

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4230
May 7, 2009

Redacted

R E S O L U T I O N

Resolution E-4230. Southern California Edison (SCE) requests approval of two new renewable resource procurement contracts with FlexEnergy, LLC relating to power plants in the Bena Sanitary Landfill in Edison, California ("Flex Kern") and the San Timoteo Landfill in Redlands, California ("Flex Bernardino"). SCE's Advice Letter (AL) 2294-E is approved without modification.

By Advice Letter 2294-E filed on December 5, 2008 and Advice Letter 2294-E-A filed on March 16, 2009.

SUMMARY

SCE's renewable contracts comply with the renewable portfolio standard (RPS) procurement guidelines and are approved

Southern California Edison (SCE) filed Advice Letter (AL) 2295-E on December 5, 2008, requesting Commission review and approval of two new power purchase agreements (PPAs) executed with FlexEnergy, LLC. SCE filed AL 2295-E-A on March 16, 2009 to amend a contract term in each agreement to comply with D.08-08-028. These bilateral contracts result from SCE's 2008 biomass standard contract program, and utilize new lean-burning Flex-Microturbines. These turbines have been developed by FlexEnergy to burn low concentration methane gas that is present at landfills. The expected online date for both FlexEnergy projects is June, 2012. The Flex Kern and Flex Bernardino projects will each initially be 100 kW and will increase their capacity over two years to 5 MW and 2 MW respectively. Due to the small size of the projects, no significant transmission upgrades are expected.

Generating facility	Type	Term (Years)	Capacity	Energy (GWh)	Expected Online Date	Location
Flex Kern	Biomass	20	100 kW – 5 MW	.876 - 30.7	June, 2012	Edison, CA
Flex Bernardino	Biomass	20	100 kW – 2 MW	.876 - 12.3	June, 2012	Redlands, CA

For all contracts executed through SCE’s 2008 biomass standard contract program, the contract price is set at the 2007 market price referent (MPR) that corresponds to the project’s online date. The proposed contract prices are reasonable, and all costs of the contracts are fully recoverable in rates over the life of the contracts, subject to Commission review of SCE’s administration of the contracts.

AL 2294-E and AL 2294-E-A are approved without modification.

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 (SB) 1078¹, and has been subsequently modified by SB 107² and SB 1036³. The RPS program is set out at Public Utilities (PU) Code Section 399.11, et seq. An RPS policy generally requires that a retail seller of electricity, such as SCE, purchase a certain percentage of electricity generated by Eligible Renewable Energy Resources (ERR). Under the California RPS, each utility is required to increase its total

¹ SB 1078 (Sher, Chapter 516, Statutes of 2002)

² SB 107 (Simitian, Chapter 464, Statutes of 2006)

³ SB 1036 (Perata, Chapter 685, Statutes of 2007)

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 2010. Furthermore, on November 17, 2008, Governor Schwarzenegger issued Executive Order S-14-08, setting a goal for energy retailers to deliver 33 percent of electrical energy from renewable resources by 2020.⁴

In response to SB 1078, SB 107, and SB 1036, the Commission has issued a series of decisions and resolutions 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.03-06-071.⁵
- Instructions for utility evaluation of each offer to sell ERRs requested in an RPS solicitation were provided in D.04-07-029⁶, as required by PU Code Section 399.14(a)(2)(B). The bid evaluation methodology is known as ‘least-cost, best-fit’.
- The Commission adopted standard terms and conditions (STCs) for RPS power purchase agreements in D.04-06-014, as required by PU Code Section 399.14(a)(2)(D). These STCs are compiled in D.08-04-009⁷, as modified by D.08-08-028⁸, 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.⁹ In this decision, the Commission established methodologies to calculate an LSE’s initial baseline procurement amount,

⁴ <http://gov.ca.gov/executive-order/11072/>

⁵ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/27360.PDF

⁶ http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/38287.PDF

⁷ http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/81269.PDF

⁸ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/86954.pdf

⁹ 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).

annual procurement target (APT) and incremental procurement amount (IPT).¹⁰

- The Commission adopted its market price referent (MPR) methodology in D.04-06-015¹¹ for determining the utility's share of the RPS seller's bid price (the contract payments at or below the MPR), as defined in PU Code Sections 399.14(a)(2)(A) and 399.15(c). The Commission refined the MPR methodology for the 2005 RPS Solicitation in D.05-12-042.¹² Subsequent resolutions adopted MPR values for the 2005, 2006, 2007, and 2008 RPS solicitations.¹³
- In D.06-10-019¹⁴, the Commission adopted rules for the eligibility and approval of RPS short-term contracts (procurement contracts that are less than 10 years in duration) and bilateral contracts (procurement contracts that are negotiated outside of a competitive RPS solicitation).
- Resolutions E-4160¹⁵ and E-4199¹⁶ implement SB 1036, which modified the RPS cost containment mechanism. The Commission established cost limitations for each IOU and set forth guidelines for approving above-MPR RPS contracts negotiated through a competitive solicitation.

¹⁰ 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.

¹¹ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/37383.pdf

¹² http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/52178.pdf

¹³ 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

Resolution E-4214: http://docs.cpuc.ca.gov/Published/Final_resolution/95553.htm

¹⁴ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/60585.PDF

¹⁵ http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/81476.PDF

¹⁶ http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/98603.PDF

The Commission has established bilateral procurement guidelines for the RPS program

While the focus of the RPS program is procurement through competitive solicitations, D.03-06-071¹⁷ allows for a utility and a generator to enter into bilateral 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 subject to the MPR, not eligible for Supplemental Energy Payments (SEPs)¹⁸, must be one month in duration, and must be deemed reasonable. Further, bilateral contracts of any length must be submitted to the Commission for approval by advice letter.¹⁹

As D.06-10-019 notes, the Commission will be developing evaluation criteria for bilateral RPS contracts.²⁰ However, in the interim, utilities' bilateral contracts can be evaluated as long as they follow the four requirements mentioned above:

- The contract was submitted for approval by advice letter
- The contract does not get applied to an IOU's cost limitation
- The contract is at least one month in duration
- The Commission deems the contract reasonable.

SCE initiated the SCE Biomass Standard Contract Program

In order to help small biomass projects contribute to the State's RPS goals and to support California Governor Arnold Schwarzenegger's goal to promote energy production from biomass fuel sources,²¹ SCE started a biomass power

¹⁷ http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/27360.htm

¹⁸ Since D.06-10-019 was adopted, SB 1036 halted the portion of the PGC fund collection that went to the SEP fund for above-MPR RPS resources, required the Energy Commission to refund the collected SEPs to the utilities, and requires the COMMISSION to implement a cost limitation. Pub. Util. Code §399.15(d)(2)(A) now says that only contracts result from a competitive solicitation are eligible for the cost limitation.

¹⁹ D.06-10-019 pp. 31

²⁰ Second Amended Scoping Memo and Ruling of Assigned Commissioner, <http://docs.cpuc.ca.gov/efile/RULC/79195.pdf>

²¹ See Executive Order S-06-06.

contracting initiative (Biomass Program) to offer a standardized contract for the purchase of renewable energy from biomass facilities with capacities of 20 MW or less.

SCE states that the Biomass Program was started because SCE recognized that smaller biomass projects have had difficulties participating in SCE’s annual solicitations. By eliminating the complex negotiation process that is needed to participate in the annual RPS solicitations, the Biomass Program gives smaller projects the opportunity to execute contracts with SCE and contribute to the State’s RPS goals.

SCE offers three different standard contracts for projects of different sizes: less than 1 MW; 1 MW to 5 MW; and 5 MW to 20 MW. The standard contracts are offered to RPS-eligible biomass resources for terms of 10, 15, and 20 years, and at an energy price set at the MPR. Important differences exist between the three standard contracts:

	Less than 1 MW	1 MW through 5 MW	>5 MW through 20 MW
Location Restrictions	Within SCE service territory	Within CAISO control area	Within CAISO control area
Startup Deadline	Within five years of contract signing	Within five years of contract signing	Seller provides date
Required Capacity Factor	As available	70%	80%
Development Security	None	None	\$20/kW
Credit and Collateral	None	None	Six months of revenue

SCE requests Commission approval of two renewable energy contracts

On December 5, 2008, SCE filed AL 2294-E seeking approval of two power purchase agreements (PPAs) between SCE and FlexEnergy Corporation. The PPAs result from bilateral negotiations, in which FlexEnergy accepted SCE’s

Biomass Program contract. SCE filed the same amendment to both contracts on March 16, 2009 in AL 2294-E-A, in order to comply with D.08-08-028.

The PPAs for which SCE is currently requesting approval will contribute energy deliveries towards SCE's renewable procurement goal required by California's RPS statute.²²

SCE requests that the Commission issue a resolution containing the following findings:²³

1. Approval of the FlexEnergy Contracts and the FlexEnergy Amendments in their entirety
2. A finding that any electric energy sold or dedicated to SCE pursuant to the FlexEnergy Contracts, as amended, 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 Legislation²⁴ or other applicable law concerning the procurement of electric energy from renewable energy resources
3. A finding that all procurement under the FlexEnergy Contracts, as amended, 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 FlexEnergy Contracts, as amended, counts, in full and without condition, towards any incremental procurement target established by the RPS Legislation or the Commission which is applicable to SCE

²² The California Energy Commission is responsible for determining the RPS-eligibility of a renewable generator. See Public Utilities Code Sect. 399.12 and D.08-04-009, as modified by D.08-08-028.

²³ SCE's requested findings were modified by AL 2294-E-A to reflect the request for approval of the amended contracts

²⁴ As defined by SCE, "'RPS Legislation' means the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11 *et seq.*"

5. A finding that all procurement under the FlexEnergy Contracts, as amended, 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 FlexEnergy Contracts and the FlexEnergy Amendments, and SCE's entry into the FlexEnergy Contracts and the FlexEnergy Amendments, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the FlexEnergy Contracts, as amended, subject only to further review with respect to the reasonableness of SCE's administration of the FlexEnergy Contracts, as amended; and
7. Any other and further relief as the Commission finds just and reasonable.

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. Participants include representatives from the Commission's Energy and Legal Divisions, the Division of Ratepayer Advocates, The Utility Reform Network, the Natural Resources Defense Council, California Utility Employees, the Union of Concerned Scientists, Aglet Consumer Alliance and the California Department of Water Resources.

SCE asserts that its PRG was consulted during each step of the renewable procurement process. In April 2007, SCE presented the PRG with the details of the SCE Biomass Program. On April 23, 2008, SCE briefed the PRG concerning the successful conclusion of discussions with FlexEnergy.

Although Energy Division is a member of the PRG, it reserved its judgment on the contracts until the resolution process. Energy Division reviewed the transactions independent of the PRG, and allowed for a full protest period before concluding its analysis.

NOTICE

Notice of AL 4230-E and AL 4230-E-A was made by publication in the Commission's Daily Calendar. Southern California Edison states that a copy of the Advice Letter and Supplemental Advice Letter were mailed and distributed in accordance with Section IV of General Order 96-B.

PROTESTS

Advice Letter 2294-E was not protested.

DISCUSSION

Description of the projects

The following table summarizes the substantive features of the proposed PPAs. See confidential Appendix A for a discussion of the contracts' terms and conditions.

Generating facility	Type	Term (Years)	Capacity	Energy (GWh)	Expected Online Date	Location
Flex Kern	Biomass	20	100 kW - 5 MW	.876 - 30.7	June, 2012	Edison, CA
Flex Bernardino	Biomass	20	100 kW - 2 MW	.876 - 12.3	June, 2012	Redlands, CA

The Flex Kern and Flex Bernardino projects are two new biomass facilities being developed by FlexEnergy, a Delaware limited liability company. The Commission has already approved two projects between SCE and the same developer.²⁵ The Flex Kern and Bernardino facilities will be located at the Bena Sanitary Landfill and the San Timoteo Landfill, respectively. Both facilities will

²⁵ Resolution E-4159, http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/91223.PDF

utilize a new Flex-Microturbine, which is a new lean-burning gas turbine technology that FlexEnergy has developed. This new Flex-Microturbine is commercially untested, and a prototype has operated for 5,000 hours. The pricing under the FlexEnergy contracts, as for all contracts from SCE's 2008 Biomass Program, is the 2007 market price referent value for the year the project comes online.

Energy Division has reviewed the proposed PPAs based upon multiple grounds:

- Consistency with SCE's 2008 RPS procurement plan
- Compliance with RPS bilateral procurement guidelines
- Consistency with RPS standard terms and conditions (STCs)
- Reasonableness of the PPA prices
- Project viability

The PPAs are consistent with SCE's Commission adopted 2008 RPS Plan

California's RPS statute requires the Commission to direct each utility to prepare a renewable energy procurement plan (Plan), and then review and accept, modify or reject the Plan prior to the commencement of a utility's annual RPS solicitation.²⁶ The Commission must then accept or reject proposed PPAs based on their consistency with the utility's approved Plan.

SCE's 2008 Plan²⁷ included an assessment of supply and demand for renewable energy and bid solicitation materials, including a pro-forma agreement and bid evaluation methodology documents. While SCE's amended 2008 Plan included a description of its SCE's Biomass Program, SCE did not specifically seek approval of its Biomass Program or the associated standard contracts as part of its 2008 Plan. Nonetheless, the Commission noted in D.08-02-008 that the Biomass Program appeared to be a reasonable application of SCE's business judgment and approved the Biomass Program as part of SCE's 2008 RPS Plan.

²⁶ Pub. Util. Code §399.14

²⁷ While SCE states in its advice letter that the contracts are consistent with its 2007 renewable procurement plan, since the bilateral contracts were executed in 2008, the Commission considered whether the PPAs are consistent with SCE's 2008 RPS Plan.

Thus, the proposed PPAs are consistent with SCE's Commission-approved 2008 RPS Plan.

PPAs fit 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.²⁸ 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.

Both of the FlexEnergy proposed projects fit SCE's identified renewable resource needs. Both facilities will have their first point of interconnection within California and satisfy SCE's delivery requirements. Further, the FlexEnergy Contracts help SCE in its goal of promoting energy production from biomass fuel sources as directed by the Governor's Executive Order.

PPAs are consistent with RPS bilateral contracting guidelines

The proposed PPAs are consistent with Commission decisions regarding RPS bilateral contracts for the following reasons:

1. The PPAs will not be applied to SCE's cost limitation.²⁹

²⁸ 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.

²⁹ The PPAs are nonetheless ineligible because they did not result from a competitive solicitation. (Public Utilities Code §399.15[d][2])

2. Pursuant to D.06-10-019, the PPAs were submitted by advice letter.³⁰
3. The PPAs are at least one month in duration.³¹
4. The PPAs are at or below the MPR, and are reasonably priced.³²

Consistency with adopted standard terms and conditions

SCE filed an amendment to each FlexEnergy contract in Al 2294-E-A in order to modify the Green Attributes standard term and condition to be in compliance with D.08-08-028. As a result, the PPAs' terms and conditions are consistent with D.08-04-009, as modified by D.08-08-028.

Contract prices are reasonable

As part of SCE's efforts to standardize and simplify the small biomass contract negotiation process, all of the 2008 Biomass Program contracts are priced at the 2007 MPR associated with the relevant online date. Based on an expected 2012 online date for a 20-year contract, the contract prices for these projects are expected to be \$101.39/MWh.

According to D.06-10-019, bilateral contracts are not subject to the MPR, but the prices must be deemed reasonable. The Commission evaluated the FlexEnergy contract prices based on their relation to the 2007 and 2008³³ MPRs and a comparison of the contracts to SCE's 2007 and 2008 RPS solicitation bids. See confidential Appendix A for our comparison of the FlexEnergy contracts to recent solicitations. The FlexEnergy contract prices are reasonable because:

- The contract prices are at or below the 2007 and 2008 MPRs for projects coming online in 2012.

³⁰ "For now, utilities' bilateral RPS contracts, of any length, must be submitted for approval by advice letter." (D.06-10-019, pp.31)

³¹ "All RPS-obligated LSEs are also free to enter into bilateral contracts of any length with RPS-eligible generators, as long as the contracts are at least one month in duration, to enable the CEC to verify RPS procurement claims." (D.06-10-019 p. 29)

³² The contract price of bilaterals must be deemed reasonable by the Commission. D.06-10-019, p. 31.

³³ The applicable 2008 MPR is \$121.26.

- SCE calculated the projects' benefit-to-cost ratios and found them favorable as compared to other bids in its 2007 solicitation.
- Energy Division staff compared the FlexEnergy projects to SCE's 2008 solicitation bids, and finds them to be competitive with the shortlisted bids.

Projects have some viability risk

SCE states in its advice letter that both projects have "better than average" viability.³⁴ The Commission notes that there is some viability risk because the FlexEnergy technology is commercially unproven, neither project has site control, and sufficient financing has not been secured. Because the projects do not have site control, they also do not have fuel contracts for the term of the contract. On the other hand, FlexEnergy has tested its 30kW turbines for over 5,000 hours and is now testing 100 kW facilities, so the technology risk is decreasing. Also, if these projects are approved, and the technology works as advertised, FlexEnergy's Flex-Microturbines could generate power across the state by utilizing low-methane gas and other biomass materials statewide that are currently unusable by other technologies.

See confidential Appendix B for SCE's project viability matrix for the proposed projects.

Project Milestones

The FlexEnergy PPAs identify necessary milestones, including permit applications, transmission interconnection applications, financing, and startup deadlines.

Financeability of Resource

FlexEnergy has secured its first round of financing. FlexEnergy's development has been funded largely through competitive grants from federal and state green energy programs, research institutes and private sources.

³⁴ p. 8

Production Tax Credit

FlexEnergy will be seeking the federal production tax credit (PTC) for both projects. The PTC is set to expire December 31, 2013.³⁵

Sponsor's Creditworthiness and Experience

SCE has some prior experience with FlexEnergy because these are the third and fourth contracts executed between the two parties. FlexEnergy now has 10 full-time employees, a Board of Directors, and secured office and manufacturing space in Irvine, California. FlexEnergy asserts that members of their team have experience with engineering and constructing power plants and negotiating and obtaining PPAs in California. As stated previously, FlexEnergy has no commercially operating plants yet.

Transmission Upgrades

Although none of the required transmission studies or interconnection applications have been completed, it is unlikely that costly or major transmission upgrades will be required because the facilities are quite small.

Fuel/Technology

The Flex Kern and Flex Bernardino facilities will be located at working landfills, which do not yet have microturbine technology utilizing the gas. FlexEnergy believes that both landfills are excellent resources for its new lean-burn gas turbine, which it expects to be able to utilize the landfills' low methane levels more efficiently than conventional microturbine technology. However, since neither project has site control, there is project risk regarding both site control and fuel contracts.

Also, the FlexEnergy technology is commercially unproven, which adds risk to the project. However, FlexEnergy has tested its 30kW turbines for over 5,000 hours and is now testing 100 kW facilities.

³⁵ The American Recovery and Reinvestment Act of 2009, House Resolution (H.R.) 1 (2009)

Site Control

While the developer has had discussions with the owners of each landfill, FlexEnergy has not yet received commitments from either landfill or the appropriate permits to allow the projects to move forward.

Permitting

FlexEnergy has not yet applied for or received any permits for either proposed project, but SCE doesn't not foresee any hurdles in attaining the appropriate permits.

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 today.

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.
2. D.08-04-009, as modified by D.08-08-028, sets forth four non-modifiable and nine modifiable standard terms and conditions to be incorporated into RPS power purchase agreements.
3. D.03-06-071 allows for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process.
4. D.08-02-008 directed the utilities to issue their 2008 renewable RFOs, consistent with their renewable procurement plans.

5. The Commission required each utility to establish a Procurement Review Group (PRG) to review the utilities' interim procurement needs and strategy, proposed procurement process, and selected contracts.
6. SCE filed Advice Letter 2294-E on December 5, 2008, requesting Commission review and approval of two renewable energy contracts with FlexEnergy: Flex Kern and Flex Bernardino.
7. SCE filed Advice Letter 2294-E-A on March 16, 2009 in order to request approval of an Amendment to each contract in order to comply with the Green Attributes standard terms and condition, which was modified in D.08-08-028.
8. SCE elected to initiate a Biomass Program that provides standard contracts for biomass projects of 20 MW or less.
9. In D.08-02-008, the Commission accepted the use of SCE's Biomass Program as part of SCE's 2008 RPS Procurement Plan for the purpose of judging whether or not a contract is consistent with the Plan.
10. The Commission has reviewed the proposed FlexEnergy contracts and finds them to be consistent with SCE's approved 2008 renewable procurement plan and bilateral procurement rules.
11. SCE briefed its PRG in April 2007 with details of the SCE Biomass Program. In April 2008, SCE briefed the PRG concerning the successful conclusion of discussions with FlexEnergy.
12. The proposed contract prices for the Flex Kern and Flex Bernardino are set at the relevant 2007 MPR.
13. Any electric energy sold or dedicated to SCE pursuant to the FlexEnergy contracts, including the Amendments, 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.
14. A finding that all procurement under the FlexEnergy contracts, including the Amendments, counts, in full and without condition, towards any annual procurement target established by the RPS Legislation or the Commission which is applicable to SCE.
15. A finding that all procurement under the FlexEnergy contracts, including the Amendments, counts, in full and without condition, towards any incremental

procurement target established by the RPS Legislation or the Commission which is applicable to SCE.

16. A finding that all procurement under the FlexEnergy Contracts, including the Amendments, 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).
17. A finding that the FlexEnergy Contracts and the FlexEnergy Amendments, and SCE's entry into the FlexEnergy Contracts and the FlexEnergy Amendments, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the FlexEnergy Contracts, including the Amendments, subject only to further review with respect to the reasonableness of SCE's administration of the FlexEnergy Contracts, including the Amendments.
18. Any indirect costs of renewables procurement identified in Section 399.15(a)(2) shall be recovered in rates.
19. The Flex Kern and Flex Bernardino contracts proposed in AL 2294-E, as amended by AL 2294-E-A, should be approved without modification.
20. 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 Flex Kern and Flex Bernardino contracts and the FlexEnergy Amendments proposed in Advice Letter 2294-E and Advice Letter 2294-E-A, are approved without modification.
2. The costs of the contracts between SCE and FlexEnergy 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 Commission review of SCE's administration of the PPAs.
3. 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 May 7, 2009; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON
PAUL CLANON
Executive Director

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

Confidential Appendix A
Confidential Contract Information
[Redacted]

Confidential Appendix B

Original Project Viability Matrices Filed with Advice Letter

[Redacted]