PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #9039
RESOLUTION E-4263
December 17, 2009

REDACTED

R E S O L U T I O N

Resolution E-4263. Southern California Edison (SCE) Company. PROPOSED OUTCOME: This Resolution approves a renewable portfolio standard power purchase agreement (PPA) with Ventura Regional Sanitation District (VRSD)

ESTIMATED COST: This Resolution approves cost recovery for a renewable energy PPA priced at $100.43/MWh.

By Advice Letter 2356-E filed on July 1, 2009.

SUMMARY

Southern California Edison's Ventura Regional Sanitation District (VRSD) contract complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved

Southern California Edison (SCE) filed advice letter (AL) 2356-E on July 1, 2009 requesting Commission review and approval of a renewable energy power purchase agreement (PPA) executed with VRSD.

Generating facility	Type	Term (Years)	Capacity (MW)	Energy (GWh)	Expected Online Date	Location
Toland Road Landfill	Landfill gas	10	1.57-5	9.63-30.66	Online	Ventura County, CA

The bilateral contract resulted from SCE's 2008 Biomass Program, the precursor to SCE's Renewable Standard Contracts Program, described below, and is

consistent with SCE's 2008 RPS Procurement Plan, which was approved by the Commission in D.08-02-008.

AL 2356-E is approved without modification.

NOTICE

Notice of AL 2356-E was made by publication in the Commission's Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

Advice Letter 2356-E was not protested.

DISCUSSION

Overview Of RPS Program

The RPS Program administered by the Commission requires each utility to increase its total procurement of eligible renewable energy resources by at least 1% of retail sales per year so that 20% of the utility's retail sales are procured from eligible renewable energy resources no later than December 31, 2010.[1]

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm and http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm.

SCE's Renewable Standard Contracts Program For Projects 20 MW And Under

SCE has a Renewable Standard Contracts Program (RSC Program) available to any eligible renewable energy resource 20 MW and under. SCE offers three different standard contracts for projects of different sizes: less than 1 MW; 1 MW

[1] *See* Pub. Utils. Code § 399.15(b)(1).

to 5 MW; and greater than 5 MW to 20 MW. The standard contracts are offered for terms of 10, 15, and 20 years and are set at the market price referent (MPR).

SCE Requests Commission Approval Of A Renewable Energy Contract

On July 1, 2009, SCE filed AL 2356-E seeking approval of a long term power purchase agreement (PPA) between SCE and Ventura Regional Sanitation District for energy from a new landfill gas facility. The bilateral agreement results from SCE's 2008 Biomass Program, the precursor to SCE's RSC Program. The PPA is priced at the 2008 MPR. The developer and seller of the facility is VRSD, an enterprise public agency in Ventura County, California that treats and disposes of solid waste and wastewater. The VRSD facility is located in Ventura County, CA at the Toland Road Landfill and will deliver baseload energy to SCE. The project utilizes Ingersoll Rand microturbines, a type of turbine which has operated commercially at multiple landfill gas sites since 2002. The initial size of the project is 1.57 MW and is expected to increase to 3.07 MW, assuming the addition of one new 250 kW microturbine every 18 months. The size of the project is not to exceed 5 MW. Since AL 2356-E was filed, the VRSD project has achieved commercial operation.

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

1. Approval of the VRSD Contract in its entirety;

2. A finding that any electric energy sold or dedicated to SCE pursuant to the VRSD Contract constitutes procurement by SCE from an eligible renewable energy resource ("ERR") for the purpose of determining SCE's compliance with any obligation that it may have to procure from ERRs pursuant to the RPS Legislation[2] or other applicable law concerning the procurement of electric energy from renewable energy resources;

3. A finding that all procurement under the VRSD Contract counts, in full and without condition, towards any annual procurement target

[2] As defined by SCE, "'RPS Legislation' refers to the current State of California Renewable Portfolio Standard program statute, as codified at California Public Utilities Code Section 399.11 *et seq*."

established by the RPS Legislation or the Commission which is applicable to SCE;

4. A finding that all procurement under the VRSD Contract counts, in full and without condition, towards any incremental procurement target established by the RPS Legislation or the Commission which is applicable to SCE;

5. A finding that all procurement under the VRSD Contract counts, in full and without condition, towards the requirement in the RPS Legislation that SCE procure 20 percent (or such other percentage as may be established by law) of its retail sales from ERRs by 2010 (or such other date as may be established by law);

6. A finding that the VRSD Contract, and SCE's entry into the VRSD Contract, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the VRSD Contract, subject only to further review with respect to the reasonableness of SCE's administration of the VRSD Contract; and

7. Any other and further relief as the Commission finds just and reasonable.

Energy Division Review Of The Proposed PPA

Energy Division evaluated the PPA for the following criteria:

- Consistency with SCE's 2008 RPS Procurement Plan (Plan)
- Consistency with the resource needs identified in SCE's Plan
- Consistency with RPS standard terms and conditions (STC)
- Consistency with bilateral contracting guidelines
- Project viability
- Consistency with the Interim Emissions Performance Standard
- Procurement Review Group (PRG) participation
- Comparison to the results of SCE's 2008 solicitation
- Cost reasonableness

Consistency With SCE's 2008 RPS Procurement Plan

California's RPS statute requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.[3] The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan. SCE's 2008 RPS Procurement Plan (Plan) was conditionally approved by D.08-02-008 on February 14, 2008. As ordered by D.08-02-008, on February 29, 2008 SCE filed and served its amended 2008 Plan. Pursuant to statute, SCE's Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, as well as bid solicitation materials, including a pro-forma agreement and bid evaluation methodology documents.[4]

Specifically, SCE'S Plan states that SCE seeks to procure renewable resources to augment those under contract from prior solicitations and those executed pursuant to the 2006 and 2007 solicitations. Specifically, SCE's Plan states that SCE intends to secure resources from its 2008 solicitation, as necessary, to ensure that it meets the 20% RPS goal as soon as possible, and with a reasonable margin of safety. SCE requested proposals based upon standard term lengths of 10, 15 or 20 years or a non-standard delivery term of no less than 1 month. SCE also requested proposals with a minimum capacity of 1.5 MW. SCE indicated a preference for projects:

- With near-term deliveries
- Located in California or outside of California if the seller complies with all requirements pertaining to "Out-of-State Facilities" as set forth in the California Energy Commission (CEC) Guidebook for RPS eligibility
- Delivered within the CAISO Control Area, but considered proposals for facilities interconnected to the Western Electricity Coordinating Council (WECC) transmission system

The VRSD project meets SCE's resource needs because it is an in-state, eligible renewable resource. The facility is operating and immediately available to deliver renewable energy within California.

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[3] Pub. Utils. Code, Section §399.14.

[4] Pub. Utils. Code, Section §399.14(a)(3).

The PPA is consistent with SCE's 2008 Procurement Plan.

Consistency With RPS Standard Terms And Conditions (STCs)

The PPA includes the Commission-adopted RPS standard terms and conditions, including those deemed "non-modifiable".

Consistency With Bilateral Contracting Guidelines

In D.09-06-050 the Commission determined that bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation. AL 3477-E was submitted before that decision was effective. Although Energy Division did not require an Independent Evaluator report, it compared the VRSD Contract to SCE's 2008 solicitation results and found that it compared favorably to SCE's shortlisted offers. In addition, Energy Division conducted its review of the PPA based on the four requirements identified in D.06-10-019.

The PPA is consistent with the bilateral contracting guidelines established in D.06-10-019.

1. The PPA will not be applied to SCE's cost limitation.[5]
2. The PPA was submitted by advice letter.[6]
3. The PPA is at least one month in duration.[7]
4. The PPA is reasonably priced.[8]

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[5] The PPA is ineligible for the cost limitation because it did not result from a competitive solicitation. Pub. Utils. Code §399.15(d)(2).

[6] "For now, utilities' bilateral RPS contracts, of any length, must be submitted for approval by advice letter." D.06-10-019 at 31.

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

[8] The contract price of bilaterals must be deemed reasonable by the Commission. D.06-10-019, at 31.

Project Viability

Since AL 2356-E was filed, the VRSD contract achieved commercial operation, so there is no project development risk. Further, the Toland Landfill has an existing permit to accept solid waste for approximately another 50 years. VRSD used reliable forecasting techniques to determine the expected level of output from the landfill and is expected to meet the energy delivery requirements outlined in the PPA.

Also, the developer is experienced – VRSD owned and operated an Ingersoll Rand 70 kW microturbine for on-site generation and sold the excess energy to SCE under a 100 kW-and-less standard offer contract that began in 2004.

SCE asserts that the VRSD project is highly viable with minimal development risk.

Compliance With The Interim Greenhouse Gas Emissions Performance Standard (EPS)

California Pub. Utils. Code §§ 8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers.

D.07-01-039 adopted an interim EPS that establishes an emission rate quota for obligated facilities to levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. The EPS applies to all energy contracts for baseload generation that are at least five years in duration.[9] Renewable energy contracts are deemed compliant with the EPS except in cases where intermittent renewable energy is firmed and shaped with generation from non-renewable resources.

The EPS does not apply to the PPA because it concerns an in-state RPS-eligible facility.

[9] "Baseload generation" is electricity generation at a power plant "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." Pub. Utils. Code § 8340 (a).

Procurement Review Group (PRG) Participation

SCE's PRG consists of representatives from: the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), California Utility Employees, the Union of Concerned Scientists, Aglet Consumer Alliance, the California Department of Water Resources, and the Commission's Energy and Legal Divisions.

Pursuant to D.02-08-071, SCE's Procurement Review Group (PRG) was consulted regarding the PPA. SCE presented the PRG with details of its Biomass Program in April 2007, and information about its RSC Program in early 2009. On February 4, 2009 SCE presented its recommendation to its PRG to execute the VRSD PPA.

Although Energy Division is a member of the PRG, it reserved final judgment on the PPA until the AL was filed. Energy Division reviewed the transaction independently of the PRG, and allowed for a full protest period before concluding its analysis.

Comparison To The Results Of SCE's 2008 Solicitation

SCE conducted a benefit-to-cost analysis of the VRSD PPA and found that it compared favorably to the more competitive proposals received in response to SCE's 2008 RFP. Confidential Appendix A addresses this analysis in more detail.

The PPA compares favorably to the results of SCE's 2008 solicitation.

Cost Reasonableness

All of the 2008 Biomass Program contracts are priced at the 2008 MPR. Based on the 2009 online date and a 10 year contract term, the contract price for this project is $100.43/MWh.

Confidential Appendix A demonstrates that the total expected costs of the PPA are reasonable compared to other bids received in response to SCE's 2008 solicitation.

Provided the generation is from an eligible renewable energy resource, payments made by SCE under the PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of SCE's administration of the PPA.

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Pub. Utils. Code § 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable "eligibility" language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an "Eligible Renewable Energy Resource," that the project's output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller use commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.[10]

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires "CPUC Approval" of a PPA to include an explicit finding that "any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource 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.*), Decision 03-06-071, or other applicable law."[11]

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission determine, prior to final CEC certification of a project, that "any procurement" pursuant to a specific contract will be "procurement from an eligible renewable energy resource."

Therefore, while we include the required finding here, <u>this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS eligible resource to count towards an RPS compliance obligation. Nor shall such a finding absolve any contracting party of its obligation to obtain CEC certification and/or to pursue remedies for breach of contract to ensure that only RPS-eligible generation is delivered and paid for under a Commission-approved</u>

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[10] *See, e.g.* D. 80-04-009 at Appendix A, STC 6, Eligibility.

[11] *See, e.g.* D. 80-04-009 at Appendix A, STC 1, CPUC Approval.

contract. Such contract enforcement activities shall be reviewed pursuant to the Commission's authority to review the administration of such contracts.

CONFIDENTIAL INFORMATION

The Commission, in implementing Pub. Utils. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.

Confidential Appendix A, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

COMMENTS ON THIS RESOLUTION

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding. The 30-day comment period for the draft of this resolution was neither waived nor reduced.

FINDINGS

1. The PPA is consistent with SCE's 2008 RPS Procurement Plan.
2. The PPA is consistent with the resource needs identified in SCE's 2008 Procurement Plan.
3. The PPA includes the Commission-adopted RPS standard terms and conditions, including those deemed "non-modifiable".
4. The PPA is consistent with the bilateral contracting guidelines established in D.06-10-019.
5. SCE asserts that the VRSD project is highly viable with minimal development risk.

6. The EPS does not apply to the PPA because it concerns an in-state RPS-eligible facility.
7. Pursuant to D.02-08-071, SCE's Procurement Review Group (PRG) was consulted regarding the PPA.
8. The PPA compares favorably to the results of SCE's 2008 solicitation.
9. Confidential Appendix A demonstrates that the total expected costs of the PPA are reasonable compared to other bids received in response to SCE's 2008 solicitation.
10. Provided the generation is from an eligible renewable energy resource, payments made by SCE under the PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of SCE's administration of the PPA.
11. Procurement pursuant to the PPA is procurement from eligible renewable energy resources for purposes of determining SCE'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 and D.06-10-050, or other applicable law.
12. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under this PPA to count towards an RPS compliance obligation. Nor shall that finding absolve SCE of its obligation to enforce compliance with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009, and included in the PPA.
13. Confidential Appendix A, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
14. Advice Letter 2356-E should be approved effective today.

THEREFORE IT IS ORDERED THAT:

1. The proposed renewable energy contract between Southern California Edison (SCE) and Ventura Regional Sanitation District in Advice Letter 2356-E is approved without modification.
2. 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 December 17, 2009; the following Commissioners voting favorably thereon:

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PAUL CLANON
Executive Director

Confidential Appendix A

Contract Price Analysis

[REDACTED]

Appendix B
Terms and Conditions

Term/Condition	
Type of Purchase (Renewable, etc)	Renewable
IOU Ownership Option	N/A – public agency
Conditions Precedent and Date Triggers	The VRSD Contract is effective on April 2, 2009 ("Effective Date"). Within 90 days of the Effective Date, SCE shall file with the Commission the appropriate request for Commission approval. To the extent not already obtained, VRSD shall expeditiously seek CEC Certification and Verification and all Permits. The term of the VRSD Contract shall commence upon Initial Operation and shall end on the last day of the calendar month which is 10 Term Years from the month of the Firm Operation Date. Prior to the commencement of the Term, the following shall have occurred: • VRSD shall obtain a FERC-accepted interconnection agreement to interconnect the Generating Facility to SCE's electric system; • VRSD shall have complied with the contract requirements in Section 3.11(c) of the contract; • SCE shall have been authorized by the CAISO to schedule the electric energy produced by the generating facility with the CAISO; • The generating facility shall be operating in parallel with the applicable transmission provider's electric system; and • VRSD shall be forecasting and delivering electric energy to SCE at the delivery point.

Term/Condition	
Average Actual Price ($/MWh)	$100.43/MWh
Product Type	Biomass (landfill gas)
Key Contract Dates (initial startup deadline, commercial operation deadline, PTC deadline, etc.)	The plant is beginning deliveries to SCE under this contract in June, 2009. The Initial Operation Date shall be on or before December 31, 2009. The Startup Deadline is July 31, 2010. There is no PTC Deadline.
Firming/Shaping Requirements	None
Expected Payments	$14,097,152
Scheduling Coordinator	SCE
Allocation of CAISO (or other control area) Charges	During the Startup Period, VRSD shall be responsible for all CAISO Charges and CAISO Sanctions, if any, attributable to or assessed for test energy delivered by VRSD to the real-time market (and any other CAISO administered market that may from time to time be implemented. Commencing upon Initial Operation and continuing throughout the Term, VRSD has no responsibility for CAISO Charges attributable to or assessed for energy delivered by VRSD to SCE. In the event VRSD fails to comply with the Forecasting provisions or any CAISO Tariff or CAISO directives, VRSD may be liable to pay an SCE Penalty or CAISO Sanction.
Allocation of Congestion Risk	There is no congestion at the delivery point because the first point of interconnection is SCE's distribution system. SCE bears the congestion risk on its distribution system.
Project Development Security	None
Daily Delay Damages	VRSD may elect to extend the Startup Deadline by paying to SCE Daily Delay Liquidated Damages in an

Term/Condition	
	amount equal to twenty cents ($0.20) per kW of Contract Capacity per day for each day (or portion thereof)
VRSD-Required Performance	90% of VRSD's Expected Annual Net Energy Production
Assurances (calculation methodology, form of PA and amount)	None
IOU-Required Performance Assurances (calculation methodology, form of PA and amount)	SCE does not post any performance assurances
Availability Guarantees	None
Energy Delivery Requirements	Contract Capacity x 0.7 x 8,760 in each term year
Liquidated Damages/ Penalties for Failure to Perform	VRSD may elect to extend the Startup Deadline by paying to SCE Daily Delay Liquidated Damages in an amount equal to twenty cents ($0.20) per kW of Contract Capacity per day for each day (or portion thereof) If in any Term Year VRSD fails to meet its Annual Energy Delivery Obligation, then VRSD shall be subject to an Energy Replacement Damage Amount penalty calculated as: (A – B – C) x D where: A = VRSD's Annual Energy Delivery Obligation in kWh B = Sum of Qualified Amounts over the Term Year in kWh C = Sum of Lost Output over the Term Year in kWh D = Two Cents ($0.02) per kWh
Force Majeure Provisions	<u>No Default for Force Majeure</u>. Neither Party shall be considered to be in default in the performance of any of its obligations set forth in this Agreement (except for obligations to pay money) when

Term/Condition	
	and to the extent failure of performance is caused by Force Majeure. <u>Requirements Applicable to the Claiming Party</u>. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, that Party (the "Claiming Party"), shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. In connection with a claim of Force Majeure: (a) The Claiming Party, within fourteen (14) days after the later of (i) the initial occurrence of the claimed Force Majeure, or (ii) the date on which the claimed Force Majeure first prevents or delays performance under this Agreement, must give the other Party Notice describing the particulars of the occurrence; and (b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement. The suspension of the Claiming Party's performance due to Force Majeure shall be of no greater scope and of no longer duration than is required by the Force Majeure. In addition, the Claiming Party shall use commercially reasonable and diligent efforts to remedy its inability to perform. This section shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Claiming Party, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the sole discretion of the Claiming Party. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

Term/Condition	
	Termination. Either Party may terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is provided, in the event of Force Majeure which prevents substantial performance by the other Party and which extends for more than three hundred sixty five (365) consecutive days.
Termination Rights of Both Parties	Either Party shall have the right to terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is given, in the event CPUC Approval has not been obtained within three hundred sixty five (365) days after SCE files its request for CPUC Approval and a Notice of termination is given on or before the three hundred ninety fifth (395th) day after SCE files the request for CPUC Approval. Either Party shall have the right to terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is given in the event CEC Certification and Verification or Permit Approval has not been obtained by VRSD within eighteen (18) months after the Effective Date and a Notice of termination is given on or before the end of the nineteenth (19th) month after the Effective Date. Either Party may also terminate in the event of a Force Majeure which prevents substantial performance by the other Party and which extends for more than three hundred sixty five (365) consecutive days.
VRSD's Termination Rights	None, other than specified above
SCE's Termination Rights	SCE shall have the right to terminate this Agreement on Notice which shall be effective five (5) Business Days after such Notice is given on or before the date that is sixty (60) days after VRSD provides to SCE the results of any Interconnection Study by the CAISO or the Transmission Provider for the Generating Facility if the results of the latest of such studies performed as of the date of the termination Notice reflect that the total cost

Term/Condition	
	of transmission upgrades or new transmission facilities to SCE, or any Transmission Provider under the jurisdiction of the CAISO, that are not paid by VRSD (without reimbursement from SCE or any other Transmission Provider) will exceed fifteen dollars ($15) multiplied by the Contract Capacity in kilowatts
Right of First Refusal	VRSD must offer electric energy, Green Attributes, Capacity Attributes and Resource Adequacy Attributes generated by or associated with the Generating Facility to SCE for a period of two years after contract termination