

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4186
September 4, 2008

R E S O L U T I O N

Resolution E-4186. Southern California Edison Company requests approval of a bilateral renewable portfolio standard power purchase agreement (PPA) with The Metropolitan Water District of Southern California (MWD). This PPA is approved without modification.

By Advice Letter 2250-E filed on June 24, 2008.

SUMMARY

SCE’s renewable contract complies with the Renewable Portfolio Standard (RPS) procurement guidelines and is approved without modification

SCE filed advice letter (AL) 2250-E on June 24, 2008 requesting Commission review and approval of a bilateral renewable energy contract with The Metropolitan Water District of Southern California (MWD). The contract will replace an existing contract with a new power purchase agreement for the output from four existing conduit hydroelectric generating facilities. The contract price is at the 2007 market price referent for a 15-year contract with an online date in 2008.

Seller	Type	Contract Price	Term Years	Capacity (MW)	GWh Energy	Online Date	Location
Metropolitan Water District of Southern California (MWD)	Small conduit hydro, existing	\$93.83 ¹	15	21.72 - 110 ²	68 - 347	11/1/2008	Four hydroelectric power plants in California ³

¹ The parties have made the entire PPA, which includes the contract price, public.

² The initial capacity is 21.72 megawatts (MW), and the contract allows generating facilities to be added or subtracted up to a maximum 110 MW.

³ The Venice Power Plant located in Culver City, the Temescal Power Plant in Corona, the Corona Power Plant in Corona, and the Red Mountain Power Plant in Fallbrook

SCE's renewable contract complies with the RPS procurement guidelines. SCE's request for approval of the renewable resource procurement contract is granted pursuant to D.08-02-008 and the bilateral contracting guidelines set forth in D.03-06-071 and D.06-10-019. The energy acquired from the contract will count towards SCE's RPS requirements.

Deliveries from this PPA are reasonably priced, and the contract price is fully recoverable in rates over the life of the contract, subject to Commission review of SCE's administration of the contract.

Confidential information about the contract should remain confidential

This resolution finds that certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583, General Order (G.O.) 66-C, and D.06-06-066 should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

BACKGROUND

The RPS Program requires each utility to increase the amount of renewable energy in its portfolio

The California RPS Program was established by Senate Bill 1078⁴, effective January 1, 2003. It requires that a retail seller⁵ of electricity, such as SCE, purchase a certain percentage of electricity generated by eligible renewable energy resources (ERR). The RPS program is set out at Public Utilities Code Section 399.11, et seq. SB 1078 required each retail seller is required to increase its total procurement of ERRs by at least 1% of annual retail sales per year so that 20% of its retail sales are supplied by ERRs by 2017.

The State's Energy Action Plan (EAP) called for acceleration of this RPS goal to reach 20 percent by 2010. This was reiterated again in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004⁶, which encouraged the utilities to procure

⁴ <http://www.energy.ca.gov/portfolio/documents/SB1078.PDF>

⁵ Includes electrical corporations, community choice aggregators and electric service providers

⁶ http://www.cpuc.ca.gov/Published/Final_decision/36206.htm

cost-effective renewable generation in excess of their RPS annual procurement targets⁷ (APTs), in order to make progress towards the goal expressed in the EAP.⁸ On September 26, 2006, Governor Schwarzenegger signed Senate Bill 107⁹, which officially accelerates the State's RPS targets to 20 percent by 2010.

CPUC has established procurement guidelines for the RPS Program

In response to SB 1078, the Commission has issued a series of decisions that establish the regulatory and transactional parameters of the utility renewables procurement program.

- On June 19, 2003, the Commission issued its "Order Initiating Implementation of the Senate Bill 1078 Renewable Portfolio Standard Program," D.03-06-071.¹⁰
- Instructions for utility evaluation (known as 'least-cost, best-fit') of each offer to sell products requested in a RPS solicitation were provided in D.04-07-029.¹¹
- The Commission adopted standard terms and conditions for RPS power purchase agreements in D.04-06-014, as required by Public Utilities Code Section 399.14(a)(2)(D). These STCs have been updated and modified most recently in D.08-04-009¹², and as a result, there are now thirteen STCs of which four are non-modifiable.
- D.06-10-050, as modified by D.07-03-046, compiled the RPS reporting and compliance methodologies.¹³ In this decision, the Commission established

⁷ APT - An LSE's APT for a given year is the amount of renewable generation an LSE must procure in order to meet the statutory requirement that it increase its total eligible renewable procurement by at least 1% of retail sales per year.

⁸ Most recently reaffirmed in D.06-05-039

⁹ SB 107, Chapter 464, Statutes of 2006

¹⁰ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/27360.PDF

¹¹ http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/38287.PDF

¹² http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/81269.PDF

¹³ D.06-10-050, Attachment A, http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/61025.PDF) as modified by D.07-03-046 (http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/65833.PDF).

methodologies to calculate an LSE's initial baseline procurement amount, annual procurement target (APT) and incremental procurement amount (IPT).¹⁴

- On June 9, 2004, the Commission adopted its market price referent (MPR) methodology¹⁵ for determining the utility's share of the RPS seller's bid price (the contract payments at or below the MPR), as defined in Public Utilities Code Sections 399.14(a)(2)(A) and 399.15(c). On December 15, 2005, the Commission adopted D.05-12-042 which refined the MPR methodology for the 2005 RPS Solicitation.¹⁶ Subsequent resolutions adopted MPR values for the 2005, 2006 and 2007 RPS Solicitations.¹⁷
- SB 1078 established a fund, to be administered by the CEC, to cover the above-MPR costs of RPS contracts. However, SB 1036¹⁸ eliminated this fund and established a new mechanism for the Commission to approve rate recovery for the above-MPR costs of RPS contracts. The Commission is now working on implementing SB 1036.¹⁹

CPUC has established procurement guidelines for bilateral contracts

While the focus of the RPS program is procurement through competitive solicitations, D.03-06-071²⁰ allows for a utility and a generator to enter into bilateral

¹⁴ The IPT represents the amount of RPS-eligible procurement that the LSE must purchase, in a given year, over and above the total amount the LSE was required to procure in the prior year. An LSE's IPT equals at least 1% of the previous year's total retail electrical sales, including power sold to a utility's customers from its DWR contracts.

¹⁵ D.04-06-015; http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/37383.pdf

¹⁶ http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/52178.pdf

¹⁷ Respectively, Resolution E-3980:

http://www.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/55465.DOC, Resolution E-4049:

http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/63132.doc, Resolution E-4118:

http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/73594.pdf

¹⁸ Statutes of 2007, Chapter 685, Perata

¹⁹ The Commission implemented the rate-changing aspects of SB 1036 in Resolution E-4160. The Energy Division has held a workshop for implementing rules on administering the above-MPR funds (AMFs) on May 29, 2009 and will finalize the rules soon.

²⁰ http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/27360.htm

contracts outside of the competitive solicitation process. Specifically, D.03-06-071 states that bilateral contracts will only be allowed if they do not require Public Goods Charge (PGC) funds. In D.06-10-019, the Commission interprets D.03-06-071, stating that bilaterals are not eligible for Supplemental Energy Payments (SEPs) and bilateral contracts must be deemed reasonable. Further, the decision requires bilateral contracts of any length must be submitted to the CPUC for approval by advice letter.²¹

Since D.06-10-019 was adopted, SB 1036 halted the portion of the PGC fund collection that went to the SEP fund, returned the collected SEPs to the utilities, and moved above-MPR cost recovery to the CPUC.²² While SB 1036 reformed the SEP process, the bilateral contracts are still ineligible for AMFs.²³

As D.06-10-019 notes, the Commission will be developing evaluation criteria for bilateral RPS contracts.²⁴ However, in the interim, utilities' bilateral contracts can be evaluated as long as they follow the three requirements mentioned above:

- the contract was submitted for approval by advice letter
- the contract does not receive AMFs
- the contract must be deemed reasonable by the CPUC.

The Commission has approved a decision setting minimum quotas of RPS contracting from long-term contract or contracts with new facilities

The RPS legislation and program rules have always expressed a preference for long-term, as opposed to short-term, RPS contracts because it is widely understood that long-term contracts are an important tool in developing new RPS-eligible generation facilities.²⁵ SB 1078 prohibited the solicitation of short-term contracts unless the CPUC approved of a contract of shorter duration. In D.03-06-071, the

²¹ D.06-10-019 pp. 31

²² See Resolution E-4160
http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/81476.PDF

²³ Pub. Util. Code §399.15(d)(2)(A).

²⁴ Second Amended Scoping Memo and Ruling of Assigned Commissioner,
<http://docs.cpuc.ca.gov/efile/RULC/79195.pdf>

²⁵ Long-term contracts are at least 10 years in duration

CPUC reaffirmed the requirement for the utilities to only offer contracts of 10, 15 and 20 years duration in their annual solicitations. Bidders, however, could offer shorter term contracts, which would be subject to CPUC-approval.

SB 107 both made explicit our ability to allow short-term contracts to fulfill RPS obligations and put conditions on the use of such contracts.²⁶ Pub. Util. Code 399.14(b)(2) states that before the Commission may approve an RPS contract of less than ten years' duration, the Commission must establish "for each retail seller, minimum quantities of eligible renewable energy resources to be procured either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005." On May 3, 2007, the Commission approved D.07-05-028²⁷, which determined that

beginning in 2007, RPS-obligated load-serving entities may use energy deliveries from contracts of less than 10 years' duration with eligible renewable energy resources that commenced commercial operation prior to January 1, 2005 for RPS compliance, on one condition. That condition is that each year they also sign contracts of at least 10 years' duration and/or contracts with RPS-eligible generation facilities that commenced commercial operation on or after January 1, 2005, for energy deliveries equivalent to at least 0.25% of their prior year's retail sales.²⁸

Further, if the LSE exceeds the 0.25% requirement for a calendar year, it may carry forward (or "bank") the "excess" contracted-for energy and use it to meet the 0.25% requirement in later years.

If the minimum quota is not met in a given year either by contracts signed in the current year or by using the banking mechanism, it may not count its short-term contracts with existing facilities signed in that year for RPS compliance, but it will begin with a clean slate the following year. The requirement remains in place until an obligated load-serving entity reaches its 20% goal.

²⁶ An additional condition is not addressed in this section: short-term contracts were ineligible for SEPs and now are ineligible for AMFs.

²⁷ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/67490.PDF

²⁸ page 1

The use of CPUC-approved short-term contracts for RPS compliance purposes is predicated on successfully demonstrating in RPS compliance filings that the minimum long-term and/or new contract quota has been met.

SCE's Procurement Review Group participated in review of the contracts

In D.02-08-071, the Commission required each utility to establish a "Procurement Review Group" (PRG) whose members, subject to an appropriate non-disclosure agreement, would have the right to consult with the utilities and review the details of:

1. Overall transitional procurement strategy;
2. Proposed procurement processes including, but not limited to, RFO; and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review

SCE's PRG was formed on or around September 10, 2002. Current participants include representatives from the Commission's Energy Division, the Division of Ratepayer Advocates, The Utility Reform Network, the Natural Resources Defense Council, the Consumers' Union, California Utility Employees, and the California Department of Water Resources.

SCE asserts that its PRG was consulted during each step of the renewable procurement process. On September 27, 2007, SCE advised the PRG of its initial bilateral discussions with MWD. SCE provided an update to the PRG on these discussions on December 27, 2007. ON April 23, 2008, SCE briefed the PRG concerning the successful conclusion of discussions with MWD.

Although Energy Division is a member of the PRG, it reserved its conclusions for review and recommendation on the PPA to the advice letter process.

SCE requests "CPUC Approval" of a bilateral power purchase agreement

On June 24, 2008, SCE filed Advice Letter (AL) 2250-E requesting Commission approval of a renewable power procurement contract with The Metropolitan Water District of Southern California. The contract is a result of bilateral negotiations, which were authorized by the Commission in D.03-06-071. The Commission's approval of the PPA will authorize SCE to accept future deliveries of incremental

supplies of renewable resources to contribute towards the renewable energy procurement goals required by California's RPS statute.²⁹ In total, procurement from the proposed projects is expected to contribute approximately 68 GWh towards SCE's APT starting in 2008.

SCE requests a Commission resolution containing the following findings in order to satisfy the "CPUC Approval" terms in the MWD Agreement:

1. Approval of the MWD Contract in its entirety;
2. A finding that any electric energy sold or dedicated to SCE pursuant to the MWD Contract constitutes procurement by SCE from an eligible renewable energy resource ("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;
3. A finding that all procurement under the MWD Contract counts, in full and without condition, towards any annual procurement target established by the RPS Legislation or the Commission which is applicable to SCE;
4. A finding that all procurement under the MWD Contract counts, in full and without condition, towards any incremental procurement target established by the RPS Legislation or the Commission which is applicable to SCE;
5. A finding that all procurement under the MWD Contract counts, in full and without condition, towards the requirement in the RPS Legislation that SCE procure 20 percent (or such other percentage as may be established by law) of its retail sales from ERRs by 2010 (or such other date as may be established by law);
6. A finding that the MWD Contract, and SCE's entry into the MWD Contract, is reasonable and prudent for all purposes, including, but not limited to, recovery rates of payments made pursuant to the MWD Contract, subject only to further review with respect to the reasonableness of SCE's administration of the MWD Contract; and
7. Any other and further relief as the Commission finds just and reasonable.

²⁹ California Public Utilities Code section 399.11 et seq., as interpreted by D.03-07-061, the "Order Initiating Implementation of the Senate Bill 1078 Renewables Portfolio Standard Program", and subsequent CPUC decisions in Rulemaking (R.) 04-04-026.

NOTICE

Notice of AL 2250-E was made by publication in the Commission’s Daily Calendar. Southern California Edison states that a copy of the Advice Letter and Supplemental Advice Letters were mailed and distributed in accordance with Section IV of General Order 96-B.

PROTESTS

Advice Letter 2250-E was not protested.

DISCUSSION

Description of the project

The following table summarizes the substantive features of the PPA:

Seller	Type	Contract Price	Term Years	Capacity (MW)	GWh Energy	Online Date	Location
Metropolitan Water District of Southern California (MWD)	Small conduit hydro, existing	\$93.83	15	21.72 - 110 ³⁰	68 - 347	11/1/2008	Four hydroelectric power plants in California ³¹

The Metropolitan Water District of Southern California transports water from northern to southern California to provide drinking water to nearly 18 million people. The movement of this water is used to generate electricity at hydroelectric generating facilities around the state. The proposed MWD contract consists of four existing conduit hydroelectric generating facilities located in California, which have all been under contract with SCE since 1983. Most recently, SCE and MWD entered into an Amended and Restated District-Edison Capacity and Energy Sale Contract

³⁰ The initial capacity is 21.72 megawatts (MW), and the contract allows generating facilities to be added or subtracted up to a maximum 110 MW.

³¹ The Venice Power Plant located in Culver City, the Temescal Power Plant in Corona, the Corona Power Plant in Corona, and the Red Mountain Power Plant in Fallbrook

in 2003 for the output from these four facilities. This contract will expire on October 31, 2008, and the new RPS PPA will commence on November 1, 2008.

The proposed Agreement allows the addition or deletion of generating facilities to the contract, up to a maximum amount of 110 MW. The contract also has a No Fault Termination clause that allows either party to terminate the Agreement after the fifth year of the contract.

Unlike most RPS contracts, this price (and the entire PPA) is public. There were no protests to the contract.

This contract was evaluated on the following criteria:

- Consistency with SCE's 2008 Procurement Plan
- Compliance with CPUC's bilateral contracting guidelines
- Compliance with standard terms and conditions decision
- Compliance with the minimum quota on short-term contracts with existing facilities
- Price reasonableness
- Project viability

PPA is consistent with SCE's CPUC-adopted 2008 RPS Plan

The PPA is consistent with SCE's CPUC-adopted 2008 RPS Plan. While SCE states in its advice letter that the MWD contract is consistent with its 2007 renewable procurement plan, since the contract was executed in 2008, the Commission considered whether the PPA was procured consistent with SCE's 2008 RPS procurement plan (Plan). In response to a data request from the Energy Division, SCE affirms that the contract is also consistent with SCE's approved 2008 Plan.

California's RPS statute requires the Commission to review the results of a renewable energy resource solicitation submitted for approval by a utility.³² The Commission will then accept or reject proposed PPAs based on their consistency with the utility's approved Plan. SCE's 2008 Plan includes an assessment of supply and demand for renewable energy and bid solicitation materials, including a pro-forma agreement and bid evaluation methodology documents.

³² Pub. Util. Code, Section §399.14

The Commission conditionally approved SCE's 2008 RPS procurement plan, including its bid solicitation materials, in D.08-02-008.³³ As ordered by D.08-02-008, on February 29, 2008 SCE filed and served its amended 2008 Plan. The proposed PPA is consistent with SCE's Commission-approved RPS Plan.

PPA fits with identified renewable resource needs

SCE'S 2008 RPS procurement plan states that SCE seeks to procure renewable resources to augment those under contract from prior solicitations and those executed pursuant to the 2006 and 2007 solicitations. That is, SCE says it will secure resources from the 2008 solicitation as necessary to ensure that SCE meets the overall goal of 20% renewables as soon as possible, and with a reasonable margin of safety. In addition to procuring resources to meet the 20% goal as soon as possible, SCE reports that it intends to procure renewables based on its High Need Case scenario.³⁴ SCE's stated preference is to receive the RPS energy in SP-15, but SCE will consider proposals based upon any designated delivery point within California. SCE states that it needs both near-term and long-term renewable energy but its evaluation criteria will favor proposals for near-term deliveries.

The MWD project meets SCE's resource needs because the facilities are operating, and thus, the energy is immediately available to deliver renewable energy within California.

The MWD contract compares favorably to SCE's 2008 solicitation

SCE conducted a benefit-to-cost analysis of the MWD Contract and found that it compared favorably to the more competitive proposals received in response to SCE's 2008 RFP.

PPA selection is consistent with RPS program's bilateral procurement guidelines

The MWD contract complies with the bilateral procurement guidelines set forth in D.03-07-051, D.06-10-019 and Pub. Util. Code §399.15(d)(2)(A). The contract

³³ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/78817.pdf

³⁴ According to SCE, its Base Case assumes a 100% on-time delivery of all currently executed contracts, and its High Need Case assumes 70% delivery from executed, but not yet delivering, contracts.

- was submitted for approval by advice letter
- will not receive AMFs
- is deemed reasonable by the CPUC.

PPA is consistent with adopted standard terms and conditions

The terms and conditions in the MWD contract comply with D.08-04-009.

SCE has procured a minimum amount of long-term and/or new RPS contracts in 2008 to count the deliveries from MWD for RPS compliance

The Commission considers the MWD contract to be a short-term contract with an existing facility. While the contract is for 15 years, there is a No Fault Termination clause that allows either party to terminate the contract after the 5th year.³⁵ This term essentially makes the contract a 5-year contract with possibility for it to be longer. Thus, SCE must sign the minimum quota of long-term contracts and/or contracts with new facilities in order for the deliveries of the MWD contract to count for RPS compliance.

This year, SCE has already entered into contracts for at least 0.25% of its 2007 retail sales.³⁶ Thus, SCE has satisfied its minimum quota requirement for counting short-term contracts with existing facilities for RPS compliance, and the MWD contract will count for RPS compliance.

³⁵ "Either Party shall have the right to terminate this Agreement on Notice effective no sooner than sixty (60) months (5 years) after the start of the Delivery Term; provided, however, that (i) for a termination to be effective on the fifth anniversary of the start of the Delivery Term, such Notice must be given no later than forty-eight (48) months (4 years) after the start of the Delivery Term, and (ii) for a termination to be effective at any time after the fifth anniversary of the start of the Delivery Term, such Notice must be given at least 24 months in advance of the designated termination date." AL 2250-E, Appendix H, § 2.04(a)(ii).

³⁶ The expected RPS-eligible energy deliveries of the Gaskell Suntower PPA alone (220.8 GWh, see AL 2253-E) are greater than 0.25% of SCE's 2007 retail sales (79,505 GWh, see SCE's March 2008 public RPS compliance filing).

Contract price is reasonable

The Commission intends to include more explicit standards for evaluating the reasonableness of bilateral RPS contracts in a decision in the near future. Until such a decision is approved, the Commission will continue to consider the approval of RPS short-term bilateral contracts only on a case-by-case basis.

In the case of MWD, the Commission has considered its price relative to the 2007 MPR and to the bids into SCE's 2007 and 2008 RPS solicitations. MWD's levelized contract price is \$93.83³⁷, which is equivalent to the 2007 MPR for a 15-year contract that comes online in 2008. Also, the MWD contract compares favorably to recent bids in SCE's 2007 and 2008 solicitations. Further, the contract price is public, and there were no protests to the advice letter.

MWD is a viable project

For many reasons, SCE believes that the MWD project is viable. The Commission agrees.

Resource/Technology

The conduit hydroelectric generating facilities that comprise the MWD project have been online, operating and delivering to SCE for over two decades.

Financing

The project's financing is in place.

Permitting

The project's permits have already all been obtained.

Transmission

The existing MWD facilities are currently interconnected to SCE's distribution system under and no new network or gen-tie upgrades are required.

³⁷ Unlike most RPS contracts, this price (and the entire PPA) is public.

Production Tax Credit

Because the facilities are already operating, the contract is not dependent on the federal production tax credit as provided in Section 45 of the Internal Revenue Code of 1986, as amended.

Sponsor's Creditworthiness and Experience

The developer has significant experience operating the existing facilities for over two decades.

Confidential information about the contracts should remain confidential

Certain contract details were filed by SCE under confidential seal. Energy Division recommends that certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments and will be placed on the Commission's agenda no earlier than 30 days from the date the Draft Resolution was mailed.

SCE filed timely comments to the Draft Resolution on August 22, 2008, and TURN filed timely reply comments on August 29, 2008. While SCE says that they fully support the Draft Resolution, they request two modifications. First, SCE asserts that the MWD contract should not be considered a short-term contract, and thus, subject to the minimum quota requirement for short-term contracts with existing facilities. SCE argues that "Unless SCE or MWD take action to terminate the contract upon 2 years notice, the MWD Contract will remain in effect for its entire 15-year term.

There is no reason to assume that the contract will be terminated early.³⁸ Second, SCE comments that the Commission should eliminate the additional reporting requirements for the MWD contract in the Draft Resolution, which required that SCE should report to Energy Division when the contract capacity changes and if the contract is terminated before 15 years. SCE says that existing processes for reporting contract updates are sufficient.

TURN supports the Draft Resolution and disagrees with SCE's comments on the first issue. TURN disputes SCE's characterization of the contract terms and SCE's assertion that the MWD contract is a long-term contract. Specifically, TURN says that the contract's "No Fault Termination" clause makes it unique among long-term fixed-price contracts because it allows either party to terminate the contract without penalty or condition precedent.³⁹

The Commission agrees with TURN on the issue of whether to consider the MWD a short-term contract for the purpose of requiring compliance with the minimum quota for short-term contracts with existing facilities. The MWD contract's "No Fault Termination" clause means that neither party is bound by the contract beyond the first 5-year term. As both SCE and TURN note, because SCE has already satisfied its minimum quota requirement, the MWD contract will count towards RPS compliance.

On the issue of requiring additional reporting obligations for the MWD contract, the Commission has taken SCE's concerns into consideration and agrees that the existing processes for reporting contract updates are sufficient. The Resolution is modified accordingly.

FINDINGS

1. The RPS Program requires each utility, including SCE, to increase the amount of renewable energy in its portfolio to 20 percent by 2010, increasing by a minimum of one percent per year.

³⁸ page 2

³⁹ page 2

2. The Commission required each utility to establish a Procurement Review Group (PRG) to review the utilities' renewable procurement needs and strategy, proposed procurement process, and selected contracts.
3. D.08-04-009 sets forth four non-modifiable and nine modifiable standard terms and conditions to be incorporated into RPS power purchase agreements.
4. D.07-05-028 established conditions for counting deliveries from contracts with existing facilities that are less than 10 years' duration for RPS compliance.
5. D.08-02-008 directed the utilities to issue their 2008 renewable RFOs, consistent with their renewable procurement plans.
6. D.03-06-071 allows for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process.
7. D.06-10-019 requires bilateral contracts to be filed for approval by the Commission by advice letter.
8. Pursuant to Pub. Util. Code §399.15(d)(2)(A), bilateral contracts may not be applied to a utility's cost limitation for above-market costs of RPS contracts.
9. SCE filed Advice Letter 2250-E on June 24, 2008, requesting Commission review and approval of a bilateral power purchase agreement with The Metropolitan Water District of Southern California (MWD).
10. SCE briefed its PRG on its status of bilateral negotiations and successful conclusion of discussions with MWD.
11. The Commission has reviewed the proposed MWD contract and finds it to be consistent with SCE's approved 2008 renewable procurement plan and bilateral procurement rules.
12. The contract price for the MWD contract is at or below the 2007 MPR released in Resolution E-4118.
13. The MWD contract price is reasonable.
14. Because the "No Fault Termination" term in the MWD contract allows SCE or MWD to terminate the contract with no penalty or obligation after the 5th year of the contract, it will be considered a short-term contract subject to the minimum quota for short-term contracts with existing facilities as set forth in D.07-05-028.
15. SCE has satisfied the requirement in D.07-05-028 and can count contracts signed in 2008 with existing facilities that are less than 10 years in duration for RPS compliance.

16. Procurement pursuant to this Agreement is procurement from eligible renewable energy resources 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. 03-06-071, or other applicable law.
17. All procurement under the MWD contract counts, in full and without condition, towards any annual procurement target established by the RPS Legislation or the Commission which is applicable to SCE;
18. All procurement under the MWD contract counts, in full and without condition, towards any incremental procurement target established by the RPS Legislation or the Commission which is applicable to SCE;
19. All procurement under the MWD contract counts, in full and without condition, towards the requirement in the RPS Legislation that SCE procure 20 percent (or such other percentage as may be established by law) of its retail sales from ERRs by 2010 (or such other date as may be established by law);
20. The MWD contract, and SCE's entry into this PPA, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the PPA, subject only to further review with respect to the reasonableness of SCE's administration of the PPA
21. Any indirect costs of renewables procurement identified in Section 399.15(a)(2) shall be recovered in rates.
22. The MWD contract proposed in AL 2250-E should be approved without modifications.
23. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should not be disclosed. Accordingly, the confidential appendices, marked "[REDACTED]" in the redacted copy, should not be made public upon Commission approval of this resolution.

THEREFORE IT IS ORDERED THAT:

1. The proposed MWD contract in Advice Letter 2250-E is approved without modifications
2. The costs of the contract between SCE and Seller are reasonable and in the public interest; accordingly, the payments to be made by SCE are fully

recoverable in rates over the life of the project, subject to CPUC review of SCE's administration of the PPA.

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 September 4, 2008; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners