopa facility.⁴ Pursuant to the Maricopa PPA, the Maricopa facility is to annually provide SDG&E with 55.6 gigawatt hours (GWh) of renewable electricity and associated renewable energy credits (RECs).

On January 14, 2016, SDG&E filed the Maricopa AL requesting Commission approval of the proposed Settlement. The proposed Settlement attempts to resolve a contract dispute between SDG&E and Maricopa regarding the allowable amount of installed direct current (DC) capacity at the Maricopa facility. Specifically, SDG&E claims that the Maricopa PPA required Maricopa to obtain SDG&E's consent prior to making changes to the amount of installed DC capacity, but that Maricopa made such a change without obtaining the

⁴ Dominion Acquires Solar Energy Project on Virginia's Eastern Shore (November 16, 2015) <http://dom.mediaroom.com/2015-11-16-Dominion-Acquires-Solar-Energy-Project-on-Virginias-Eastern-Shore>.

requisite consent. Additionally, the increased amount of DC capacity results in an increase in the amount of energy and RECs that SDG&E will be required to purchase pursuant to the Maricopa PPA.

Consistent with the Maricopa PPA, SDG&E and Maricopa went through a dispute resolution process to resolve the above described dispute.⁵ The two parties ultimately agreed to the proposed Settlement, conditioned on CPUC approval.

SDG&E requests that the Commission:

1. Find that the proposed Settlement is a fair and reasonable resolution of the dispute between SDG&E and Maricopa;
2. Approve the proposed Settlement in its entirety;
3. Approve SDG&E's acceptance of payment from Maricopa and the crediting of the payment to ratepayers via SDG&E's Energy Resource Recovery Account (ERRA).

Energy Division Evaluated the Settlement based on the following criteria:

- Consistency with Commission Policies and Requirements
 - SDG&E's 2014 RPS Procurement Plan
 - Prudent Contract Administration
 - Procurement Review Group
- Cost Reasonableness
- PPA and Settlement Viability

Consistency with SDG&E's 2014 RPS Procurement Plan

In its approved 2014 RPS Procurement Plan (2014 RPS Plan) SDG&E provided an assessment of supply and demand, description of potential RPS compliance delays, status update of projects within its RPS portfolio, and an assessment of project failure and delay risk within its RPS portfolio.⁶ SDG&E stated that it did

⁵ RAM Power Purchase Agreement between San Diego Gas & Electric Company and Maricopa West Solar PV, LLC, (Section 12 - Dispute Resolution).

⁶ Section 399.13(a)(5).

not have a need for additional RPS procurement; thus, it did not need to hold a 2014 RPS solicitation, but would continue to procure through mandated programs, such as the renewable auction mechanism and the renewable feed-in-tariff program. SDG&E's 2014 RPS Plan also included a *pro forma* agreement that included terms limiting and/or reducing payment for excess capacity and generation. In addition, SDG&E discussed its portfolio optimization strategies, including cost minimization through cost optimization. Specifically, SDG&E noted that as part of its cost optimization strategy it "continually monitors its existing contracts and seeks to optimize their performance on behalf of customers."⁷

The proposed Settlement is a result of SDG&E's monitoring an existing PPA and seeks to minimize potential ratepayer costs. Based on SDG&E's RPS portfolio optimization described in its 2014 RPS Plan, the proposed Settlement is consistent with SDG&E's 2014 RPS Plan.

The proposed Settlement is consistent with SDG&E's 2014 RPS Procurement Plan, approved by D.14-11-042.

Prudent Contract Administration

The Commission requires the investor-owned utilities to prudently administer its procurement contracts. SDG&E states in the Maricopa AL that pursuant to Section 12 of the Maricopa PPA, a dispute resolution provision, it addressed a dispute between itself and Maricopa. Further, SDG&E asserts that the settlement payment represents a reasonable proxy for the additional future PPA costs that will result from the additional DC capacity.

SDG&E's entering into a dispute resolution process is consistent with the Maricopa PPA. Further, SDG&E's pursuit of a payment equivalent to the future additional costs is consistent with the Commission's standards of code of conduct regarding prudent contract administration.

Procurement Review Group (PRG) Participation Requirement

The PRG was initially established in D.02-08-071 to review and assess the details of the investor owned utilities' (IOU's) overall procurement strategy,

⁷ SDG&E's 2014 Final RPS Procurement Plan, p. 19.

solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission as a mechanism for procurement review by non-market participants.

Participants in SDG&E's PRG include representatives from the Office of Ratepayer Advocates, California Department of Water Resources, The Utility Reform Network, and the California Utility Employees. In the Maricopa AL, SDG&E asserts that the proposed Settlement and proposed booking of the Settlement payment to ERRRA was presented to its PRG at the November 20, 2015 meeting.⁸

Consistent with D.02-08-071, SDG&E's Procurement Review Group participated in the review of the Settlement.

Cost Reasonableness

In accepting the additional amount of installed DC capacity, SDG&E will accept a one-time upfront payment from Maricopa for the approximate total additional future costs that will be incurred pursuant to the Maricopa PPA. SDG&E states in the Maricopa AL that the settlement payment amount was determined by:

1. Calculating a forward energy price for the PPA term and comparing that price to the post-time of delivery price in the Maricopa PPA;
2. Multiplying the difference between the two prices by the number megawatt-hours of forecasted additional generation resulting from the increased DC capacity;
3. Reducing the product to net present value using SDG&E's cost of capital.

SDG&E asserts that the settlement payment amount is reasonable because it is an approximation for the additional future Maricopa PPA costs. Using this methodology and the confidential analysis provided by SDG&E in the Maricopa AL, the Commission finds that the cost and value of the proposed Settlement is reasonable. However, the Settlement agreement's approval is a unique result of this specific contract dispute. The analysis of the reasonableness of the settlement here is not precedential. See Confidential Appendix A for a detailed discussion of the analysis.

⁸ Maricopa AL, p. 2.

The Settlement amount represents a reasonable approximation of future additional ratepayers' costs due to the additional amount of installed DC capacity at the Maricopa facility.

Payment received by SDG&E under the Settlement is reasonable and shall be credited to SDG&E ratepayers via SDG&E's ERRAs.

PPA and Settlement Viability

The Maricopa facility was developed by E.ON Solar, a subsidiary of E.ON SE. It has received its necessary permits, including a conditional use permit from Kern County and approved habitat control plan. Additionally, it is fully constructed and achieved commercial operation on December 12, 2015.⁹

Based on the terms and conditions of the PPA, the terms and conditions of the Settlement, and the fact that the Maricopa facility is commercially operating, it is reasonable to expect that Maricopa will meet the terms and conditions of the PPA and Settlement.

Safety Considerations

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 a proposed settlement agreement. The Settlement regards a payment for additional costs due to additional installed DC capacity. The Settlement does not alter the existing Maricopa PPA or any facility operations. As the Settlement does not require a change in facility operations, there are no incremental safety implications associated with approval of this settlement and release agreement beyond the status quo.

Based on the information before us, this contract does not appear to result in any adverse safety impacts on the facility or operations of SDG&E.

⁹ "E.ON Solar Announces the Completion of the Maricopa West Facility" (PR Newswire (November 4, 2015)); Master CAISO Control Area Generating Capability List (January 15, 2016)

Confidential Information

The Commission, in implementing Section 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, including price, is confidential for three years from the date the contract states that energy deliveries begin, or until one year following contract expiration, except contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked “[REDACTED]” in the public copy of this resolution, as well as the confidential portions of the Maricopa AL, remain confidential at this time.

COMMENTS

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, pursuant to Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

FINDINGS

1. The SDG&E Settlement and Release of Claims Agreement with Maricopa West Solar, LLC is consistent with SDG&E’s 2014 approved Renewables Portfolio Standard Procurement Plan (D.14-11-042).
2. Consistent with D.02-08-071, SDG&E’s Procurement Review Group participated in the review of the Settlement and Release of Claims Agreement between SDG&E and Maricopa West Solar PV, LLC.
3. The Settlement and Release of Claims agreement considered in this resolution is a unique result of a specific contract dispute. The analysis of the reasonableness of the settlement here is not precedential.
4. The payment amount pursuant to the Settlement and Release of Claims Agreement represents a reasonable approximation of additional ratepayers’ costs due to the additional amount of installed DC capacity at the Maricopa West Solar PV facility.

5. Payment received by SDG&E under the Settlement and Release of Claims Agreement is reasonable and shall be credited to SDG&E ratepayers via SDG&E's Energy Resource Recovery Account.
6. The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the Advice Letter 2848-E, remain confidential at this time.
7. Advice Letter 2848-E should be approved and effective today.

THEREFORE IT IS ORDERED THAT:

1. The request of the San Diego Gas & Electric Company for review and approval of the proposed settlement and release of claims agreement with Maricopa West Solar PV, LLC, as requested in Advice Letter 2848-E, is approved without modification.
2. San Diego Gas & Electric Company shall record the settlement payment approved in this resolution in its Energy Resource Recovery Account.

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 March 17, 2016; the following Commissioners voting favorably thereon:

TIMOTHY J. SULLIVAN
Executive Director

Confidential Appendix A

Evaluation Summary of the Maricopa West Solar PV, LLC
Settlement and Release of Claims Agreement

[Redacted]