Decision 12-06-022 June 21, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U338E) for Approval of Transactions related to a Renewables Portfolio Standard Replacement Agreement with Mountain View Power Partners and the Novation of a DWR Contract with Mountain View Power Partners.	Application 09-09-015 (Filed September 22, 2009)

DECISION APPROVING TRANSACTIONS TO PROCURE RENEWABLE ENERGY FROM MOUNTAIN VIEW POWER PARTNERS FACILITY

1. Summary

In this application, Southern California Edison Company seeks approval for a series of transactions related to the renewable energy output of the Mountain View Power Partners, LLP facility, a 66.6 megawatt wind project located in Palm Springs, California. The transactions involve applicant's procurement of renewable energy from January 1, 2008 through September 30, 2011. We grant the requested approvals. We also find that the renewable energy credits associated with the energy from these transactions apply to the applicant's obligations to meet targets in the renewables portfolio standard program (subject to that energy meeting criteria set by the California Energy Commission), and the payments are recoverable in rates (subject to Commission review of applicant's administration of the contracts). This proceeding is closed.

2. Background

Southern California Edison Company (SCE) seeks approval for a series of transactions related to the renewable energy output of the Mountain View Power Partners, LLP (MVPP) facility, a 66.6 megawatt (MW) wind project located in Palm Springs, California. The transactions involved eight agreements, for which SCE originally sought our approval. SCE now seeks approval of only six agreements. A brief history is helpful to put the agreements in context, along with SCE's current request for Commission approval of only some of the agreements.

2.1. Brief History

In January 2001, the legislature passed emergency legislation in response to the 2000/2001 California energy crisis.[1] That legislation authorized the California Department of Water Resources (DWR) to make electricity purchases for investor-owned utility (IOU) retail customers. This was necessary because IOUs were not financially able at the time to make those purchases.

In September 2002, we allocated the energy and capacity benefits of 41 DWR power purchase contracts to IOU customers. (Decision (D.) 02-09-053, Ordering Paragraph (OP) 1.) One such contract was between DWR and MVPP (referred to herein as the DWR Contract). We apportioned the benefits and costs of the DWR Contract to the customers of SCE. The DWR Contract conveyed energy and capacity to DWR, but did not include the renewable energy credits (RECs) associated with the electricity generated by the MVPP facility.[2] Upon

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[1] Assembly Bill 1, First Extraordinary Session (Keeley, Stat. 2001, ch. 4).

[2] RECs are defined by Pub. Util. Code § 399.12(h) and D.08-08-028. RECs are used to demonstrate compliance with the renewables portfolio standard (RPS) program.

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further development of the state's renewables program, MVPP entered into separate agreements with third parties to sell the future rights to a portion of the RECs.

On January 1, 2003, the RPS program became effective.[3] The RPS program requires that retail sellers of electricity procure increasing quantities of electricity generated by facilities using renewable resources, reaching 33% by 2020.

In August 2008, we defined and specified the attributes of an REC for compliance with the RPS program. While at that time, retail sellers could only procure bundled RPS contracts (for energy and RECs from an RPS-eligible facility), we also indicated that we would later decide whether to authorize the use of unbundled and/or tradable RECs (TRECs) for RPS compliance. (D.08-08-028.)

In March 2010, we authorized the use of TRECs for RPS compliance. (D.10-03-021.) In May 2010, we stayed D.10-03-021 pending resolution of two petitions for modification. (D.10-05-018.)

In December 2011, we implemented new Section 399.16, related to RPS portfolio content categories and the procurement of unbundled RECs. (D.11-12-052.)

2.2. History of this Proceeding

On September 22, 2009, SCE sought approval in this application for a series of eight transactions related to the renewable energy output of the MVPP

All subsequent code section references are to the Public Utilities Code unless noted otherwise.

facility. The transactions involved the buy-out of the RECs sold by MVPP to other entities, the rebundling of those RECs with the electricity generated by the MVPP plant, and the novation of the DWR Contract.[4] In combination, we call these the MVPP Transactions.

On May 14, 2010, the Administrative Law Judge (ALJ) stayed this proceeding given our stay of D.10-03-021. The stay was ordered here because this application combined novation with TREC transactions. As a result, the requested relief could not be granted, and no action could be taken here until we again authorized the use of TRECs for RPS compliance.

In January 2011, we lifted the stay of D.10-03-021 and authorized the use of TRECs created on or after January 1, 2008. (D.11-01-025.) On January 24, 2011, the ALJ lifted the stay of this proceeding, with parties ordered to provide updated information. On February 24, 2011, a Scoping Memo and Ruling of the Assigned Commissioner was filed and served, identifying the issues and setting a schedule.

On April 27, 2011, all parties jointly moved for receipt of testimony into evidence, based on an agreement reached during an all-party settlement conference that no evidentiary hearing would be needed. By Ruling dated May 16, 2011, the proposed testimonies and corrected data of SCE, plus the proposed testimony of the Division of Ratepayer Advocates (DRA), were received as evidence, and a briefing schedule was set.

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[3] Senate Bill (SB) 1078 (Sher, Stats. 2002, ch. 516, codified as §§ 399.11, *et seq.*) began the RPS program. Most recently, SB2 (1X) (Simitian), Stats. 2011, ch.1, revised and expanded the RPS program.

[4] Novation is the substitution of a new obligation for an old one by the mutual agreement of all parties.

On May 31, 2011, briefs were filed and served by SCE, DRA and Californians for Renewable Energy (CARE). On June 9, 2011, CARE filed and served its reply brief, and on June 13, 2011, SCE filed and served its reply brief. DRA does not oppose SCE's requests, with limited clarifications and conditions. CARE opposes the transactions, and recommends denial of the requests.

On January 13, 2012, SCE, with permission of the ALJ, filed a Status Report. In that report, SCE requests approval of only six of the eight agreements and, according to SCE, those agreements should be approved for all the reasons stated in the application, testimony and briefs. No party sought to file comments on the Status Report.

3. Discussion

The MVPP Transactions include eight agreements: (a) five Buy-Out Agreements, (b) Letter Agreement, (c) Novation Agreement, and (d) Replacement Agreement. Each is briefly described below.

3.1. Agreements

SCE explains that its customers have been receiving energy and capacity benefits from the MVPP facility, and have been incurring the costs of the DWR Contract, since Commission allocation of that contract to SCE in 2003. SCE says it entered into the series of transactions at issue here in order to procure bundled renewable output from the MVPP facility over the period from January 1, 2008 through September 30, 2011 (thereby providing RPS benefits to its customers), and to satisfy Commission policy on novation of DWR contracts.[5]

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[5] As early as 2002, we stated that one Commission goal was to transition full responsibility for energy market related activities from DWR back to the utilities as soon as possible, making every effort to relieve DWR from the responsibility of

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Buy-Out Agreements: SCE says it discovered that MVPP had entered into agreements with third parties to sell future rights to a portion of the RECs from the MVPP facility, although none of these third parties had received or taken title to any of these RECs. To directly procure all of the energy benefits, capacity benefits and RECs from the MVPP facility as bundled renewable output, SCE entered into five buy-out agreements (Buy-Out Agreements).[6] The Buy-Out Agreements terminated the third party agreements, and ensured that all RECs from the MVPP facility were retained by MVPP.

Letter Agreement: Termination of the third party agreements, according to SCE, allowed SCE to procure a bundled renewable product directly from MVPP. To do this, SCE entered into a letter agreement (Letter Agreement) with MVPP for the exclusive rights to all RECs generated by the MVPP facility. SCE says that the Letter Agreement, combined with the DWR Contract, secured all of the MVPP facility's energy benefits, capacity benefits and RECs as bundled renewable output for SCE's customers.

Novation Agreement: SCE reports that DWR, MVPP and SCE then entered into a novation agreement (Novation Agreement). The Novation Agreement removed DWR from the DWR Contract, and replaced DWR with SCE.

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performing any functions that should be performed in the long term by utilities. (D.02-12-069 at 7-8.) In 2008 we addressed a process for renegotiating and novating DWR contracts so that DWR would no longer be a supplier of power. (D.08-11-056.)

[6] The five buy-out agreements are: (1) the 3Degrees Buy-Out Agreement, (2) Grey K Buy-Out Agreement, (3) Grey K II Buy-Out Agreement, (4) CE2 CC Buy-Out Agreement, and (5) CE2 EO Buy-Out Agreement.

Replacement Agreement: Parties also agreed to replace the DWR Contract with an agreement between MVPP and SCE (Replacement Agreement). As a result, the energy and RECs from the MVPP facility would be delivered directly to SCE.

Effective Dates: According to SCE, the effectiveness of these agreements was contingent upon Commission approval. SCE explained that the Replacement Agreement would take effect upon Commission approval, and both the DWR Contract and the Letter Agreement would terminate. Thus, two periods were involved:

- From January 1, 2008 until Commission approval of the Replacement Agreement: MVPP would convey bundled RPS-eligible energy to SCE pursuant to the DWR Contract and the Letter Agreement; and
- From the date of Commission approval of the Replacement Agreement until September 30, 2011: MVPP would deliver bundled RPS-eligible energy directly to SCE pursuant to the Replacement Agreement.[7]

3.2. No Need to Consider Novation and Replacement Agreements

We did not approve the Novation Agreement, nor the Replacement Agreement, by September 30, 2011. SCE reports that those agreements cannot now take effect. As a result, SCE no longer requests Commission approval of

[7] SCE notes in its Status Report that SCE and MVPP entered into a separate 10-year agreement for the delivery of RPS-eligible energy from the MVPP facility that began on October 1, 2011. That agreement was approved by the Commission on June 19, 2009 in Resolution E-4248.

those agreements. (Status Report at 3.) We accept SCE's request. We give no further consideration to approving or rejecting these two agreements.[8]

3.3. Buy-Out and Letter Agreements

SCE requests approval of the remaining agreements. Taken together, these agreements will allow SCE to use for RPS compliance the procurement from the existing DWR Contract. The agreements do not create a new procurement obligation, and extend no further than the end of the DWR Contract, September 30, 2011.

We consider SCE's request in the context of some of the changes to the RPS program made by SB 2 (1X) and implemented by the Commission. In particular, SB 2 (1X) establishes a new classification of RPS procurement transactions into portfolio content categories. (Section 399.16.)

In D.11-12-052, we addressed the application of the new portfolio content categories to transactions, like those at issue in this proceeding, in which DWR had contracted for the energy but not the RECs from RPS-eligible generation facilities in California. We noted that:

> [i]n three of its contracts, DWR procured energy from RPS-eligible wind farms in California, but expressly did not also buy the RECs associated with that energy. Two of the contracts (with Cabazon Wind Partners LLC and Whitewater Hill Wind Partners LLC) are assigned to SDG&E. One, with Mountain View Power Partners, is assigned to SCE. The customers of both SDG&E and SCE are receiving electricity

[8] CARE asserts that the MVPP Novation and Replacement Agreements are neither just nor reasonable, and should not be approved. (CARE Brief at 10.) We need not address CARE's position on these two specific agreements given that SCE no longer requests their approval. We, however, address CARE's concerns relative to the remaining agreements.

> generated by California RPS-eligible wind facilities, but because the contracts did not also convey the RECs, the utilities (and thus their ratepayers) are not receiving credit toward RPS compliance.

The Commission explained that:

> [b]oth SDG&E and SCE have sought to buy RECs from these facilities and "reunite" the RECs with the underlying generation that their customers receive from the DWR contracts. [However], once the electricity and the RECs are separated, the RECs are "unbundled" and the underlying electricity may not be used for RPS compliance. It is generally not possible to reattach RECs that have been unbundled from the energy with which they are originally associated.

The Commission then concluded that:

> In this unique and limited circumstance, however, SDG&E and SCE should be allowed to acquire the RECs separately from the energy but receive RPS compliance credit as though they had been purchased together. Neither the utilities nor their ratepayers had any part in DWR's decision to buy only the electricity and not the RECs; neither the utilities nor their ratepayers should be disadvantaged by the assignment to them of these DWR contracts. SCE and SDG&E should be able to obtain the RECs that would have been part of the contracts if the energy and RECs had been procured together, thus making the generation under the DWR contracts RPS-eligible.

The buy-out and letter agreements effectively "rebundle" the RECs with the energy SCE's customers have received from the MVPP contracts, as authorized by D.11-12-052, OP 15. The agreements reasonably ensure that the output from the 66.6 MW MVPP facility (about 200,000 megawatt-hours (MWh) per year) may be considered for RPS compliance.

DRA asserts that the MVPP Transactions must be found to be just and reasonable. DRA reviewed the contracts here, and found that they meet those

tests. For example, DRA determined that the TREC price was less than the Commission established TREC price cap; the bundled MVPP Transaction price was less than the applicable market price referent (MPR); and the contract terms appeared to be within a zone of reasonableness. (DRA Opening Brief at 3, 7-9.)[9] DRA does not oppose granting the requested relief.

We agree with DRA's assessment, as further supported by evidence from SCE. The renewable premium is less than the TREC price cap, and is competitive compared to the renewable premiums in SCE's 2008 RPS solicitation. The total price is below both the 2007 and 2008 MPRs, and is less than the prices for executed contracts in SCE's 2008 RPS solicitation. The MVPP facility was operational and delivering power during the applicable period, making the transactions highly viable compared to output from projects secured via the 2008 RPS solicitation but not yet constructed at that time. The agreements are reasonable in light of market conditions at the time, and in view of the unique circumstances of the agreements. The procurement is consistent with SCE's RPS procurement plans. The result is to convert procurement of non-RPS-eligible energy to bundled renewable energy on terms that are just and reasonable, to the benefit of SCE and its customers.[10]

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[9] As the Commission noted in D.11-12-052, at 54, the TREC price cap instituted by D.10-03-021 is not affected by the changes made by SB 2 (1X). The MPR requirements were repealed by SB 2 (1X), but we accept DRA's analysis as indicative of price reasonableness for the MVPP Transaction.

[10] These agreements do not create a new procurement obligation for SCE, but only reunite RECs with the energy already contracted for in the DWR Contract. The Commission therefore evaluates the reasonableness of the agreements within the anticipated, limited, timeframe of the agreements.

CARE presents several arguments in opposition to the transactions. CARE asserts, for example, that our implementation of the use of RECs for RPS compliance is enjoined by a March 17, 2011 San Francisco Superior Court decision, *Association of Irritated Residents v. California Air Resources Board*, San Francisco Superior Court No.CPF-09-509562 (March 17, 2011). This decision, which in any event applied only to the California Air Resources Board, was reversed by the Court of Appeal, First Appellate District, in Case No. A132165 (June 24, 2011). CARE's claim on this point is now irrelevant.

CARE also contends that the price in the original DWR Contract (a 10-year contract starting in October 2001) is neither just nor reasonable, making the MVPP Transactions (energy, capacity, and RECs over 45 months starting January 1, 2008) unjust and unreasonable. SCE does not now ask for a Commission finding relative to the DWR Contract, and the Commission assigned the DWR Contract to SCE almost ten years ago. We therefore make no finding on the DWR Contract, and do not need to do so to reach a conclusion about the agreements before us. Rather, we find that the Buy-Out and Letter Agreements are just and reasonable based on price, viability, and other factors discussed herein.

CARE also argues that the REC price is unreasonable when compared with Commission-established avoided costs. We do not agree. The agreements we consider here are voluntary, bilaterally-negotiated RPS transactions. We review them in the same way we review other voluntary, bilaterally-negotiated RPS procurement. (D.09-06-050, OP 7.) For all the reasons stated above, we find that the Buy-Out and Letter Agreements are just and reasonable. This includes an assessment that the price is reasonable compared to the price of viable

alternatives SCE did not need to procure given the purchase of RPS-eligible MVPP electricity.[11]

3.4. Other Findings

SCE asks for three additional findings. We address each in turn.

3.4.1. Procurement From Eligible Renewable Energy Resource (ERR)

SCE asks that we find:

> Any electric energy sold or dedicated to SCE pursuant to the Letter Agreement and the Buy-Out Agreements constitutes procurement by SCE from an ERR for the purpose of determining SCE's compliance with any obligation that it may have to procure from ERRs pursuant to the RPS Legislation or other applicable law concerning the procurement of electric energy from renewable energy resources. (Status Report at 4.)

DRA recommends that our approval be conditioned on California Energy Commission (CEC) verification that all renewable energy at issue here is from an RPS eligible resource. DRA is correct. The CEC certifies ERRs. (§ 399.13.) Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. The Commission has no jurisdiction to determine whether a project is an ERR. Neither can the Commission determine, prior to final CEC certification of a project, that any energy sold or dedicated to SCE pursuant to specific agreements will constitute procurement from an ERR.

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[11] CARE's comparisons, even if relevant (which they are not), are not persuasive. For example, CARE compares the TREC price cap ($50 per MWh) to a price paid by Pacific Gas and Electric Company (PG&E) for as-delivered capacity (which CARE says is $6.29/MWh). (June 9, 2011 Reply Brief at 6.) CARE fails to demonstrate that comparing the TREC price cap with an as-available capacity price is meaningful. Further, even if the price comparison is relevant (which it is not), CARE fails to explain why a price paid by PG&E is a reasonable measure for a transaction that involves SCE.

Thus, while we make the requested finding, we do so subject to specific qualification. The finding is consistent with our requirement for a similar standard, non-modifiable clause in all RPS contracts that involve CPUC Approval.[12] As we have before, however, we qualify this finding by noting that this provision 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 finding absolve the seller of its obligation to obtain CEC certification, or the buyer of its obligation to pursue remedies for breach of contract, if necessary. Such contract enforcement activities shall be reviewed pursuant to the Commission's authority to review SCE's contract administration.[13]

3.4.2. Counts Towards RPS

SCE asks that we find:

> All procurement under the Letter Agreement and the Buy-Out Agreements meets all Commission requirements to count towards the RPS. (Status Report at 4.)

We make this finding, but again do so subject to specific qualification. The CEC verifies whether electricity is eligible to be counted towards RPS targets, including that it is only counted once for the purpose of meeting RPS requirements in this or any other state. (§ 399.13(b).) The final counting of

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[12] See D.08-04-009, Appendix A, at 3, Standard Term and Condition 1 (CPUC Approval).

[13] See this same qualification, for example, in Resolution E-4438 issued February 6, 2012.

electricity procured from the MVPP facility via the Buy-Out and Letter Agreements is subject to verification by the CEC.

3.4.3. Payments Fully Recoverable

Finally, SCE asks that we find:

> Payments made by SCE under the Letter Agreement and the Buy-Out Agreements (including broker fees with respect to such transactions) are fully recoverable in rates over the life of the Letter Agreement and the Buy-Out Agreements, subject to Commission review of SCE's administration of the Letter Agreement and the Buy-Out Agreements. (Status Report at 4.)

We know of no reason not to make this finding, and we do so.

4. Conclusion

We approve the five Buy-Out Agreements and the Letter Agreement. We also make the three findings requested by SCE conditioned on (a) CEC certification that the facility is an ERR, (b) CEC verification that the energy is RPS-eligible, and (c) Commission review of SCE's administration of these agreements.

5. Categorization and Need for Hearing

The Commission preliminarily determined that a hearing would be needed. The assigned Commissioner confirmed that a hearing would be needed. (February 24, 2011 Scoping Memo and Ruling of Assigned Commissioner, Ruling Paragraph 4.) No hearing, however, was needed or held. Accordingly, we change the determination, and find that no hearing is needed.

6. Comments on Proposed Decision

The proposed decision of ALJ Anne E. Simon in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice

and Procedure. Comments were filed on June 4, 2012 by SCE and June 11, 2012 by CARE. Reply comments were filed on June 18, 2012 by SCE. The comments and reply comments have been carefully considered. No changes are made to the proposed decision.

7. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Anne E. Simon and Thomas R. Pulsifer are the assigned ALJs in this proceeding.

Findings of Fact

1. No hearing was needed or held.

2. SCE no longer requests approval of either the Novation Agreement or the Replacement Agreement.

3. The Buy-Out Agreements and the Letter Agreement rebundle RECs from the MVPP facility with the output from the MVPP facility.

4. The prices in the Buy-Out Agreements and the Letter Agreement compare favorably to reasonable benchmarks or alternatives; and the agreements involve output from a viable facility, are reasonable in light of market conditions at the time and the unique circumstances of these agreements, and are consistent with SCE's RPS procurement plan.

5. Procurement of electricity by SCE pursuant to the Buy-Out Agreements and the Letter Agreement:

   a. constitutes procurement by SCE from an ERR, subject to CEC certification of the facility as an ERR; and

   b. meets all Commission requirements to count this electricity towards RPS targets, subject to verification by the CEC that the electricity is RPS-eligible.

6. Payments made by SCE for electricity procurement pursuant to the Buy-Out Agreements and the Letter Agreement (including broker fees) are fully

recoverable in rates, subject to Commission review of SCE's administration of the agreements.

Conclusions of Law

1. No hearing is needed, and the determination of the need for a hearing should be changed.

2. The five Buy-Out Agreements and the Letter Agreement should be approved, in accordance with D.11-12-052, OP 15.

3. The CEC certifies ERRs, and verifies that energy from ERRs is RPS-eligible.

4. The findings requested by SCE should be made, subject to specific qualifications.

5. This order should be effective today so that any uncertainty regarding these transactions, and their application to SCE's RPS procurement quantity requirements, is removed.

O R D E R

IT IS ORDERED that:

1. The request by Southern California Edison Company for Commission approval of the following agreements is granted: (a) 3Degrees Buy-Out Agreement, (b) Grey K Buy-Out Agreement, (c) Grey K II Buy-Out Agreement, (d) CE2 CC Buy-Out Agreement, (e) CE2 EO Buy-Out Agreement, and (f) Letter Agreement.

2. All electricity procured by Southern California Edison Company (SCE) pursuant to the five Buy-Out Agreements and the Letter Agreement:

   a. constitutes procurement by SCE from an eligible renewable energy resource (ERR) for the purpose of determining SCE's compliance with its obligations under applicable law to procure from ERRs, subject to verification by the

California Energy Commission (CEC) that the facility is an ERR; and

b. meets all Commission requirements to count towards SCE's Renewable Portfolio Standard (RPS) obligations, subject to CEC verification that the electricity is RPS-eligible.

3. Southern California Edison Company may acquire the unbundled renewable energy credits pursuant to the five Buy-Out Agreements and the Letter Agreement separately from the energy conveyed under the contracts, but receive credit for compliance with the California renewables portfolio standard as though the energy and the renewable energy credits had been purchased together.

4. All payments made by Southern California Edison Company (SCE) for electricity and renewable energy credits procured pursuant to the five Buy-Out Agreements and the Letter Agreement (including broker fees with respect to such transactions) are fully recoverable in rates over the life of these agreements, subject to Commission review of SCE's administration of these agreements.

5. No hearing is needed.

6. Application 09-09-015 is closed.

This order is effective today.

Dated June 21, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners