STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

F I L E D
05-20-11
02:10 PM

May 20, 2011

Agenda ID #10425
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 10-07-017

This is the proposed decision of Administrative Law Judge (ALJ) Jean Vieth, previously designated as the presiding officer in this proceeding. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Upon the request of any Commissioner, a Ratesetting Deliberative Meeting (RDM) may be held. If that occurs, the Commission will prepare and publish an agenda for the RDM 10 days beforehand. When the RDM is held, there is a related ex parte communications prohibition period. (See Rule 8.2(c)(4).)

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Jean Vieth at xjv@cpuc.ca.gov and assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:lil

Attachment

Decision **PROPOSED DECISION OF ALJ VIETH** (Mailed 5/20/2011)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902E) to Amend Renewable Energy Power Purchase Agreement with NaturEner Rim Rock Wind Energy, LLC and for Authority to Make a Tax Equity Investment in the Project.	Application 10-07-017 (Filed July 15, 2010)

DECISION APPROVING SETTLEMENT SUBJECT TO CONDITION

1. Summary

Subject to one condition designed to protect the public interest, we approve the all-party settlement which, among its terms, authorizes San Diego Gas & Electric Company (SDG&E) ratepayers and shareholders to make a tax equity investment in what is known as the Rim Rock wind project. Major settlement terms include the following: reducing the Rim Rock power purchase agreement (PPA) from 309 megawatts (MW) to 189 MW, imposing a quantified price cap on the green attributes associated with the PPA, reducing ratepayer funding to no more than $250 million (from the initial request for as much as $600 million), making repayment of shareholder investment subordinate to repayment of ratepayer investment, and ensuring oversight of SDG&E's further due diligence. SDG&E also agrees to limit its future pursuit of Tradable Renewable Energy Credits that are only tangentially associated with California. We condition our approval to require that should the parties negotiate an

increase in SDG&E's rate of return under specified settlement provisions, they must seek Commission approval through a petition for modification of today's decision. Finally, we authorize the filing under seal of certain confidential information in the settlement as well as the transactions documents attached to the settlement.

2. Procedural History

The following entities filed timely protests to the application: the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), and the Western Power Trading Forum (WPTF). Independent Energy Producers (IEP) filed a response, which also raised concerns. San Diego Gas & Electric Company (SDG&E) filed a reply to address each of the protests and the response.

Following a prehearing conference (PHC) on September 15, 2010, the Assigned Commissioner issued a timely scoping memo, which set this matter for evidentiary hearing.[1] Hearings were held in San Francisco on December 13-17, 2010, as scheduled. Four parties participated, SDG&E, NaturEner Rim Rock Wind Energy, LLC (Rim Rock), DRA and TURN (the active parties). After requesting and receiving several extensions to the briefing schedule (by Administrative Law Judge (ALJ) rulings on January 19, February 3, February 14, March 4, and March 17, 2011), the active parties reached a settlement, noticed and held a settlement conference, and on April 8, 2011, filed a joint motion requesting adoption of their settlement.[2] The ALJ set a schedule for comments on the motion and joint settlement, but no comments or reply

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[1] *Assigned Commissioner's Ruling and Scoping Memo*, September 29, 2010.

[2] The public version of the settlement is attached to today's decision as Appendix 1.

comments were filed. The case was submitted on April 29, 2011, the day reply comments on the motion and joint settlement were due.

Concurrently on April 8, 2011, SDG&E and Rim Rock jointly filed a motion seeking leave to file portions of the settlement under seal. No responses to the motion were filed.

3. Summary of Authority Sought

3.1. Resolution E-4277

Commission Resolution E-4277 approved, without modification, SDG&E's Advice Letter 2088-E for a power purchase agreement (PPA) consisting of a bilateral contract between SDG&E and Rim Rock.[3] The public version of E-4277 lists pertinent details of the PPA in table format.

Generating facility	Technology Type	Term (Years)	Minimum Capacity (MW)	Minimum Energy (GWh)	Commercial Operation Date	Location
Rim Rock	Wind, new	15	300	1,053	December 31, 2010	Kevin, Montana

The public version of E-4277 does not disclose the contract price but finds that it is reasonable, stating:

> The Rim Rock contract price is at or below the 15-year 2008 MPR [market price referent] for a facility beginning operation in 2011. [citation omitted] Additionally, Confidential Appendix B shows that the Rim Rock contract price compares favorably both to all bids in SDG&E's 2008 solicitation as well as to its short-listed

[3] *See* Resolution E-4277, November 20, 2009, at 1 and Ordering Paragraph 1.

bids. Confidential Appendix C includes a detailed discussion of the contractual pricing terms.[4]

E-4277 also finds that that the project is viable "relative to other projects that were bid into SDG&E's 2008 RPS [renewables portfolio standard] solicitation."[5]

Power generated by the Rim Rock project is intended to meet part of SDG&E's RPS procurement goal under the California RPS Program, codified at Public Utilities Code § 399.11 et seq.[6] Given Rim Rock's Montana location, the PPA provides for the following purchase/sale/delivery mechanism, which the California Energy Commission (CEC) has verified as RPS eligible. SDG&E ratepayers will pay for the power produced when Rim Rock is online and generating but will sell the null power[7] back to the project company, which in turn will resell the null power into the energy markets in Alberta, Canada. SDG&E will retain the green attributes in the form of Renewable Energy Credits (RECs). It is these RECs that will be delivered to California under the CEC's RPS deliverability guidelines.

3.2. The July 15, 2010 Application

In the application filed July 15, 2010, SDG&E requests several amendments to the PPA, as well as authority to make a tax equity investment in the project

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[4] Resolution E-4277 at 10; *see* also Finding 12.

[5] Resolution E-4277, Finding 13.

[6] All subsequent references to a statute or statutes mean the Public Utilities Code unless further specified.

[7] Null power is a term used to describe energy stripped of all of the environmental and renewable attributes – also called green attributes -- of renewable electricity.

and to hedge null power sales for a term of up to ten years in order to ensure price stability (SDG&E's present hedging authority is limited to five years). The proposed PPA amendments include:

- An increase in the PPA's term to 20 years;
- Changes to the PPA to allow the project to be built in phases;
- Deferral of the PPA's commercial operation date to no later than December 31, 2012;[8]
- Modification of the PPA's green attributes price to authorize a cost-based price that would not exceed an agreed upon price cap, to be fixed after Commission approval of the application and just prior to the project's "Construction Financial Closing," as defined; and
- Authority to make a tax equity investment of up to $600 million in the project holding company that would develop the project.

As the application explains:

> The federal government offers significant tax incentives to assist in the development of renewable resources. First, Production Tax Credits ("PTCs") are direct dollar-for-dollar reductions in an investor's tax liability. A wind project will generate a benchmark PTC of $15 for each megawatt hour of electricity produced; this benchmark is escalated annually for inflation and currently stands at $22 for 2010. Next, the Modified Accelerated Cost Recovery System ("MACRS") allows for faster recovery of the costs of a wind energy facility. Most of the facility can be depreciated within five years, rather than the normal 20-25 year book life of the equipment. PTCs and MACRS together provide investors with a very large percentage – nearly 45% - of the return on their investment. (Application at 3-4.)

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[8] Commercial operation must begin no later than December 21, 2012 for the project to be eligible for production tax credits (PTCs).

While traditionally, tax equity investors have been large investment or commercial banks (which typically have large "appetites" for tax credits and low financing costs), in the current economic climate not only is credit tight, but many of these entities are experiencing reduced tax appetites. The result is that low cost financing continues to be scarcer than before, which has had a negative impact on renewable energy project development.

SDG&E filed its application against this backdrop. The application states:

> While in years past the utility rate of return had been higher than rates charged by financial institutions, that relationship has now been reversed. SDG&E can offer renewable projects lower financing and these savings can be passed through directly to ratepayers. (Application at 5.)

The application goes on to describe the proposed financing arrangement:

> The structure of this proposed transaction … is common for renewable generation projects in contrast with conventional (non-renewable) generation. The key difference that allows for this sharing of the project ownership between the IPP [independent power producer] and the utility is the role of tax equity – tax equity is fundamental to an RPS project. The financing of renewables is generally 100% equity financing, whereas financing of conventional generation is a combination of debt and equity. The debt in a renewables project is replaced by funds from a tax equity investor who will monetize the PTCs and depreciation in the project as part of the return on and of their investment. In this case, SDG&E would simply be a tax equity investor, taking on the role typically played by a financial institution. (Application at pp 5-6.)

Fundamental to a tax equity investment structure is the concept of partnership "flip." Under the typical tax equity investor/developer partnership, the investor receives as much as 99% of the benefit stream (e.g., tax credits, depreciation, cash) for some pre-determined period; thereafter the benefit streams switches (or flips) in the favor of the developer, who retains the ownership stake in the project and receives the majority of all subsequent proceeds.

At the PHC, SDG&E and Rim Rock represented that absent the new tax equity authority and the other proposed amendments to the PPA, the Rim Rock wind project would be unlikely to proceed. Consistent with their protests, DRA and TURN raised a number of concerns about the application. TURN argued that the Commission should reject the application. In TURN's view the proposed tax equity investment offered few benefits but created new and hard-to-quantify risks for ratepayers. TURN also argued that if amended as SDG&E proposed, the PPA would violate the then-existent moratorium on Tradable RECs (also known as TRECs).[9] DRA declined to make a definitive recommendation until after it completed discovery but identified several potentially troublesome issues associated with the proposed tax equity investment, including SDG&E's treatment of cost items, ratemaking proposals, the adequacy of ratepayer protections, and whether the tax equity investment would provide disproportionate benefits to SDG&E shareholders.

[9] Decision (D.) 11-01-025 lifts this moratorium.

The scoping memo recognizes that this application, which is the first tax equity investment proposal by an investor-owned utility to come before the Commission, raises a number of unique factual and legal issues. The factual issues identified largely focus on the complicated and complex cost implications of the relief requested, including corresponding ratepayer/shareholder risks and benefits, and whether one or more reasonable alternatives exist. The legal issues identified focus on whether the application as proposed is consistent with law and Commission policy.

The four active parties -- SDG&E, Rim Rock, DRA and TURN -- all sponsored witnesses at hearing, with DRA and TURN both recommending that the Commission deny the application. DRA and TURN strongly opposed a number of major elements of the tax equity proposal. They argued that:

- the size of the proposed tax equity investment -- up to $600 million financed by SDG&E's ratepayers (equivalent to approximately 79.99% of the total project costs) – was simply too large;
- the tax equity proposal exposed ratepayers to limited upside, but substantial risk, and correspondingly provided SDG&E's shareholders substantial benefit, but relatively little or no risk; and
- the proposal contained a serious structural flaw, in that SDG&E sought to obtain final Commission approval to execute the amended PPA, even though the applicable green attribute price would not be determined until a later date and without any review of SDG&E's subsequent due diligence or the inputs used in the final Base Case Model to calculate the final green attributes price.

3.3. Joint Settlement

The active parties ask the Commission to approve their settlement (attached to today's decision as Appendix 1), which resolves all disputed issues among them, and to authorize amendment of the PPA as specified in the settlement. Accordingly, they now expressly agree that the PPA should be modified as proposed in the application to increase the PPA's term to 20 years, impose a quantified price cap on the green attributes associated with the PPA, permit the project to be built in phases, defer the PPA's commercial operation date to no later than December 31, 2012, and permit hedging for terms of up to ten years. To address the concerns registered by DRA and TURN, other settlement provisions depart markedly from the proposal in the application and constitute significant concessions by SDG&E and Rim Rock. Specifically, the active parties now mutually agree that:

- SDG&E's purchase commitment should be reduced from 309 megawatts (MW) to 189 MW, a reduction of over 35%. This decrease directly reduces SDG&E's total project costs and, as described in the next bullet, is one factor that reduces total ratepayer investment. (*See* Appendix 1, § 2(a).)
- The percentage of project costs to be funded through ratepayer investment should be decreased from 79.99% (as proposed in the application) to less than 65%. The reduction in project costs, together with the cap on ratepayer investment at less than 65%, results in total ratepayer investment of no more than $250 million, compared to the application's request that ratepayer's fund an amount up to $600 million. (*See* Appendix 1, § 2(f)(i).)
- SDG&E shareholders should make a tax equity investment equal to no less than 10% of the project costs. This provision, developed in response to criticisms from DRA and TURN that SDG&E shareholders should "have skin in the game" in order to better balance respective benefits and risks, means that SDG&E shareholders, like ratepayers, are subject to reduced

returns or possible loss in the event the project fails to perform in accordance with projections. (*See* Appendix 1, § 2(f)(iii).)

- Relevant transaction documents have been restructured to make recovery of shareholder investment subordinate to recovery of ratepayer investment by providing that ratepayer investment will be repaid first. (*See* Appendix 1, § 2(g).) This provision also serves to further rebalance risks and benefits for SDG&E shareholders and ratepayers.
- SDG&E guarantees ratepayer neutrality (i.e., that costs to ratepayers of the rate-based investment compared to project benefits will not exceed a zero net present value). SDG&E must file periodic reports to ensure that its ratemaking is consistent with these (and other) settlement terms. (*See* Appendix 1, § 2(h).)
- SDG&E and Rim Rock should provide DRA, TURN, and the Director of the Commission's Energy Division with various reports containing updated information about the key inputs in the run of the Base Case Model leading up to Construction Financial Closing (e.g. the energy price forecast for the Alberta Electric System Operator markets and the projected capacity factor for the Rim Rock wind generators), and should provide DRA and TURN with an opportunity to review and question these key inputs. (*See* Appendix 1, § 3.)
- Should the parties be unable to resolve, informally, future disputes that may arise among them regarding implementation of the settlement, they should engage in alternate dispute resolution with the assistance of the Director of the Commission's Energy Division, pursuant to the terms of the settlement. (*See* Appendix 1, § 3(j).)
- SDG&E commits (with some exceptions) not to procure any incremental TRECs from projects that are neither directly connected nor dynamically scheduled to a California-based balancing area authority, such as the California Independent System Operator and others, if such procurement would mean that more than 25% of SDG&E's REC purchases though 2017 consisted of TRECs. (*See* Appendix 1, § 4.)

4. Standard of Review

4.1. Timeliness

Rule 12.1(a) of the Commission's Rules of Practice and Procedure (Rules) provides that parties may file settlements "by written motion any time after the first prehearing conference and within 30 days after the last day of hearing…." However, Rule 1.2 permits "liberal" construction of the Commission's rules in the interests of justice and expressly authorizes "deviations" from the rules for good cause. Though the active parties filed their settlement some four months after hearings, they have established good cause for doing so. They remained in regular contact with the ALJ, sought timely modifications of the established schedule, and diligently pursued negotiations on the complex issues this application raises. Rule 12.1(a) should be waived here; accordingly, the settlement is timely.

4.2. Grounds for Approval

To approve a settlement, Rule 12.1(d) provides that the Commission must find that the settlement is "reasonable in light of the whole record, consistent with the law, and in the public interest."

Depending upon the matter at hand, the Commission may examine a number of factors in making a determination under Rule 12.1(d). These may include: (1) the risk, expense, complexity and likely duration of further litigation, (2) whether the settlement negotiations were at arms-length, (3) whether major issues were addressed, and (4) whether the parties were adequately represented.[10]

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[10] *See* D.10-10-035 (citing D.88-12-083, (1988) 30 CPUC2d 189, 222).

When presented with an all-party settlement, the Commission initially focuses upon the following, particular considerations and asks whether: (1) the settlement commands the unanimous sponsorship of all active parties to the proceeding; (2) the sponsoring parties are fairly representative of the affected interests; (3) no term of the settlement contravenes statutory provisions or prior Commission decisions; and (4) the settlement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.[11]

5. Discussion: with One Condition, the Parties' Settlement is Reasonable and Should be Approved

We address, separately, the first two requirements of all-party settlements and then follow with a discussion of the remaining two requirements as part of a broader assessment of the legal and policy merits of the settlement consistent with Rule 12.1(d), including factors mentioned above (risks and expense of further litigation, whether negotiations were at arms-length, etc.). With a few minor exceptions (discussed below), we find that the settlement is reasonable in light of the record, consistent with law, and in the public interest. The problems we perceive can be corrected readily, and if the parties accept the condition we impose to mitigate those problems, the settlement should be approved.

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[11] *See San Diego Gas & Electric Company*, D.92-12-019, (1992) 46 CPUC2d 538, 550-551, which first articulated this standard. Subsequent decisions interpret the term "active parties" to refer to those parties that have participated in an ongoing, meaningful way. No Commission decision interprets the term to include every person or entity that, after obtaining party status, declined to participate further.

5.1. All Active Parties Sponsor Settlement

The settlement is an uncontested, all-party settlement. The four active parties -- SDG&E, Rim Rock, DRA and TURN – all sponsor the settlement. While the two other parties, WPTF and IEP, are not settlement signatories, they have not opposed the settlement and in fact, have participated only minimally after obtaining party status. WPTF filed an initial protest and attended the PHC, but did not participate at all beyond that. IEP filed a response and attended the settlement conference.

5.2. Sponsoring Parties Fairly Represent Affected Interests

The four active parties fairly represent the affected interests. SDG&E and Rim Rock represent, respectively, the purchasing utility and RPS developer interests in the current PPA and in the amendments to the PPA which the settlement proposes. DRA and TURN represent the interests of utility consumers and ratepayers and both are well-situated to assess the myriad policy ramifications of the settlement on those interests.

5.3. If Conditioned, Settlement is Reasonable and Consistent with Law and the Public Interest

The last two inquiries under the all-party analysis examine whether any settlement terms contravene statutory provisions or prior Commission decisions and whether the settlement contains sufficient information to permit the Commission to discharge its future regulatory obligations. Of course, as the parties recognize, this examination must permit the Commission to conclude, affirmatively, that the requirements of Rule 12.1(d) have been met. The parties highlight multiple factors to support their case that the settlement meets all criteria necessary for approval and we review these additional arguments below.

First, as the parties point out, the settlement expeditiously resolves issues that were litigated vigorously at hearing and which most assuredly would have been litigated further. Approval of the settlement will relieve the parties from filing opening and reply briefs and from continuing to litigate what was, and what otherwise would continue to be, a highly contested proceeding. In this respect the settlement is consistent with Commission policy favoring settlements,[12] which is designed to support "many worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results."[13]

Second, the parties assure us that settlement negotiations were conducted at arm's length and there is no evidence to suggest otherwise. Each party was represented by experienced counsel. Through the hearing stage, DRA and TURN, in opposition to the application, and SDG&E and Rim Rock, in support, aggressively advanced their respective positions via pleadings, prepared testimony and witness cross-examination. We are confident that this settlement is the product of arms-length negotiations.

Third, the parties assert that settlement agreement addresses all major issues raised in this proceeding and the substantial record developed permits the Commission to thoroughly assess the settlement's resolution of those issues. Each of the active parties engaged in detailed discovery, submitted expansive prepared testimony on behalf of their own witnesses (some ten persons, in total)

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[12] *See* D.09-10-046 at 8-9 ("There is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation.") (citing D.88-12-083).

[13] D.08-01-043 at 10 (citing D.05-03-022).

and cross-examined opposing witnesses over five days' time. The settlement is indeed comprehensive. A few provisions concern us, but we discuss those below, together with a condition that mitigates our concern.

Fourth, the parties state that the settlement process was conducted in full compliance with Article 12 of the Rules, which governs settlements, and we are aware of no evidence to the contrary. The parties likewise contend that the settlement is consistent with statutory provisions and prior Commission decisions and that it has been drafted to provide the Commission with sufficient information to allow the discharge of all future obligations. Though these assertions are made in good faith, they are difficult to fully corroborate in a matter as complex as this one. The provisions that concern us raise potential legal issues the parties have not addressed, but if conditioned, these become "non-issues."

Substantively, the settlement undisputedly reflects and incorporates numerous and significant concessions made by each of the active parties not only to remove opposition to, but also to gain support for, this first-ever proposal for tax equity investment by a California regulated utility. Under the settlement, if approved, SDG&E and Rim Rock can proceed with an 189 MW amended PPA, which will provide SDG&E's ratepayers with a substantial amount of green attributes at a quantified price cap, but with lower downside risk to those same ratepayers. To reduce perceived ratepayer risk, the settlement not only reduces the size of SDG&E's purchase obligation but also reduces the project's ratepayer funding, both in terms of absolute dollars (a reduction from as much as $600 million to no more than $250 million) but also as a percentage of total investment. The settlement also imposes real risk on SDG&E shareholders, by requiring that they also make an equity investment and by subordinating

repayment of their investment until after ratepayers' investment has been repaid. The settlement also ensures oversight at a critical implementation stage by establishing a process that enables DRA and TURN to review the Base Case Model, including the material inputs used to calculate the final green attributes price. Finally, the settlement establishes an alternative dispute resolution process to provide timely and speedy resolution, should disagreements arise among the parties in the future.

Thus, the settlement includes specific provisions designed to address DRA's and TURN's well-developed objections, while authorizing SDG&E and Rim Rock to proceed with a less expansive, less expensive (and less risky) plan for a tax equity investment in the project. We are concerned, however, with two parallel provisions that appear to delegate to the parties the ability to negotiate an increase in SDG&E's rate of return without setting any criteria for such a change and without requiring Commission review or approval of the change (Appendix 1, § 2(g)(ii) and (iii).[14] As a matter of public policy, we decline to endorse these provisions. Therefore, we need not examine the extent to which we could delegate, lawfully, that ratemaking authority or how doing so might limit our regulatory options in the future. Consistent with Rule 12.4(c), we provide the parties with notice of an acceptable alternative: should all parties agree to an increase in SDG&E's rate of return, they must file a petition to modify today's decision, pursuant to Rule 16.4.

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[14] We read these provisions differently than § 2(g)(v) or §3(c)(ii) in Appendix 1, for example. In the latter, timing changes are not criteria-free, but appear to rely much more directly upon the results produced by the Base Case Model.

With this condition, we conclude that the settlement advances the public interest by carefully rebalancing the various stakeholder interests at issue. On the whole, we conclude that the settlement enables the SDG&E tax equity investment to advance the "creativity, innovation, and vigor in program execution" that the Commission has requested the electric utilities to pursue in seeking to achieve their RPS procurement strategies.[15] The parties' careful drafting of the settlement and their generally thorough, detailed preparation of the joint motion requesting adoption of the settlement have hastened our review and significantly aided our timely assessment of the merits.

6. Remaining Evidentiary and Confidentiality Issues

The sole remaining evidentiary issue, receipt in evidence of the document marked for identification at hearing as TURN's Exhibit 151-CCC, is now moot. The ALJ had directed the parties to brief issues related to the admission of this highly confidential document, which concerns Performance Review Group data for another utility. Since TURN no longer seeks admission of the document, the ALJ should destroy the copy tendered at hearing and should not lodge it in the formal file.

The April 8, 2011, joint motion of SDG&E and Rim Rock raises the remaining confidentiality issues. SDG&E and Rim Rock seek to file under seal information redacted from the settlement, as well as all of Exhibit A to the settlement (consisting of the amended transaction documents), pursuant to § 454.5(g) and § 583, General Order 66-C, D.06-06-066, D.08-04-023 and Rule 11.4 of the Rules.

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[15] D.09-06-018, Ordering Paragraph 5.

D.06-06-066, as modified, establishes two matrices, one for investor-owned utilites (IOUs), the IOU Matrix, and one for energy service providers (ESPs), the ESP Matrix. Both matrices identify categories and sub-categories of data entitled to confidentiality and specify the nondisclosure terms applicable. The confidentiality afforded under the matrices is derived from statutory protections for non-public market sensitive and trade secret information, including authority set forth in § 454.5(g) and § 583, Government Code § 6254(k), and statutes referenced in the Commission's General Order 66-C. The party claiming protection under either matrix must show:

1) That the material it is submitting constitutes a particular type of data listed in the Matrix,

2) Which category or categories in the matrix the data correspond to,

3) That it is complying with the limitations on confidentiality specified in the Matrix for that type of data,

4) That the information is not already public, and

5) That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.[16]

[16] D.06-06-006, as modified by D.07-05-032, Ordering Paragraph 2.

In compliance with these requirements as applicable to the IOU Matrix, SDG&E and Rim Rock have attached to the motion as Exhibit B the declaration of SDG&E's witness Moftakhar, the Financial Planning Manager in the Financial Analysis Department. The declaration, which satisfactorily addresses each requirement for confidential treatment under the IOU matrix, includes this chart (at page 3):

Description of Data	**Matrix Category**	**Period of Confidentiality**
Settlement Agreement: Shaded data, C-RR	VII.G.	Contract Terms and Conditions Confidential for three years following delivery starts or until one year following expiration, whichever comes first.
Description of Data	**Matrix Category**	**Period of Confidentiality**
Confidential Exhibit A: First Amendment to the Participation Agreement, C-RR	VII.G	Contract Terms and Conditions Confidential for three years following delivery starts or until one year following expiration, whichever comes first.
Description of Data	**Matrix Category**	**Period of Confidentiality**
Confidential Exhibit A: Annex II Pricing Addendum, C-RR	VII.G VIII.A	Contract Terms and Conditions Confidential for three years following delivery starts or until one year following expiration, whichever comes first. Raw Bid Data -Always confidential.

Description of Data	Matrix Category	Period of Confidentiality
	VIII.B	Summaries of bids (total MW, MWH, technology types, etc) are confidential until final contracts are submitted to CPUC for approval. Quantitative Analysis in Scoring and Evaluation of Bids Confidential for three years after winning bidders selected.
Confidential Exhibit A: amended Table of Base Case Model Inputs, C-RR	VII.G VIII.A VIII.B	Contract Terms and Conditions Confidential for three years following delivery starts or until one year following expiration, whichever comes first. Raw Bid Data -Always confidential. Summaries of bids (total MW, MWH, technology types, etc) are confidential until final contracts are submitted to CPUC for approval. Quantitative Analysis in Scoring and Evaluation of Bids Confidential for three years after winning bidders selected.

Description of Data	Matrix Category	Period of Confidentiality
Confidential Exhibit A: Amended and Restated LLC Agreement of NaturEner Rim Rock Project Holding Company, C-RR	VII.G	Contract Terms and Conditions Confidential for three years following delivery starts or until one year following expiration, whichever comes first.

The declaration also lays out alternative grounds for confidential treatment, addressing the standards developed under § 583 and § 454.5(g) (protection of market sensitive information), Evidence Code § 1060 (trade secret protection) and General Order 66-C (protection against disclosures that would subject a regulated entity to an unfair business disadvantage).

The motion should be granted. Confidential treatment of the requested information is necessary to protect against inappropriate disclosure of confidential, commercially sensitive information pertaining to SDG&E's electric procurement resources and strategies and Rim Rock's confidential and proprietary cost information. The information should be placed under seal subject to the previously-established confidentiality designation for this docket "C-RR" (which pertains to confidential information available to the Commission and signatories of confidentiality agreements for this docket, including Rim Rock).[17]

[17] This docket has several levels of confidentiality. Rim Rock is excluded from access to certain other categories of market-sensitive data identified as "C."

7. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with § 311, comments were allowed under Rule 14.3, and the parties were afforded an opportunity to make an election to accept the Commission's conditioned approval of the settlement, pursuant to the Rule 12.4(c).

Consistent with Rule 12.4(c) and recognizing the provisions in the settlement for Commission approval (Appendix 1, § 8) and for modification of the settlement (Appendix 1, § 13), the parties' comments state:

8. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

Findings of Fact

1. Though the active parties filed their settlement some four months after hearings, they remained in regular contact with the ALJ, sought timely modifications of the established schedule, and diligently pursued negotiations on the complex issues this application raises.

2. The four active parties -- SDG&E, Rim Rock, DRA and TURN – all sponsor the settlement. While the two other parties, WPTF and IEP, are not settlement signatories, they have not opposed the settlement and in fact, have participated only minimally after obtaining party status.

3. SDG&E and Rim Rock represent, respectively, the purchasing utility and RPS developer interests in the current PPA and in the amendments to the PPA which the settlement proposes. DRA and TURN represent the interests of utility consumers and ratepayers and both are well-situated to assess the myriad policy ramifications of the settlement on those interests.

4. The settlement expeditiously resolves issues that were litigated vigorously at hearing and which most assuredly would have been litigated further.

5. Each party was represented by experienced counsel and the settlement is the product of arms-length negotiations.

6. There is no evidence that the settlement process was not conducted in full compliance with Article 12 of the Rules.

7. The settlement is comprehensive; it includes specific provisions designed to address DRA's and TURN's well-developed objections, while authorizing SDG&E and Rim Rock to proceed with a less expansive, less expensive (and less risky) plan for a tax equity investment in the project. In particular, the settlement ensures oversight at a critical implementation stage by establishing a process that enables DRA and TURN to review the Base Case Model, including the material inputs used to calculate the final green attributes price.

8. Two parallel provisions, Appendix 1, §2 (g)(ii) and (iii), appear to delegate to the parties the ability to negotiate an increase in SDG&E's rate of return without setting any criteria for such a change and without requiring Commission review or approval of the change. Whether or not this is legal, it is not good public policy.

9. Approval of the settlement should be conditioned upon the following: should all parties agree to an increase in SDG&E's rate of return under Appendix 1, § 2(g)(ii) and (iii), they must file a petition to modify today's decision that meets the requirements of Rule 16.4. As so conditioned, the settlement is reasonable.

10. TURN no longer seeks admission in evidence of the document identified as Exhibit 151-CCC.

Conclusions of Law

1. The active parties having established good cause, Rule 12.1(a) should be waived. Accordingly, the settlement has been properly filed.

2. The settlement is an uncontested, all-party settlement.

3. The four active parties fairly represent the affected interests.

4. If the settlement is conditioned to require Commission approval in accordance with Rule 16.4 of any increase in SDG&E's rate of return under Appendix 1, § 2(g)(ii) and (iii), our legal concerns about these provisions is mitigated. With this condition, the settlement should be approved.

5. The parties should be afforded an opportunity to make an election to accept the Commission's conditioned approval of the settlement, pursuant to Rule 12.4(c).

6. SDG&E and Rim Rock have met the burden or proof to show that the information redacted from the settlement, as well as all of the revised transaction documents in Attachment A to the settlement, meet the confidentiality requirements for protection under the IOU Matrix. The joint motion of SDG&E and Rim Rock to file that information and those documents under seal should be approved.

7. TURN's motion to receive in evidence the document identified as Exhibit 151-CCC is moot. The ALJ should destroy the copy tendered at hearing and should not lodge it in the formal file.

8. In order to provide certainty and to avoid impairing the valid business interests of the parties, this decision should be effective today.

O R D E R

IT IS ORDERED that:

1. Subject to the following condition, The *Joint Motion of San Diego Gas & Electric Company* (SDG&E*), Naturener Rim Rock Wind Energy, LLC, Division of Ratepayer Advocates, and the Utility Reform Network for Approval of Settlement Agreement* (settlement), filed April 8, 2011, is granted and the settlement, the public version of which is attached to this decision as Appendix 1, is approved: if all parties agree to an increase in SDG&E's rate of return as provided in § 2 (g)(ii) and (iii) of the settlement, they then must file a petition to modify this decision that meets the requirements of Rule 16.4 of the Commission's Rules of Practice and Procedure and the rate of return increase shall not become effective except upon the Commission's approval of the petition for modification.

2. The April 8, 2011, *Joint Motion of San Diego Gas & Electric Company* (SDG&E) *and NaturEner Rim Rock Wind Energy, LLC* (Rim Rock)*, For Leave to File Confidential Materials Under Seal* is granted and the information redacted from the settlement and from Exhibit A to the settlement is filed under deal .

   (a) The confidential information placed under seal pursuant to this ruling shall remain sealed for the period provided by the Investor-Owned Utility (IOU) Matrix and shall not be made accessible or be disclosed to anyone other than Commission staff except upon the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge, which order shall be entered only after notice to SDG&E and Rim Rock (or its successor), and an opportunity to be heard.

   (b) If SDG&E or Rim Rock, as applicable, believes that the confidential information placed under seal pursuant to this ruling should be granted protection beyond the period provided by the IOU Matrix, SDG&E or Rim Rock (or its

> successor) may file a motion stating the justification for further withholding the material from public inspection or for such other relief as the Commission Rules may then provide. The motion shall be filed no later than 45 days before the expiration of the relevant time period.

3. The Utility Reform Network's oral motion to receive in evidence the document identified at hearing as Exhibit 151-CCC is moot. The assigned Administrative Law Judge shall destroy the copy of Exhibit 151-CCC tendered at hearing and shall not lodge it in the formal file.

4. Application 10-07-017 is closed.

This order is effective today.

Dated _____, at San Francisco, California.