

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #11402
RESOLUTION E-4507
July 12, 2012

REDACTED

R E S O L U T I O N

Resolution E-4507. Golden State Water Company (GSWC) (DBA Bear Valley Electric Services (BVES)) requests approval of a purchase and sale agreement for renewable energy credits with County Sanitation District No. 2 of Los Angeles.

PROPOSED OUTCOME: This Resolution approves GSWC purchase and sale agreement for renewable energy credits with County Sanitation District No. 2 of Los Angeles.

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

By Advice Letter 258-E filed on November 23, 2011.

SUMMARY

Golden State Water Company's proposed purchase and sale agreement (PSA) for renewable energy credits with County Sanitation District No. 2 of Los Angeles complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved without modifications.

Golden State Water Company (GSWC) on behalf of Bear Valley Electric Services (BVES) filed Advice Letter (AL) 258-E on November 23, 2011 requesting Commission review and approval of a PSA executed with County Sanitation District No. 2 of Los Angeles (LACSD) for renewable energy credits (RECs). The bilaterally negotiated PSA provides unbundled RECs from the Palos Verdes Landfill Gas-to-Energy facility. The facility associated with the PSA is located in Rolling Hills Estates, California.

The following table summarizes the PSA:

Generating Facilities	Project Technology Type	Minimum Energy (GWh)	Contract Delivery Start Date	Project Location
Palos Verdes Landfill Gas-to-Energy	Biogas, existing	20.8 - 2010 15.7 - 2011	Day after CPUC approval	Rolling Hills Estates, CA

This resolution approves the LACSD PSA without modifications. The proposed PSA is consistent with BVES' 2011-2016 Integrated Resource Plan. The RECs procured under the PSA are reasonably priced and payments made by BVES pursuant to the PSA are fully recoverable in rates over the life of the PSA, subject to BVES' administration of the PSA.

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

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).

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 258-E was made by publication in the Commission's Daily Calendar. GSWC states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

No protests were received.

DISCUSSION

GSWC requests on behalf of BVES approval of a purchase and sale agreement for renewable energy credits with County Sanitation District No. 2 of Los Angeles

On November 23, 2011, GSWC filed AL 258-E, on behalf of BVES, requesting Commission approval of a bilaterally negotiated purchase and sale agreement with County Sanitation District No. 2 of Los Angeles (LACSD) for RECs from the Palos Verdes Landfill Gas-to-Energy facility.⁴ The Palos Verdes Landfill Gas-to-Energy facility is located in Rolling Hills Estates, California and began operating in 1989. It was RPS-certified by the California Energy Commission (CEC) in 2005.⁵ Energy from the facility was previously sold to Southern California Edison (SCE) from 1988 to 2008 under a Standard Offer No. 4 (SO4) contract.

In September 2009, GSWC and LACSD executed a Master Agreement and Confirmation No. 1 for renewable energy and RECs, which was approved by the Commission in D.11-06-030 on June 30, 2011. BVES received RPS-eligible

⁴ BVES is a division of GSWC.

⁵ California Energy Commission's List of RPS-certified facilities:
http://www.energy.ca.gov/portfolio/documents/list_RPS_certified.html

generation pursuant to the Master Agreement and Confirmation No. 1 from August 1, 2011 to October 1, 2011.⁶

However, while the Master Agreement/Confirmation No. 1 was pending Commission approval, LACSD sought to terminate the agreement because the facility was becoming uneconomic to operate and LACSD was facing increased public opposition towards the plant. On August 1, 2011, GSWC and LACSD reached a settlement agreement which included terms by which Confirmation No. 1 would be terminated.

In addition, on August 1, 2011, GSWC and LACSD executed Confirmation No. 2, the PSA that is considered herein.⁷ The PSA is for RECs associated with energy that was previously sold by LACSD during the period in between the termination of its SO4 contract with Southern California Edison and the date which the Commission approved the Master Agreement and Confirmation No. 1.

Summary of Contract Terms and Conditions⁸

Term/Condition	RPS Contract
Type of Purchase	Renewable Energy Credits
Conditions Precedent and Date Triggers	In the event that CPUC approval of Confirmation No. 2 does not occur before June 30, 2012, Confirmation No. 2 shall be of no force or effect regarding the 20,793 2010 RECs. In the event CPUC approval of Confirmation No. 2 does not occur prior to October 1, 2012, neither Party is liable to the other Party for any obligations under Confirmation No. 2.

⁶ On October 1, 2011, the Palos Verdes Landfill Gas-to-Energy facility ceased operations.

⁷ Confirmation No. 2 is not a part of the settlement agreed to between BVES and LACSD. It is a separate agreement between the two parties.

⁸ The PSA is not confidential due to LACSD being a public agency. The full PSA is included as Appendix F of GSWC AL 258-E.

Price	\$30.00 per REC
Expected Payments	Assuming purchase and delivery of a total of 36,445 RECs at \$30.00/REC, expected total payment of \$1,093,350

BVES requests that the Commission issue a resolution that:

1. Approves the proposed Confirmation No. 2, in its entirety, including payments to be made by BVES pursuant to Confirmation No. 2, subject to the Commission's review of BVES' administration of Confirmation No. 2.
2. Finds that any procurement pursuant to the proposed Confirmation No. 2, is procurement from an eligible renewable energy resource for the purposes of determining BVES' compliance with any obligation that it may have to procure eligible renewable resources pursuant to California Renewables Portfolio Standard ("RPS"), D.03-06-071 and D.06-10-050 or other applicable law or decision.
3. Finds that Confirmation No. 2 is consistent with BVES' 2011 Integrated Resource Plan.
4. Finds that the terms of Confirmation No. 2, including the price of delivered RECs, are reasonable.
5. Finds that BVES' procurement costs under Confirmation No. 2, as provided in Section 399.14(f)(2), shall be recovered through BVES' PPAC account.
6. Finds that Confirmation No. 2 is not covered procurement subject to the EPS because it does not involve procurement of electrical energy.

Energy Division Review of the Proposed PSA

Energy Division evaluated the PSA for the following criteria:

- Consistency with bilateral contracting guidelines;
- Consistency with BVES' 2011-2016 Integrated Resource Plan;
- BVES RPS Procurement Portfolio Need;
- Consistency with the Commission's least-cost best-fit requirements;

- Consistency with RPS standard terms and conditions (STC);
- Consistency with renewable energy credits (REC) rules;
- Consistency with minimum quantity requirements;
- Cost reasonableness; and
- Project viability.

Consistency with Bilateral Contracting Guidelines

In AL 258-E, GSWC describes BVES' repeated attempts to procure RPS-eligible generation and RECs. GSWC states that BVES has issued six requests for proposals (RFPs) between 2006 and 2011, but has had limited response. Furthermore, the offers received were unsatisfactory from a least-cost, best-fit perspective. As a result, BVES pursued the original Master Agreement and Confirmation No. 1 bilaterally and the bilaterally negotiated PSA considered herein is the result of a settlement agreement reached regarding the termination of the Master Agreement and Confirmation No. 1.⁹

In D.06-10-019, the Commission determined that bilateral contracts were permissible provided that they met several conditions, including that the contracts are at least one month in duration, submitted for approval by advice letter, and be deemed reasonable. In D.09-06-050, the Commission determined that bilateral contracts should be reviewed according to the same processes and standards as contracts that are the result of a competitive solicitation. Accordingly, as described in this resolution, Energy Division reviewed the PSA using the same standards used to review contracts resulting from an annual solicitation. Applying the above standards, the PSA is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.

Consistency with BVES' 2011-2016 Integrated Resource Plan

Prior to 2012, the Commission has not required BVES to file and receive Commission approval of an RPS procurement plan. Instead, BVES has utilized its integrated resource plan (IRP) for its RPS procurement planning. The IRP

⁹ The settlement agreement gave BVES the right to purchase the RECs included in the PSA considered herein, but the settlement agreement did not include the PSA itself.

includes a summary of BVES' RPS portfolio, provides an assessment of BVES' RPS needs, and its strategy for meeting its RPS requirements.

BVES' 2011-2016 IRP discussed plans to pursue renewable energy credits to meet some or all of its RPS requirements as well as renewable energy with RECs transactions.¹⁰ BVES did express a preference for resources that could be managed with little or no administrative burden, are cost-effective, and can be integrated into BVES' existing resource portfolio. The PSA is for RECs from an RPS-certified facility that fits BVES' RPS resource needs. Thus, the PSA is consistent with BVES' 2011-2016 Integrated Resource Plan.

BVES RPS Procurement Portfolio Need

BVES currently has one Commission approved RPS contract, the above mentioned Master Agreement / Confirmation No. 1 with LACSD. Thus, as shown in Figure 1 and Table 1 (below), BVES has need for additional renewable energy and RECs in all three RPS compliance periods.¹¹ The PSA will provide 36,445 RECs which represents 44 percent of BVES' Compliance Period 2011-2013 RPS procurement need.

¹⁰ See Exhibit 1 of GSWC AL 258-E for a copy of BVES' 2011-2016 IRP.

¹¹ See BVES' March 2012 RPS Procurement Progress Report.

Figure 1: BVES is forecasted to be under-contracted in all three Compliance Periods¹²

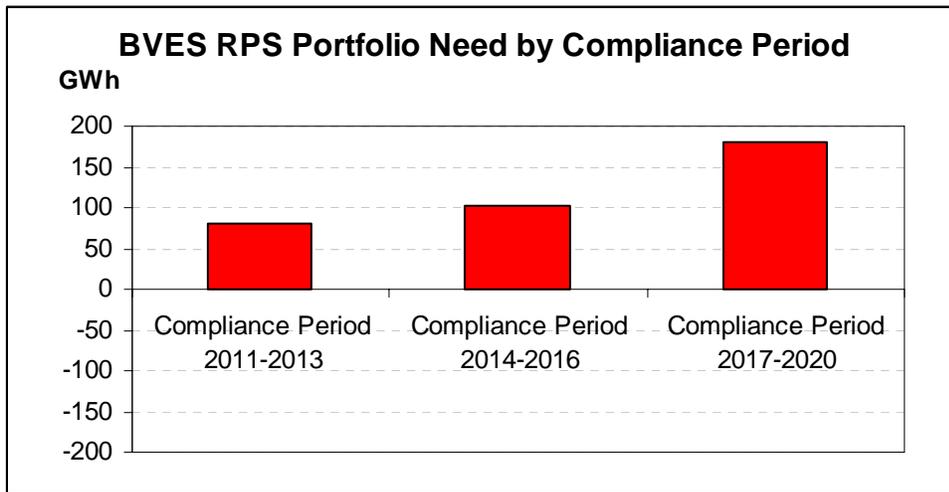


Table 1: LACSD-RECs are expected to contribute to BVES’ RPS Portfolio needs in Compliance Period 2011-2013 (units are in GWh)

	Compliance Period 2011-2013	Compliance Period 2014-2016	Compliance Period 2017-2020
RPS Target*	82	103	179
Operating	2	0	0
Approved	0	0	0
Subtotal	2	0	0
Need	80	103	179
LACSD-RECs	36	0	0

*does not include any deficits as defined in the proposed decision Setting Compliance Rules for the Renewables Portfolio Standard Program issued April 24, 2012

¹² Includes: operating RPS-eligible generation under CPUC-approved PPAs and RPS-eligible generation under CPUC-approved PPAs that are under development. Any deficits as defined in the proposed decision Setting Compliance Rules for the Renewables Portfolio Standard Program issued May 24, 2012 were not included.

Consistency with the Commission's least-cost best-fit (LCBF) requirements

In D.04-07-029, the Commission directs the utilities to use certain criteria in their LCBF selection of renewable resources.¹³ 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 in their advice letters seeking approval of REC-only contracts their methodology for evaluating the contracts.

BVES negotiated the PSA bilaterally, therefore the PSA did not compete directly with other RPS offers. However, in AL 258-E, GSWC explains that BVES did compare the PSA to bids received by BVES around the time that the PSA was executed and concluded that the PSA was reasonable relative to those offers based on price and fit with BVES' resource portfolio. See the "Cost Reasonableness" section and Confidential Appendix A of this resolution for a discussion of how the PSA's price compares to BVES' RPS solicitations that occurred prior to the PSA's execution.

The PSA was evaluated consistent with the Commission's LCBF requirements.

Consistency with RPS Standard Terms and Conditions

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

The PSA includes all of 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.

¹³ See §399.14(a)(2)(B)

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.¹⁴

As stated above, the PSA's price is \$30/REC. Thus, the PSA's price is below the temporary \$50/REC price cap.

In D.11-12-052, the Commission implemented portfolio content categories for the RPS program. As an unbundled REC transaction, BVES expects procurement pursuant to the PSA to be classified as Portfolio Content Category 3. D.11-12-052 also affirmed that small and multi-jurisdictional utilities meeting the criteria set out in Section 399.18(b) and Section 399.17(b) are not subject to the requirements and limitations of procurement from each portfolio content category.

Consistency with Minimum Quantity of Long-Term Contracts Requirement

Section 399.13(b) allows the Commission to authorize a retail seller to enter into a contract of less than 10 years' duration if the Commission has established minimum quantities of eligible renewable energy resources to be procured through contracts of at least 10 years' duration.¹⁵ While the Commission has not yet established a minimum quantity of eligible renewable energy resources to be procured through contracts of at least 10 years in duration, it may be construed that BVES is required to meet the minimum quantity requirements of § 399.13(b) because the PSA is less than 10 years in length.

¹⁴The 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.)

¹⁵ The Commission had previously adopted a minimum quantity requirement, but SB 2 (1X) amended and renumbered Section 399.13. The Commission has issued the Proposed Decision Setting Compliance Rules for the Renewables Portfolio Standard Program which adopts a new minimum quantity requirement.

BVES has not executed any contracts that are longer than 10 years in contract term length in Compliance Period 2011-2013. Thus, for the PSA considered herein to be counted towards BVES' RPS compliance requirements, BVES would likely need to comply with the minimum quantity threshold.

Cost Reasonableness

Based on BVES' solicitation results, BVES determined that at the time the PSA was executed the PSA price of \$30.00/REC was reasonable.¹⁶ The Commission's reasonableness review for RPS contract prices includes comparisons of proposed contracts to other proposed RPS projects from recent RPS solicitations and recently executed contracts. BVES has not executed any RPS contracts other than the above mentioned Master Agreement/Confirmation No. 1 with LACSD. Thus, the Commission analyzed cost reasonableness of the proposed PSA based on BVES' solicitation prior to the execution of the PSA and bilaterals it received between its most recent solicitation and execution of the PSA. Applying this analysis and the confidential analysis provided by GSWC in AL 258-E, the Commission determines that the PSA's costs are reasonable. However, BVES' 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 PSA are reasonable based on the PSA's price relative to BVES' solicitation prior to the execution of the PSA and bilaterals BVES received between the solicitation and the execution of the PSA.

Provided that the RECs are from an eligible renewable energy resource, payments made by BVES pursuant to the PSA are fully recoverable in rates over the life of the PSA, subject to Commission review of BVES' administration of the PSAs.

¹⁶ See Appendix F of GSWC AL 258-E for a copy of the proposed PSA.

Contract Viability

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

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 REC-only contracts that requires “CPUC Approval” of an agreement to include an explicit finding that “any procurement pursuant to this Agreement is procurement of Renewable Energy Credits that conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, 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

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

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.

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 a finding absolve a seller from its obligation to obtain CEC certification or absolve the purchasing utility of its obligation to enforce compliance with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in the PSA. 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 deliveries begin, 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 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 PSA is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.

2. The PSA is consistent with BVES' 2011-2016 Integrated Resource Plan.
3. The PSA was evaluated consistent with the Commission's LCBF requirements.
4. The PSA includes the Commission-adopted RPS standard terms and conditions including those deemed "non-modifiable".
5. The PSA's price is below the temporary \$50/REC price cap established in D.10-03-021, as modified by D.11-01-025.
6. The total expected costs of the PSA are reasonable based on the PSA's price relative to BVES' solicitation prior to the execution of the PSA and bilaterals BVES received between the solicitation and the execution of the PSA.
7. Provided the Renewable Energy Credits are compliant with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in the PSA, payments made by BVES pursuant to the PSA are fully recoverable in rates over the life of the PSA, subject to Commission review of BVES' administration of the PSA.
8. It is reasonable to expect that LACSD will meet the terms and conditions of the PSA.
9. Procurement pursuant to the PSA is procurement of Renewable Energy Credits that conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, for purposes of determining BVES' compliance with any obligation it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), or other applicable law.
10. The immediately preceding finding shall not be read to absolve BVES of its obligation to enforce compliance with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009, and included in these PSAs.
11. 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.
12. AL 258-E should be approved without modification.

THEREFORE IT IS ORDERED THAT:

1. The request of Golden State Water Company for Commission review and approval of a purchase and sale agreements for renewable energy credits with County Sanitation District No. 2 of Los Angeles, as requested in Advice Letter 258-E, is approved without modification.

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 July 12, 2012; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Cost Reasonableness Analysis

[Redacted]