PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item #36
I.D.#7857

ENERGY DIVISION **RESOLUTION E-4176**
September 18, 2008

REDACTED

R E S O L U T I O N

Resolution E-4176. San Diego Gas and Electric (SDG&E) Company requests approval of the amended MMR Power Solutions, LLC renewable resource power purchase agreement. The contract is approved without modification.

By Advice Letter 1975-E Filed on March 25, 2008 and Supplemental Advice Letter 1975-E-A filed on April 24, 2008.

SUMMARY

SDG&E's amended renewable contract complies with the Renewable Portfolio Standard (RPS) procurement guidelines and is approved without modification

SDG&E filed advice letter (AL) 1975-E on March 25, 2008 requesting California Public Utilities Commission (Commission) review and approval of an amended renewable energy power purchase agreement with MMR Power Solutions, LLC (MMR). SDG&E filed AL 1975-E-A on April 24, 2008 to supplement AL 1975-E, in order to include the Independent Evaluator's (IE) Report for SDG&E's 2008 amendment to its Renewable Power Purchase Agreement (PPA) with MMR.

Generating Facility	Type	Term Years	Capacity (MW)	Annual Deliveries (GWh)	Online Date	Project Location	New or Existing Facility?
Mount Signal Solar / MMR Power Solutions, LLC	Solar Thermal Hybrid	20	49.4	304	December 31, 2009	Imperial County, California	New

This amended contract is for a new 49.4-megawatt (MW) solar thermal hybrid facility. The hybrid plant is solar thermal with a biofuel fired fluid heater. SDG&E's renewable contract complies with the Renewable Portfolio Standard (RPS) procurement guidelines and is approved. The energy acquired from the contract will count towards SDG&E's RPS requirements.

Deliveries from the 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[1] and codified by California Pub. Util. Code Section 399.11, et seq. The statute requires that a retail seller of electricity such as SDG&E purchase a certain percentage of electricity generated by Eligible Renewable Energy Resources (ERR). Originally, each utility was required to increase its total procurement of ERRs by at least 1 percent of annual retail sales per year until 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.[2] This was reiterated again in the Order Instituting

[1] Chapter 516, statutes of 2002, effective January 1, 2003 (SB 1078)

[2] The Energy Action Plan was jointly adopted by the Commission, the California Energy Resources Conservation and Development Commission (CEC) and the California Power Authority (CPA). The Commission adopted the EAP on May 8, 2003.

Rulemaking (R.04-04-026) issued on April 28, 2004,[3] which encouraged the utilities to procure cost-effective renewable generation in excess of their RPS annual procurement targets (APTs)[4], in order to make progress towards the goal expressed in the EAP. On September 26, 2006, Governor Schwarzenegger signed Senate Bill (SB) 107,[5] which codified the State's goal to procure 20 percent of its electricity from renewable resources by 2010, subject to the Commission's rules on flexible compliance[6].

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[7] 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.

Additionally, on December 15, 2005, the Commission adopted D.05-12-042 which refined the MPR methodology for the 2005 RPS Solicitation.[8] Subsequent resolutions adopted MPR values for the 2005, 2006 and 2007 RPS Solicitations.[9]

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[3] http://www.cpuc.ca.gov/Published/Final_decision/36206.htm

[4] 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.

[5] Chapter 464, Statutes of 2006 (SB 107)

[6] Pub. Util. Code Section 399.14(a)(2)(C)

[7] D.04-07-015

[8] http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/52178.pdf

[9] 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-4110: http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/73594.pdf

In addition, D.06-10-050, as modified by D.07-03-046, further refined the RPS reporting and compliance methodologies.[10] In this decision, the Commission established methodologies to calculate an LSE's initial baseline procurement amount, annual procurement target (APT) and incremental procurement amount (IPT).[11]

More recently, the standard terms and conditions for RPS power purchase agreements, adopted in D.04-06-014, have also been modified. These STCs have been updated and modified most recently in D.08-04-009[12], and as a result, there are now thirteen STCs of which four are non-modifiable.

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 that 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 commencing in order for short-term contracts to be used towards RPS compliance.

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

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[10] 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.

[11] 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.

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

build upon an existing proceeding to encourage sustainable use of biomass and other renewable resources."

SDG&E requests approval of an amended renewable energy contract

On March 25, 2008, SDG&E filed Advice Letter (AL) 1975-E requesting Commission approval of an amended renewable procurement contract with MMR. Resolution E-4073 approved the original power purchase agreement on March 15, 2007.[13] The PPA results from SDG&E's September 30, 2005 solicitation for renewable bids, which was authorized by D.05-07-039 on July 21, 2005.[14]

The Commission's approval of the PPA will authorize SDG&E to accept future delivery of incremental renewable generation, which will contribute towards the 20 percent renewables procurement goal required by California's RPS statute.[15]

SB 1036 has reformed the process for above-MPR cost recovery

Pursuant to SB 1078 and SB 107, the California Energy Commission (CEC) was authorized to "allocate and award supplemental energy payments" to cover above-market costs[16] of long-term RPS-eligible contracts executed through a competitive solicitation.[17] The statute required that developers seeking above-market costs apply to the CEC for supplemental energy payments (SEPs).

The mechanism for awarding above-market costs to eligible renewable energy contracts negotiated through a competitive solicitation was modified by SB 1036, which became effective on January 1, 2008.[18] SB 1036 authorizes the Commission to provide above-MPR cost recovery through electric retail rates for contracts that are deemed reasonable. Above-MPR cost recovery has a 'cost limitation'

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[13] Resolution E-4073 approved Advice Letter1845-E filed November 20, 2006 (http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/65780.PDF)

[14] http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/48266.pdf

[15] 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 CPUC decisions in Rulemaking (R.) 04-04-026, R.06-02-012 and R.06-05-027.

[16] "Above-market costs" refers to the portion of the contract price that is greater than the appropriate market price referent (MPR).

[17] Pub. Util. Code 399.15(d)

[18] Chapter 685, Statutes of 2007 (SB 1036)

equal to the amount of funds currently accrued in the CEC's New Renewable Resources Account, which had been established to collect SEP funds, plus the portion of funds that would have been collected through January 1, 2012. In addition, pursuant to SB 1036, Pub. Util. Code § 399.15(d)(2) provides that:

> "The above-market costs of a contract selected by an electrical corporation may be counted toward the cost limitation if all of the following conditions are satisfied:
>
> (A) The contract has been approved by the commission and was selected through a competitive solicitation pursuant to the requirements of subdivision (d) of Section 399.14.
>
> (B) The contract covers a duration of no less than 10 years.
>
> (C) The contracted project is a new or repowered facility commencing commercial operations on or after January 1, 2005.
>
> (D) No purchases of renewable energy credits may be eligible for consideration as an above-market cost.
>
> (E) The above-market costs of a contract do not include any indirect expenses including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades."

The Commission has been working to complete implementation of SB 1036. On April 10, 2008, Resolution E-4160 was approved by the Commission implementing the rate issues of SB 1036. Additionally, a workshop was held on May 29, 2008 to discuss the additional implementation issues of SB 1036.

SDG&E requests final "CPUC Approval" of PPA

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. Approves the proposed amendment without modification, including approval of full cost recovery in rates through the Energy Resource Recovery Account (ERRA) mechanism of all payments to be made by SDG&E, subject to Commission review of SDG&E's administration of the Agreement;
2. Recovery of debt equivalence or FIN 46(R) costs – SDG&E requests allowance to recover the revenue requirement associated with rebalancing

its capital structure to the authorized level to mitigate the impact of debt equivalence associated with this contract. These revenue requirements would be recovered through the ERRA from SDG&E's bundled customers along with the contract payment amounts once the plant goes in service.

3. Finds that any generation procured pursuant to the proposed amendment 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; and,
4. Finds that any generation procured pursuant to the proposed amendment constitutes incremental procurement or procurement for baseline replenishment 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 program (Public Utilities Code §§ 399.11, et seq. or other applicable law) and relevant Commission decisions.

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 information regarding the proposed amendment on September 17, 2007, December 18, 2007, and January 15, 2008.

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 1975-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter and Supplemental Advice Letter was mailed and distributed in accordance with Section IV of General Order 96-B.

PROTESTS

Advice Letter 1975-E was not protested.

DISCUSSION

Description of the project

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

Generating Facility	Type	Term Years	Capacity (MW)	Annual Deliveries (GWh)	Online Date	Project Location	New or Existing Facility?
Mount Signal Solar / MMR Power Solutions, LLC	Solar Thermal Hybrid	20	49.4	304	December 31, 2009	Imperial County, California	New

The original PPA arose from SDG&E's 2005 RPS solicitation. Advice Letter 1845-E was filed on November 20, 2006 requesting approval of the PPA. Commission Resolution E-4073 approved the original PPA on March 15, 2007. The original PPA was executed by SDG&E and Bethel Energy, LLC (Bethel). On October 1, 2007, Bethel, MMR, and SDG&E executed an Assignment, Assumption and

Consent Agreement whereby Bethel assigned all rights, title and interest in the PPA to MMR. In May 2007, Bethel and MMR approached SDG&E requesting an amendment to the original PPA.

SDG&E's Advice Letter 1975-E concerns an amendment to Commission approved PPA

- SDG&E's PPA with MMR is amended for additional increased energy output.
- SDG&E's PPA with MMR is amended to modify pricing terms throughout the contract term.
- SDG&E's PPA with MMR is amended to update standard contract terms and conditions as required in D.07-11-025.

To increase generation output and lower the project's cost per MWh, a biofuel fired fluid heater will be added to the plant. The biofuel fired fluid heater will enable the power block (steam turbine, heat exchanges, cooling tower) to be utilized 24 hours a day instead of only during the hours associated with solar power production. This design change results in a generation increase of 81 percent from 168 to 304 GWh. The net capacity of 49.4 MW, however, remains the same. The change in design creates a plant design similar to the SEGS VIII and IX facilities which are located and operating in the Mojave Desert.

The price renegotiation process began in May 2007 when MMR came to SDG&E with a request to amend the original PPA to allow for design changes and a pricing increase to make the project financially viable. The pricing increase was necessary due to design changes, increased costs of raw materials, equipment, and Engineering, Procurement and Construction ("EPC") Contractor, as well as additional equipment costs due to adding a biofuel fired fluid heater. (See confidential Appendix D for further pricing information).

The PPA's Standard Terms and Conditions are consistent with previously approved and adopted Standard Terms and Conditions

In D.04-06-014, the Commission set forth standard terms and conditions (STCs) to be incorporated into RPS agreements. Appendix A of that decision identified nine of the fourteen STCs as "may not be modified." On November 19, 2007, after the filing of AL 2143-E, the Commission decided to grant, in part, an amended petition for modification of D.04-06-014. This decision, D.07-11-025, which granted in part the petition for modification, stated that all renewable power

purchase agreements must contain four non-modifiable standard terms and conditions.
The amended PPA conforms to all non-modifiable Standard Terms and Conditions as defined in D.07-11-025.

Contract is consistent with SB 1036 requirements and will count towards SDG&E's Above MPR Funds (AMFs) cost limitation

SB 1036, effective January 1, 2008 set forth five conditions, codified in Pub. Util. Code § 399.15(d)(2), for contracts to be counted toward the cost limitation. The MMR contract satisfies the conditions:

- Selected through SDG&E's 2005 competitive solicitation; the contract is consistent with SDG&E's approved procurement plan,
- Contract is at least 10 years in duration,
- New facility,
- Not a contract for unbundled renewable energy credits, and
- Does not include any indirect expenses including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades.

The Commission issued Draft Resolution E-4160 on March 12, 2008, which proposes additional eligibility and reasonableness review standards for contracts requesting above-market funds. On March 28, 2008, however, the Executive Director of the Commission granted a Joint Party Request to bifurcate out some issues addressed in the Draft Resolution in order to obtain more party comments on issues related to establishing the cost limitation and administering the AMFs. Resolution E-4160 was approved on April 10, 2008 and the implementation of the remaining bifurcated issues is in progress.

The PPA's levelized price is reasonable

The contract price in the original PPA was at or below the 2005 MPR. Due to change in project design and increases in equipment costs, however, MMR and SDG&E renegotiated the contract price.

The Staff has rigorous requirements on whether or not a price reopener is considered. A project requesting a price amendment will only be considered if it is compared with bids in the recent RPS solicitation, and the request is filed with extensive documentation in the forms of balance of plan, cash flow and shadow

models, and detailed documentation (from manufacturer and/or developer) clearly showing the reasoning for the increase. SDG&E provided this documentation.

During price renegotiations, SDG&E's Treasurer and Finance Department met with MMR to review the financials of the project. The augmented contract price was evaluated to ensure the increase was justified and reasonable. MMR provided its financial model and list of project costs to both SDG&E and the Commission.

SDG&E's Treasurer and Finance Department performed several analyses during the price amendment negotiations. Specifically, their due diligence included closely examining the MMR financial model (pro forma) and examination of equipment purchase agreements, price quotes, and engineering cost estimates. Included in the analysis was examination of the purchase agreement for the steam turbine generator, condenser and reboiler systems, the draft purchase agreement for the solar reflector panels and heat collector elements (HCEs) as well as the proposal for the fluidized bed energy system. The contracting/subcontracting plan and costs were scrutinized as were the arrangements for and status of the primary site (land) and power transmission arrangements. SDG&E found both the increased costs and the financial model reasonable. Additionally, the Finance Department's analysis found that the new price with increased costs and annual output produced a new rate of return comparable to original contract's rate of return, and thus deemed reasonable. Additionally, SDG&E notes that the price in the amended PPA is competitive with bids received in the 2007 solicitation, and would have been shortlisted in the 2007 solicitation.

The IE also reviewed the open book economic evaluation of the price amended project. The calculations and assumptions influencing the rate of return were checked and found to be reasonable. The key assumptions reviewed were: capital investment, EPC costs, market value of the plant, operation & maintenance fees, income taxes, tax credits and depreciation, property taxes, and other development costs and fees.[19] Once the assumptions were reviewed, the IE reviewed the rate of return for reasonableness. The IE judged the reasonableness

[19] Independent Evaluator's Report: Review of a Long-term Renewable Resource Contract Offer from MMR Power Solutions, LLC., Appendix C, p. 33 (Advice Letter 1975-E-A)

of MMR's expected return on investment using two approaches: reasonableness of risk premium and comparison of the rate of return to SDG&E's Weighted Average Cost of Capital (WACC). The IE concluded from both approaches that MMR's expected return on investment was reasonable.

In addition to examining the reasonableness of the price increase, the amended PPA was compared against bids received in the 2007 RPS solicitation and the 2007 MPR, as required for price reopeners. While the levelized contract price exceeds the 2007 MPR[20], the Commission finds that the contract price is reasonable. Specifically, the project compares favorably to SDG&E's 2007 solar thermal bids, approval of this contract will provide greater resource diversity[21], and the project will likely contribute significantly towards SDG&E's 2010 RPS goal. Also, the contract complies with the requirements for above-market cost recovery pursuant to SB 1036 (see above).

Further factors that were considered when evaluating the contract price's reasonableness are:

- Contract price compares favorably to bid supply curves for all projects bid into SDG&E's 2007 solicitation.
- Current cost of solar thermal energy costs. Specifically, MMR's contract price is reasonable when compared on levelized cost of energy ($/MWh) basis.[22]
- Contract captures long-term future benefits for ratepayers. If approved, development of this project will advance the commercialization of solar thermal hybrid technology.
- Greater technology diversity may increase overall renewable energy supply and increase competition in the market and RPS solicitations.

Thus, the Commission finds that the contract price is reasonable.

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[20] 2007 MPR, Resolution E-4118
http://docs.cpuc.ca.gov/PUBLISHED/Final_resolution/73594.htm

[21] Currently, MMR I is one of 3 SDG&E approved solar projects out of a total of 21 approved projects. {http://www.cpuc.ca.gov/PUC/energy/electric/RenewableEnergy/rpsprojects.htm)

[22] RETI Phase 1A Final Report: http://www.energy.ca.gov/2008publications/RETI-1000-2008-002/RETI-1000-2008-002-F.PDF

This price reasonableness evaluation does not set a precedent for Commission review of above-MPR RPS contracts. Confidential Appendix D includes a detailed discussion of the PPA's pricing terms, and demonstrates that the net present value of the sum of payments to be made under the PPAs are greater than the net present value of payments that would be made at the market price referent for the anticipated delivery.

SDG&E requested in its advice letter that the Commission approve full cost recovery for all contract costs.[23] The contract meets the requirements of Pub. Util. Code § 399.15(d)(2) (see above), and the contract price is reasonable, therefore the Commission will approve cost recovery of all contract costs.

The PPA's above MPR contract payments will count against SDG&E's AMFs cost limitation.[24] To the extent that the contract payments may exceed SDG&E's AMFs cost limitation SDG&E is voluntarily procuring the energy.[25]

The PPA is a viable project

SDG&E believes that the project is viable because:

Project Milestones

The PPA identifies the agreed-upon project milestones, including the interconnection agreement, project financing, construction start and commercial operation deadlines.

Site Control

MMR is working towards 100% site control. MMR held an option on the primary site and is in the process of negotiating an extension to that option.

Financeability of resource

[23] Advice Letter 1975-E, p. 5

[24] Energy Division is currently working to implement SB 1036. Implementation will include determining a AMFs cost limitation for SDG&E.

[25] If the AMFs required for the PPA exceeds SDG&E's AMFs cost limitation, pursuant to Pub. Util. Code 399.15(d)(4), SDG&E may voluntarily procure above-MPR energy.

Financing is advancing as planned and the project is progressing as scheduled.

Production Tax Credit (PTC)

A day-for-day COD relief provision is included in the PPA that depends on the extension of federal investment and production tax credits (ITCs/PTCs) as provided in Section 45 of the Internal Revenue Code of 1986. ITCs and PTCs in their current form are due to expire on December 31, 2008. The Proposed Agreement provides for a day-for-day commercial online date (COD) relief if by beginning on May 1, 2008 if the Federal Government does not pass an extension for the PTC/ITC by that date. That is, for every day after May 1, 2008 that the PTC/ITC is not renewed, the COD is extended by one day and this extension is limited to one year without penalty. The extension, however, can not result in a COD delay of more than one year (until 12/31/2010).

Maturity of Technology and Fuel Availability

Solar thermal hybrid technology combining solar and natural gas has been in successful operation for over 20 years. Instead of natural gas, however, the facility will use biofuel. Separately the biofuel technology portion of the project has also operated successfully. Fuel supply contracts for biofuel are being negotiated. The Commission feels that any possible risk to the ratepayer due to fuel availability and cost is mitigated by contract structure.

Transmission Upgrades

The system impact study (SIS) is in progress but has not been completed. The facilities study (pending) has also not been completed and the network upgrade(s) will not be known until the facilities study is complete. The PPA is not dependent on any proposed transmission.

Confidential information about the contracts 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 Pub. Util. Code Section 583, 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, and will be placed on the Commission's agenda no earlier than 30 days from today.

Comments were filed by the Independent Energy Producers Association on September 9, 2008. The comment period ended on September 8, 2008. The Energy Division did not accept the comments due to their late filing.

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. SDG&E filed Advice Letter 1975-E on March 25, 2008 and Advice Letter 1975-E-A on April 24, 2008, requesting Commission review and approval of the amended renewable energy contract with MMR Power Solutions, LLC's solar thermal facility in Imperial County, California.
3. The Commission previously approved the PPA in Resolution 4073-E on March 15, 2007.
4. D.05-07-039 directed the utilities to issue their 2005 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. SDG&E briefed its PRG on the proposed amendment to the Bethel Energy, LLC / MMR PPA on September 17, 2007, December 18, 2007, and January 15, 2008.
7. D.08-04-009 set forth standard terms and conditions to be incorporated into RPS Power Purchase Agreements.

8. The amended PPA has an increased contract price.
9. The amended PPA has updated standard contract terms and conditions.
10. The amended contract price is above the 2007 MPR released in Resolution E-4118.
11. Energy Division reviewed the amended PPA and finds it reasonable.
12. On October 14, 2007, Governor Schwarzenegger signed Senate Bill 1036, which has an effective date of January 1, 2008.
13. Pursuant to Senate Bill 1036, approved costs above the MPR may be applied toward the cost limitation.
14. Senate Bill 1036 authorizes the Commission to provide above-market cost recovery through rates.
15. The cost of the contract 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 PPA.
16. This amended Agreement with an increased contract price is reasonable and should be approved in its entirety.
17. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583, General Order (G.O.) 66-C and, 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 Agreement is procurement from an eligible renewable energy resource for purposes of determining SDG&E's compliance with any obligation it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard, (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.
19. All procurement under the MMR Contract counts, in full and without condition, towards any annual procurement target established by the RPS Legislation or the Commission which is applicable to SDG&E.
20. All procurement under the MMR Contract counts, in full and without condition, towards any incremental procurement target established by the RPS Legislation or the Commission which is applicable to SDG&E.

21. All procurement under the MMR Contract counts, in full and without condition, towards the requirement in the RPS Legislation that SDG&E procure 20% (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).
22. Any indirect costs of renewables procurement identified in Section 399.15(d) shall be recovered in rates.
23. AL 1975-E and AL 1975-E-A should be approved without modification.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter AL 1975-E and 1975-E-A are approved without modification.
2. Consistent with the Findings above, the costs of the contracts between SDG&E and Sellers 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, pursuant to SB 1036 and subject to CPUC review of SDG&E's administration of the PPA.
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 September 18, 2008; the following Commissioners voting favorably thereon:

_____
Paul Clanon
Executive Director

Confidential Appendix A

Overview of 2004 - 2007 Solicitation Bids

[REDACTED]

Confidential Appendix B

LCBF Ranking of 2007 Bids

[REDACTED]

Confidential Appendix C

Contract Summary

[REDACTED]

Confidential Appendix D

Contract Price

[REDACTED]

Confidential Appendix E

Project's Contribution to RPS Goals

[REDACTED]