

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

ENERGY DIVISION

**RESOLUTION E-4208  
November 21, 2008**

REDACTED

**R E S O L U T I O N**

Resolution E-4208. San Diego Gas and Electric (SDG&E) Company requests approval of a bilateral renewable power purchase agreement with Blue Lake Power, LLC. This agreement is approved without modification. However, terms SDG&E requested are partially accepted, and advice letter 2000-E is approved with modification.

By Advice Letter 2000-E filed on June 27, 2008.

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**SUMMARY**

**SDG&E’s renewable contract complies with the Renewable Portfolio Standard (RPS) procurement guidelines and is approved without modification. Advice letter 2000-E, however, is approved with modification.**

SDG&E filed advice letter (AL) 2000-E on June 27, 2008 requesting California Public Utilities Commission (Commission) review and approval of a bilateral renewable energy power purchase agreement (PPA) with Blue Lake Power, LLC (BLP).

<b>Generating facility</b>	<b>Type</b>	<b>Term Years</b>	<b>Capacity (MW)</b>	<b>Energy (GWh)</b>	<b>Online Date</b>	<b>Location</b>
Blue Lake	Biomass	10	11	90	4/1/2009	Humboldt County, CA

SDG&E’s renewable PPA is for biomass capacity from a repowered facility and complies with the RPS procurement guidelines. SDG&E’s request for approval of the renewable resource procurement contract is granted pursuant to D.07-02-011 which approved SDG&E’s 2007 RPS Procurement Plan and the bilateral contracting guidelines set forth in D.03-06-071 and D.06-10-019. The energy acquired from the PPA will count towards SDG&E’s RPS requirements.

Deliveries from this contract are reasonably priced and fully recoverable in rates over the life of the contract; subject to Commission review of SDG&E'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 Renewables Portfolio Standard (RPS) Program was established by Senate Bill 1078<sup>1</sup> and codified by California Public Utilities Code Section 399.11, et seq. The statute requires that a retail seller<sup>2</sup> of electricity, such as SDG&E, purchase a certain percentage of electricity generated by eligible renewable energy resources (ERR). Originally, each retail seller was required to increase its total procurement of ERRs by at least 1 percent of annual retail sales per year so that 20 percent is reached, subject to the Commission's rules on flexible compliance, no later than 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, 2004<sup>3</sup>, which encouraged the utilities to procure cost-effective renewable generation in excess of their RPS annual procurement targets<sup>4</sup> (APTs), in order to make progress towards the goal

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<sup>1</sup> <http://www.energy.ca.gov/portfolio/documents/SB1078.PDF>

<sup>2</sup> Includes electrical corporations, community choice aggregators and electric service providers

<sup>3</sup> [http://www.cpuc.ca.gov/Published/Final\\_decision/36206.htm](http://www.cpuc.ca.gov/Published/Final_decision/36206.htm)

<sup>4</sup> 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.

expressed in the EAP.<sup>5</sup> On September 26, 2006, Governor Schwarzenegger signed Senate Bill 107, which officially accelerates the State's RPS targets to 20 percent by 2010.<sup>6</sup>

### **The Commission has established procurement guidelines for the RPS Program**

The Commission has issued a series of decisions that describe the regulatory and transactional framework of the RPS 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. On June 9, 2004, the Commission adopted its Market Price Referent (MPR) methodology<sup>7</sup> for determining the Utility's share of the RPS seller's bid price, as defined in Pub. Util. Code Sections 399.14(a)(2)(A) and 399.15(c). The Commission also adopted standard terms and conditions for RPS power purchase agreements in D.04-06-014 as required by Pub. Util. Code Section 399.14(a)(2)(D). Instructions for evaluating the value of offers made in response to each RPS solicitation were provided in D.04-07-029.

More recently, on December 15, 2005, the Commission adopted D.05-12-042 which refined the MPR methodology for the 2005 RPS Solicitation.<sup>8</sup> Subsequent resolutions adopted MPR values for the 2005, 2006 and 2007 RPS Solicitations.<sup>9</sup> In addition, D.06-10-050, as modified by D.07-03-046, further refined the RPS reporting and compliance methodologies.<sup>10</sup> In this decision, the Commission established methodologies to calculate an LSE's initial baseline procurement

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<sup>5</sup> Most recently reaffirmed in D.06-05-039

<sup>6</sup> SB 107, Chapter 464, Statutes of 2006

<sup>7</sup> D.04-07-015

<sup>8</sup> [http://www.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/52178.pdf](http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/52178.pdf)

<sup>9</sup> Respectively, Resolution E-3980:

[http://www.cpuc.ca.gov/WORD\\_PDF/FINAL\\_RESOLUTION/55465.DOC](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](http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/63132.doc), Resolution E-4110: [http://www.cpuc.ca.gov/word\\_pdf/FINAL\\_RESOLUTION/73594.pdf](http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/73594.pdf)

<sup>10</sup> D.06-10-050, Attachment A,

[http://www.cpuc.ca.gov/WORD\\_PDF/FINAL\\_DECISION/61025.PDF](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](http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/65833.PDF)).

amount, annual procurement target (APT) and incremental procurement amount (IPT).<sup>11</sup>

In addition, the Commission has implemented Pub. Util. Code 399.14(b)(2), which states that before the Commission can 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 (long-term contracts) or from new facilities commencing commercial operations on or after January 1, 2005." On May 3, 2007, the Commission approved D.07-05-028, which established a minimum percentage of the prior year's retail sales (0.25%) that must be procured with contracts of at least 10 years' duration or from new facilities in order for short-term contracts to be used towards RPS compliance.

While the focus of the RPS program is procurement through competitive solicitations, D.03-06-071<sup>12</sup> 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 eligible for Supplemental Energy Payments (SEPs) since SEPs are funded through PGC funds and that bilateral contracts must be deemed reasonable. Further, the decision requires bilateral contracts of any length must be submitted to the Commission for approval by advice letter.<sup>13</sup>

Since D.06-10-019 was adopted, SB 1036<sup>14</sup> halted the portion of the PGC fund collection that went to the SEP fund, returned the collected SEPs to the utilities,

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<sup>11</sup> 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.

<sup>12</sup> [http://www.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/27360.htm](http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/27360.htm)

<sup>13</sup> D.06-10-019 pp. 31

<sup>14</sup> [http://info.sen.ca.gov/pub/07-08/bill/sen/sb\\_1001-1050/sb\\_1036\\_bill\\_20071014\\_chaptered.pdf](http://info.sen.ca.gov/pub/07-08/bill/sen/sb_1001-1050/sb_1036_bill_20071014_chaptered.pdf)

and moved above-MPR cost recovery to the Commission.<sup>15</sup> While SB 1036 reformed the SEP process, the bilateral contracts are still ineligible for AMFs.<sup>16</sup>

As D.06-10-019 notes, the Commission will be developing evaluation criteria for bilateral RPS contracts.<sup>17</sup> In the interim, however, utilities' bilateral contracts may be approved as long as they follow the three requirements mentioned above:

- the contract is submitted for approval by advice letter
- the contract does not receive AMFs
- the contract be deemed reasonable by the Commission.

### **Governor Schwarzenegger's Executive Order encourages bioenergy development**

Governor Schwarzenegger's Executive Order S-06-06 encourages bioenergy development in California, stating that "sustained biomass development offers strategic energy, economic, social and environmental benefits to California, creating jobs through increased private investment within the state." The Executive Order encourages the Commission to "initiate a new proceeding or build upon an existing proceeding to encourage sustainable use of biomass and other renewable resources." SDG&E's PPA with BLP represents an opportunity for the Commission to promote near-term biomass development in California.

### **SDG&E requests approval of new renewable energy PPA**

On June 27, 2008, SDG&E filed AL 2000-E requesting Commission approval of a renewable procurement contract with Blue Lake Power, LLC (BLP). The PPA results from bilateral negotiations. The Commission's approval of the PPA will authorize SDG&E to accept future delivery of incremental renewable generation,

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<sup>15</sup> See Resolution E-4160

[http://docs.cpuc.ca.gov/WORD\\_PDF/FINAL\\_RESOLUTION/81476.PDF](http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/81476.PDF)

<sup>16</sup> Pub. Util. Code §399.15(d)(2)(A).

<sup>17</sup> Second Amended Scoping Memo and Ruling of Assigned Commissioner, <http://docs.cpuc.ca.gov/efile/RULC/79195.pdf>

which will contribute towards the 20 percent renewables procurement goal required by California's RPS statute.<sup>18</sup>

### **SDG&E requests final "CPUC Approval" of Contract**

SDG&E requests that the Commission issue a resolution containing the findings necessary for "CPUC Approval" as defined in Appendix A of D.04-06-014. In addition, SDG&E requests that the Commission issue a resolution that finds the following:

1. Approval of the Proposed Agreement without modification, including approval of full cost recovery in rates of all payments to be made by SDG&E, subject to Commission review of SDG&E's administration of the Agreements; and
2. Any generation procured pursuant to the Proposed Agreement constitutes generation from an eligible renewable energy resource for purposes of determining SDG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard program (Public Utilities Code §§ 399.11, et seq. or other applicable law) and relevant Commission decisions.

Additionally, SDG&E requests that (i) the Commission expressly acknowledge in the resolution adopting the Proposed Agreement the importance of acting to mitigate any negative impact on SDG&E's balance sheet and/or credit profile caused by application of debt equivalence and/or FIN 46(R) requirements; and (ii) the Commission affirm that to the extent the Proposed Agreement negatively affects SDG&E's credit rating, the Commission will seek to mitigate such impacts through expeditious consideration of the relevant capital structure adjustment application filed by SDG&E pursuant to D.08-05-035<sup>19</sup>.

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<sup>18</sup> California Pub. Util. 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 Commission decisions in Rulemaking (R.) 04-04-026, R.06-02-012, and R.06-05-027.

<sup>19</sup> D.08-05-035 Establishing a Multi-Year Cost of Capital Mechanism for the Major Energy Utilities  
([http://docs.cpuc.ca.gov/WORD\\_PDF/FINAL\\_DECISION/83554.PDF](http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/83554.PDF))

### **SDG&E's Procurement Review Group participated in review of the contract**

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.

The PRG for SDG&E consists of: California Department of Water Resources (DWR), the Commission's Energy Division, Union of Concerned Scientists (UCS), Division of Ratepayer Advocates (DRA), and The Utility Reform Network (TURN).

SDG&E provided its PRG with reports on the BLP project on two occasions. The first briefing occurred on April 17, 2008. SDG&E provided an additional briefing on May 15, 2008. These presentations included a general overview of the negotiated terms and conditions, rationale for selection, and assessment of the price of the PPAs.

None of the PRG members expressed any objection to the price or terms of the proposed PPA, as presented. A PRG member did raise the issue of the project being located in an area where there is the potential for transmission congestion. Although Energy Division is a member of the PRG, it reserved its conclusions for review and recommendation on the contracts to the resolution process.

### **NOTICE**

Notice of AL 2000-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section IV of General Order 96-B.

### **PROTESTS**

Advice Letter 2000-E was protested.

SDG&E's Advice Letter AL 2000-E was timely protested by Independent Energy Producers Association (IEP) on July 17, 2008.

IEP does not object to the project or PPA. IEP protests, however, SDG&E's request concerning the treatment of debt equivalence. Specifically, IEP objects to SDG&E's request for the Commission to recognize that SDG&E may need to take action to mitigate possible negative effects this PPA may have on its credit rating due to application debt equivalence and/or FIN 46(R). IEP argues that SDG&E's request either repeats SDG&E's existing authority, or SDG&E is seeking to modify the Commission's decision on this issue. Thus, IEP recommends that the Commission reject SDG&E's request regarding treatment of debt equivalence.

SDG&E responded to IEP's protest on July 24, 2008. SDG&E argues that its request is reasonable and necessary. Additionally, SDG&E argues that its request is not an attempt to modify D.08-05-035; rather, SDG&E's request is intended to provide the Commission with notice of the actions SDG&E will take if this PPA negatively impacts its credit rating.

## **DISCUSSION**

The following table summarizes the substantive features of the PPA. See confidential Appendix C for a detailed discussion of contract terms and conditions.

<b>Generating facility</b>	<b>Type</b>	<b>Term Years</b>	<b>Capacity (MW)</b>	<b>Energy (GWh)</b>	<b>Online Date</b>	<b>Location</b>
Blue Lake	Biomass	10	11	90	4/1/2009	Humboldt County, CA

### **Energy Division examined the PPA on multiple grounds:**

- Consistency with SDG&E's Commission adopted 2007 RPS Procurement Plan
- Compliance with RPS bilateral guidelines
- Conformance to Commission adopted Standard Terms and Conditions
- Sufficient showing the project is viable
- Sufficient showing the project's contract price is reasonable

### **PPA is consistent with SDG&E's Commission adopted 2007 RPS Plan**

California's RPS statute requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.<sup>20</sup> SDG&E's 2007 RPS procurement plan (Plan) was approved by D.07-02-011 on February 15, 2007.<sup>21</sup> Pursuant to statute, SDG&E's 2007 RPS Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.<sup>22</sup>

### PPA is consistent with identified resource needs

SDG&E's 2007 RPS RFO focused on developing and maintaining a diverse renewable portfolio that also best fits its resource needs. SDG&E's 2007 RPS RFO sought a diverse mix of renewable technologies and allowed a combination of both power purchase and ownership options. The 2007 RFO also solicited capacity and energy services from repowered, upgraded, or new facilities. Projects could include unit firm or as-available deliveries starting in 2008, 2009, 2010 or 2011. If approved, the 11 MW repowered Blue Lake facility is expected to begin firm deliveries in 2009 of 90 GWh per year of biomass generation.

### **PPA is consistent with RPS procurement guidelines**

The proposed PPA is consistent with Commission decisions<sup>23</sup> regarding RPS bilateral contracts for the following reasons:

- 1) the PPA does not require above-market funds;
- 2) the PPA was filed by advice letter;

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<sup>20</sup> Pub. Util. Code, Section §399.14

<sup>21</sup> [http://docs.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/64640.htm](http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/64640.htm)

<sup>22</sup> Pub. Util. Code, Section §399.14(a)(3)

<sup>23</sup> "[The CPUC]...will allow prudent bilateral contracts only when such contracts do not require any PGC funds" (D.03-06-071 p. 59, CoL 31, OP 29). "For now, utilities' bilateral RPS contracts, of any length, must be submitted for approval by advice letter. Such contracts are not subject to the MPR, which applies to solicitations, but they must be reasonable (D.03-06-017, *mimeo.*, p. 59)... The PPA is at least one month in duration (D.06-10-019 p. 29). No bilateral contracts are currently eligible for SEPs." (D.06-10-019, pp.31-32).

- 3) the Commission deems the PPA reasonable; and
- 4) the PPA's term length is longer than one month in duration.

The Commission intends to adopt more explicit reasonableness review standards and criteria for RPS bilateral contracts in a future decision. Until such decision is approved, the Commission will continue to consider the approval of RPS bilateral contracts on a case-by-case basis.

### **Consistency with adopted Standard Terms and Conditions**

The Commission set forth Standard Terms and Conditions (STC) to be incorporated into RPS agreements, including bilateral contracts, in D.04-06-014 and several subsequent decisions<sup>24</sup>. Several STCs were identified in confidential Appendix B of D.04-06-014 as "may not be modified". On November 16, 2007, the Commission adopted D.07-11-025, which reduced the number of non-modifiable terms from nine to four, and refined the language of some of these terms in response to an amended petition for modification of D.04-06-014.<sup>25</sup> The Commission compiled the most updated STCs in D.08-04-009.<sup>26</sup>

The remaining non-modifiable STCs include "CPUC Approval", "RECs and Green Attributes", "Eligibility" and "Applicable law".

#### "May Not be Modified" Terms

The PPA does not deviate from the non-modifiable terms and conditions.

#### "May be Modified" Terms

During the course of negotiations, the parties identified a need to modify some of the modifiable standard terms in order to reach agreement. All of these terms

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<sup>24</sup> D.07-02-011 (as modified by D.07-05-057), and D.07-11-025 Attachment A  
[http://docs.cpuc.ca.gov/WORD\\_PDF/FINAL\\_DECISION/75354.PDF](http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/75354.PDF)

<sup>25</sup> On February 1, 2007, PG&E and SCE jointly filed a petition for modification of D.04-06-014. On May 22, 2007, a PD was filed and served. Prior to the PD being voted on by the Commission, PG&E and SCE filed an amended petition for modification of D.04-06-014.

<sup>26</sup> [http://docs.cpuc.ca.gov/WORD\\_PDF/FINAL\\_DECISION/81269.PDF](http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/81269.PDF)

had been designated as subject to modification upon request of the bidder in Appendix A of D.08-04-009.

### **PPA is for a viable project**

SDG&E believes the project is viable for the following reasons:

#### Project History and Status

Blue Lake Power, a subsidiary of Continental Resource Solutions, bought the Blue Lake plant from North American Power Group.<sup>27</sup> Ultrapower 3<sup>28</sup> successfully developed and operated the plant from 1985 to 1999.<sup>29</sup> Energy generated from the plant was sold to PG&E under a 30-year Interim Standard Offer 4 (ISO4) contract. The contract was restructured and terminated in 1999. The plant ceased operation in 2000.<sup>30</sup> Blue Lake Power is repowering the facility and reports that the project is on schedule to begin deliveries as scheduled.

#### Site Control and Permitting

Full site control has been obtained. All major permits necessary to achieve commercial operation have been filed and are on schedule.

#### Technology and Fuel Quality

Biomass is a proven technology. BLP is currently stockpiling fuel. BLP plans to arrange long-term fuel supply by capitalizing on the forest management experience of its development team.

#### Developer experience

BLP is a group of professional engineers, professional foresters, and power industry financial and legal personnel all having substantial experience in the

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<sup>27</sup> "Owner Looking to Bring Blue Lake Power Plant On Line" *The Times-Standard* 18 September 2008

<sup>28</sup> North American Power Group owned 100 percent of the outstanding stock of Ultrapower 3

<sup>29</sup> Resolution E-3657

<sup>30</sup> AL 2000-E, filed June 27, 2008, p.11

alternative energy industry. BLP will draw upon its experience in re-starting and operating a similar biomass facility in Burney, CA.

#### Production Tax Credit (PTC)

BLP intends to utilize PTCs for the project.

#### Financing

The developer is pursuing financing for the project.

#### Transmission

The developer plans to use the existing interconnection arrangement at the facility and the existing PG&E owned tie-line. It is not expected that the project will require any network upgrades.

#### **Contract Price is Reasonable**

The contract price is reasonable. The levelized all-in contract price is below the 2007 MPR<sup>31</sup> and compares favorably to bids received in the 2007 RPS solicitation. Confidential Appendix D includes a discussion of the contract's pricing terms.

#### **Qualitative factors were considered during project evaluation**

SDG&E considered qualitative factors (e.g. credit and finance, project status, technology viability and participant experience, and consistency with RPS goals) during project evaluation.

#### **Commission adopted minimum quotas for long-term RPS contracting**

Pub. Util. Code 399.14(b)(2) states that before the Commission can approve an RPS PPA 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 PPAs 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.07-05-028<sup>32</sup> which established a

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<sup>31</sup> Resolution E-4118, Adopting the 2007 MPR, October 4, 2007,  
[http://docs.cpuc.ca.gov/PUBLISHED/Final\\_resolution/73594.htm](http://docs.cpuc.ca.gov/PUBLISHED/Final_resolution/73594.htm)

<sup>32</sup> [http://www.cpuc.ca.gov/WORD\\_PDF/FINAL\\_DECISION/67490.PDF](http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/67490.PDF)

minimum percentage of the prior year's retail sales that must be contracted with contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005. As a repowered, long-term PPA, deliveries from this project will contribute to SDG&E's minimum quota requirement.

### **IEP's protest is accepted**

IEP's protest of AL 2000-E recommends the Commission should reject SDG&E's request concerning the treatment of debt equivalence. IEP argues SDG&E's request is redundant and unnecessary. IEP additionally argues SDG&E's request is not warranted since SDG&E has not shown that its credit ratings will be affected by any debt equivalence associated with the PPA. In its reply comments, SDG&E asserts that the request is reasonable since each PPA that SDG&E signs negatively impacts SDG&E's credit ratios and credit profile. Thus, SDG&E argues it is reasonable to provide notice to the Commission and have the Commission recognize the potential implications of the PPA on SDG&E's credit rating.

As IEP's protest notes, debt equivalence was addressed in D.07-12-052<sup>33</sup>, wherein the Commission established a mechanism for the utilities to make any needed adjustments if debt equivalence or other risks reach a level that affects a utility's credit rating. Additionally, in D.08-05-035, the Commission provides the authority for an IOU to file an application to adjust its capital structure in order to preserve its existing credit rating. The Commission agrees that there is an established process for treatment of debt equivalence outside the request and approval process of PPAs. As such, SDG&E's request for Commission acknowledgement and affirmation related to the PPA's effect on SDG&E's credit rating is not granted. The acceptance of IEP's protest, however, does not affect the Commission's approval of the PPA.

### **Confidential information about the contract should remain confidential**

Certain contract details were filed by SDG&E under confidential seal. Energy Division recommends that certain material filed under seal pursuant to Public

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<sup>33</sup> Opinion Adopting Pacific Gas and Electric Company's, Southern California Edison Company's, and San Diego Gas & Electric Company's Long-Term Procurement Plans (D.07-12-052) [http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/76979.pdf](http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/76979.pdf)

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 or reduced. Accordingly, this draft resolution was mailed to parties for comments.

No comments were received.

## **FINDINGS**

1. The RPS Program requires each utility, including SDG&E, 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.03-06-071 allows for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process.
3. D.06-10-019 requires bilateral contracts to be filed for approval by the Commission by advice letter.
4. SDG&E filed Advice Letter 2000-E on June 27, 2008, requesting Commission review and approval of a bilateral power purchase agreements with BLP.
5. 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.
6. SDG&E provided its PRG with reports on April 17, 2008, and May 15, 2008.
7. Independent Energy Producers Association (IEP) filed a protest to AL 2000-E on July 17, 2008.
8. SDG&E filed a response to IEP's protest on July 24, 2008.

9. D.07-02-011 directed the utilities to issue their 2007 renewable RFOs, consistent with their renewable procurement plans.
10. The Commission has reviewed the proposed Blue Lake Power, LLC (BLP) contract and finds it to be consistent with SDG&E's approved 2007 renewable procurement plan.
11. The Commission has reviewed the proposed BLP contract and finds it to be consistent with bilateral procurement rules.
12. D.08-04-009 sets forth four non-modifiable and nine modifiable standard terms and conditions to be incorporated into RPS power purchase agreements, including bilaterals.
13. A levelized contract price below the 2007 MPR is considered *per se* reasonable as measured according to the net present value calculations explained in D.04-06-015, D.04-07-029, and D.05-12-048.
14. The contract price for the BLP contract is at or below the 2007 MPR released in Resolution E-4118.
15. The BLP contract price is reasonable.
16. The Commission accepts IEP's protest.
17. 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.
18. Procurement pursuant to this PPA constitutes 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.
19. Procurement pursuant to this PPA constitutes incremental procurement by SDG&E from an eligible renewable energy resource for purposes of determining SDG&E's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard, Commission Decision 03-06-071, or other applicable law.

20. AL 2000-E should be approved with modification; per D.07-12-052 and D.08-05-035, SDG&E's request regarding recovery of debt equivalence or FIN 46(R) costs is not approved.

**THEREFORE IT IS ORDERED THAT:**

1. Advice Letter 2000-E is approved with modification.
2. The costs of the contracts between SDG&E and Seller are reasonable and in the public interest; accordingly, the payments to be made by SDG&E are fully recoverable in rates over the life of the project, subject to CPUC review of SDG&E's administration of the PPAs.

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 November 21, 2008; 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**

### Overview of 2004 – 2007 Solicitation Bids

[REDACTED]

## **Confidential Appendix B**

### Ranking of 2007 Bids

[REDACTED]

# **Confidential Appendix C**

## Contract Summary

[REDACTED]

## Confidential Appendix D

Contract Price

[REDACTED]

## **Confidential Appendix E**

### Projects' Contribution to RPS Goals

[REDACTED]

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**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



October 22, 2008

I.D. #8046  
Draft Resolution E-4208  
November 21 Commission Meeting

TO: PARTIES TO DRAFT RESOLUTION E-4208  
(R.08-08-009)

Enclosed is draft Resolution E-4208 of the Energy Division addressing SDG&E's advice letter 2000-E. It will be on the agenda at the November 21, 2008 Commission meeting. The Commission may then vote on this Resolution or it may postpone a vote until later.

When the Commission votes on a draft Resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different Resolution. Only when the Commission acts does the Resolution become binding on the parties.

Parties may submit comments on the draft Resolution no later than Monday, November 12, 2008.

An original and two copies of the comments, with a certificate of service, should be submitted to:

Honesto Gatchalian  
Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
fax: 415-703-2200  
email: [ijnj@cpuc.ca.gov](mailto:ijnj@cpuc.ca.gov)

An electronic copy of the comments should be submitted to:

Cheryl Lee  
Energy Division  
[cnl@cpuc.ca.gov](mailto:cnl@cpuc.ca.gov)

Those submitting comments and reply comments must serve a copy of their comments on 1) the entire service list attached to the draft Resolution, 2) all Commissioners, and 3) the Director of the Energy Division.

Comments may be submitted electronically.

Comments shall be limited to five pages in length plus a subject index listing the recommended changes to the draft Resolution and an appendix setting forth the proposed findings and ordering paragraphs. Comments shall focus on factual, legal or technical errors in the proposed draft Resolution. Comments that merely reargue positions taken in the advice letter or protests will be accorded no weight and are not to be submitted.

Reply comments shall be served on parties and Energy Division no later than Monday, November 17, 2008 and may also be submitted electronically.

Late submitted comments or reply comments will not be considered.

Paul Douglas  
Project and Program Supervisor  
Energy Division

Attachment:  
Certificate of Service

## CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of Draft Resolution E-4208 on all parties in these filings or their attorneys as shown on the attached list.

Dated October 22, 2008 at San Francisco, California.

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Maria Salinas

## NOTICE

Parties should notify the Energy Division, Public Utilities Commission, 505 Van Ness Avenue, Room 4002 San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the Resolution number on the service list on which your name appears.