

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #9910
RESOLUTION E-4383
December 2, 2010

REDACTED

R E S O L U T I O N

Resolution E-4383. Southern California Edison Company requests approval of an amended and restated renewable power purchase and sale agreement between SCE and Mountain View Power Partners IV, LLC.

PROPOSED OUTCOME: This Resolution approves cost recovery for an amended and restated renewable energy PPA between SCE and Mountain View.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter (AL) 2511-E filed on September 20, 2010.

SUMMARY

Southern California Edison's Mountain View power purchase agreement, as amended and restated, complies with the Renewable Portfolio Standard (RPS) procurement guidelines and is approved.

Southern California Edison (SCE) filed advice letter (AL) 2511-E requesting Commission review and approval of an amendment to its previously approved power purchase and sale agreement (PPA) executed with Mountain View Power Partners IV, LLC (Mountain View). Mountain View Power Partners IV, LLC is a wholly-owned subsidiary of AES Wind Generation, Inc. The original PPA resulted from SCE's 2003 RPS solicitation and was approved by the Commission on June 30, 2005 in Commission Resolution E-3934.

The amended and restated PPA adjusts the contract price and several other contract terms to account for the increased project costs since the bid was first submitted. Project capacity is also increased.

The following table summarizes the restated agreement:

	Generating facility	Type	Term (Years)	Capacity (MW)	Energy (GWh/year)	Initial Forecasted Online Date	Location
Original PPA	Mountain View Power Partners IV, LLC	Wind	20	37-50	118-159	December 31, 2006	Palm Springs, CA
Amended and Restated PPA	Mountain View Power Partners IV, LLC	Wind	20	49	165	December 1, 2011	Palm Springs, CA

The Mountain View project will be a 49 MW wind facility located near Palm Springs, California. The restated contract is priced above the 2009 market price referent (MPR) but at or below the 2008 MPR for a 20-year contract and compares favorably to the bid prices from SCE’s 2008 and 2009 RPS solicitations. The 2009 MPR is applicable to this contract.

Deliveries from the amended and restated PPA are reasonably priced and fully recoverable in rates over the life of the contract, subject to Commission review of SCE’s administration of the contract.

AL 2511-E is approved without modification.

NOTICE

Notice of AL 2511-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

No protests were received to this advice letter.

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 one percent of retail sales per year so that twenty percent 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 requests approval of its amended and restated PPA with Mountain View

SCE signed the original Mountain View PPA on March 8, 2005. The Commission approved the PPA in Resolution E-3934 on June 30, 2005. The original contract, negotiated by SCE through its 2003 RPS solicitation, was a 20-year agreement for a 37 MW facility, with an option to expand to a project total of 50 MW. The amended and restated contract maintains the 20-year term and sets the project capacity at 49 MW. SCE claims that without the modifications set forth in the restated and amended PPA, the Mountain View project would not be viable.

SCE claims that the restated Mountain View contract is in compliance with Resolution E-4199, which states that if a developer requests an amendment that affects the price of an approved contract, the investor-owned utility (IOU) should re-evaluate the competitiveness of the amended contract as compared to the projects that the IOU is currently negotiating and to its most recent shortlist.

¹ See Public Utilities (Pub. Utils.) Code § 399.15(b)(1).

SCE states that the amended and restated contract price is above the applicable 2009 MPR² but notes that it is at or below the applicable 2008 MPR, which was in effect when SCE and Mountain View began negotiating an amendment. The contract also compares favorably to the prices bid by renewable generation projects that were short-listed in SCE's 2009 RPS solicitation, and to the prices of executed contracts from the 2008 RPS solicitation.

SCE requests the Commission to issue a resolution containing:

1. Approval of the amended & restated Mountain View PPA in its entirety;
2. A finding that any electric energy sold or dedicated to SCE pursuant to the amended & restated Mountain View PPA constitutes procurement by SCE from ERRs for the purpose of determining SCE's compliance with any obligation that it may have to procure from ERRs pursuant to the RPS Legislation or other applicable law concerning the procurement of electric energy from renewable energy resources;
3. A finding that all procurement under the amended & restated Mountain View PPA counts, in full and without condition, towards any annual procurement target established by the RPS Legislation³ or the Commission which is applicable to SCE;
4. A finding that all procurement under the amended & restated Mountain View PPA 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 amended & restated Mountain View PPA 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);

² Resolution E-4199 requires the amended contract price to be compared against the most recently approved MPRs. In this case, the 2009 MPR was most recently adopted.

³ As defined by SCE, "'RPS Legislation' means the State of California Renewables Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, *et seq.*"

6. A finding that the amended & restated Mountain View PPA, and SCE's entry into the amended & restated Mountain View PPA, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the amended & restated Mountain View PPA, subject only to further review with respect to the reasonableness of SCE's administration of the amended & restated Mountain View PPA; 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 the resource needs identified in SCE's 2009 RPS Procurement Plan (Plan)
- Consistency with the Resolution E-4199 requirements for above-MPR contract price amendments
- Project viability
- Consistency with RPS standard terms and conditions (STC)
- Consistency with the Interim Emissions Performance Standard (EPS)
- Procurement Review Group (PRG) participation

Consistency with the Resource Needs Identified in SCE's Plan

Pursuant to statute, SCE's Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.⁴ SCE's 2009 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 intends to secure resources from its 2009 solicitation, as necessary, to ensure that it meets the 20% RPS goal as soon as possible, 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.

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

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 proposed Mountain View project fits SCE’s identified renewable resource needs. The amended PPA is a 20-year contract for new renewable generation in California, expected to commence deliveries in 2011.

The proposed project is consistent with the resource needs identified in SCE’s 2009 Procurement Plan.

Consistency with the requirements for above-MPR contract price amendments

The energy price associated with the amended and restated Mountain View PPA is above the 2009 market price referent (MPR). Pursuant to Resolution E-4199⁵, the Mountain View PPA complies with the eligibility criteria for Above-MPR Funds (AMFs) set forth in California Public Utilities Code § 399.15(d)(2) as follows: (1) the PPA covers a duration of no less than 10 years; (2) it is with a new facility commencing operations after January 1, 2005; (3) it is not a purchase of renewable energy credits; and (4) it does not include any indirect expenses as set forth in the statute.

Resolution E-4199 sets forth eligibility rules for RPS contracts that are above the MPR, including guidelines for evaluating above-MPR contracts that are resubmitted for approval of a price amendment to a Commission-approved contract. For such amended contracts that are eligible for above-MPR funds, the Commission requires:

⁵ http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/98603.pdf

- the IOU to re-evaluate the competitiveness of the amended contract as compared to the projects that the IOU is currently negotiating and to its most recent shortlist, and the IOU must provide a sufficient showing in the advice letter that the amended contract is competitive based on current market data;
- the IOU to explain why the contract change is needed, and provide all relevant data to justify the change;
- the developer to provide the Commission and the Independent Evaluator (IE) with cash flow models, both the original reflecting the price in the original contract and the latest version, to assure that the proposed price increase reflects net changes in costs;
- the confidential project-specific IE report to, at a minimum, include its evaluation of the new price based on the project's market valuation as compared to the bids in the IOU's most recent solicitation, a review of the cash flow model, and an evaluation of the change in model inputs;
- that if the IOUs' AMFs are exhausted, the IOU must state whether it will voluntarily procure the above-MPR costs.

The proposed contract complies with the Resolution E-4199 requirements for above-MPR price amendments. SCE provided in the advice letter the information required to explain why the changes to contract price and other terms are needed, and to satisfy the cash flow model and IE report requirements.

Review of cost-reasonableness

In reviewing the reasonableness of a price increase to an existing PPA, it is necessary to compare the project to other bids in the most recent RPS solicitation, and to review the cash flow model provided by the developer.

To re-evaluate the competitiveness of the amended contract as compared to SCE's other RPS opportunities, SCE calculated a renewable premium for the amended and restated Mountain View contract and compared the project to SCE's 2009 RPS solicitation bids. This comparison is included in Confidential Appendix A, attached to this resolution. SCE states in AL 2511-E that "the

amended energy price compares favorably to the proposals from SCE's 2009 RPS solicitation."⁶

The IE's contract-specific evaluation of the Mountain View project is attached as confidential Appendix B to this resolution. The IE finds that the project compares favorably to contracts executed pursuant to the 2008 solicitation with respect to their renewable premiums and project viability, and that the project compares favorably to the results of SCE's 2009 solicitation.

Confidential Appendix A also includes a detailed discussion comparing the contract cost between the original and amended Mountain View PPAs, as submitted by SCE. The IE also reviewed the cash flow model and financial assumptions submitted by Mountain View and found them to be reasonable, as discussed in confidential Appendix B.

Finally, SCE has exhausted its AMFs and proposes to voluntarily procure the amended above-MPR Mountain View PPA pursuant to California Public Utilities Code § 399.15(d)(4).

The total expected costs of the amended and restated PPA, as estimated by SCE, are reasonable based on their relation to bids received in response to SCE's 2009 solicitation. Payments made by SCE under the amended PPA are fully recoverable in rates over the life of the amended and restated PPA, subject to Commission review of SCE's administration of the amended and restated PPA.

Project Viability

For SCE's 2009 RFP, SCE evaluated and scored each bid's viability, based on a number of factors such as development issues, site control, technology maturity and seller experience (see confidential Appendix B in AL 2511-E). SCE scored the Mountain View project using the same project viability calculator used for the 2009 bids. See confidential Appendix A of this Resolution for a comparative analysis that shows that the Mountain View project scores favorably compared to SCE's other offers.

⁶ AL 2511-E at 4.

Mountain View has secured nearly all of the necessary permits at the time the AL was filed, and SCE asserts that Mountain View is on schedule to secure the remaining permits. The required interconnection agreement has been executed. Mountain View is a wholly-owned subsidiary of AES Wind Generation, Inc., an affiliate of AES Corporation. SCE states that AES Wind Generation has developed over 1,800 MW of generation projects, and that “the development team includes individuals with extensive experience in the operation and ownership of utility-scale power generation facilities throughout the United States.”⁷

SCE asserts that the Mountain View project’s viability is high compared to the bids shortlisted in SCE’s 2009 solicitation.

Consistency with RPS Standard Terms and Conditions (STCs)

The original Mountain View PPA was signed in 2005, before the Commission’s modifications to its standard terms and conditions. The amended and restated PPA has been updated to include, without change, all of the Commission’s current non-modifiable terms and conditions, including: “Green Attributes,” “Eligibility,” “CPUC Approval,” and “Applicable Law.”

In addition, as permitted by D.07-11-025, SCE modified most if not all of the “modifiable” terms. These modifications, however, include the same principles and serve the same purpose as the standard terms, and are consistent with the law and government regulations. Thus, the modifications contained in the amended and restated Mountain View PPA are permissible.

The amended and restated Mountain View PPA is consistent with D.08-04-009, as modified by D.08-08-028.

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.

⁷ AL 2511-E at 14.

D.07-01-039 adopted an interim EPS that establishes an emission rate limit for obligated facilities to levels no greater than the greenhouse gas (GHG) emissions rate 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.⁸ Generating facilities using certain renewable resources are deemed compliant with the EPS,⁹ although contracts with intermittent resources are subject to the limitation that total purchases under the contract do not exceed the expected output from the facility over the term of the contract.¹⁰

The amended and restated Mountain View PPA complies with the EPS because wind energy is one of the pre-approved renewable energy technologies listed in D.07-01-039.

Procurement Review Group (PRG) Participation

The Procurement Review Group (PRG) was initially established in D.02-08-071 as an advisory group to review and assess the details of the IOUs' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission.

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, the California Department of Water Resources, and the Commission's Energy and Legal Divisions.

SCE briefed its PRG concerning the Mountain View PPA amendments on August 4, 2010.

Pursuant to D.02-08-071, SCE's Procurement Review Group participated in the review of the PPA.

⁸ "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).

⁹ D.07-01-039, Attachment 7, p. 4.

¹⁰ D.07-01-039, Attachment 7, p. 7.

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.¹¹

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.”¹²

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, 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 finding absolve the seller of its obligation to obtain CEC certification or the utility of its obligation to pursue remedies for breach of contract. Such contract

¹¹ See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

¹² See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

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.

The confidential appendices, 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

Pub. Utils. Code § 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS AND CONCLUSIONS

1. The original power purchase and sale agreement (PPA) between Southern California Edison (SCE) and Mountain View Power Partners IV, LLC (Mountain View) resulted from SCE's 2003 RPS solicitation and was approved by the Commission on June 30, 2005 in Resolution E-3934.
2. The amended and restated Mountain View PPA is consistent with the resource needs identified in SCE's 2009 Procurement Plan.

3. The amended and restated PPA compares favorably to the results of SCE's 2009 solicitation.
4. The viability of the amended and restated PPA is high compared to other projects offered to SCE.
5. The amended and restated PPA complies with the Emissions Performance Standard because it meets the conditions established in D.07-01-039.
6. With regard to the PPA amendments, SCE has complied with the Commission's rules for involving the Procurement Review Group.
7. The terms and conditions in the amended and restated Mountain View PPA are consistent with D.08-04-009, as modified by D.08-08-028.
8. The total expected costs of the amended and restated PPA, as estimated by SCE, are reasonable based on their relation to bids received in response to SCE's 2009 solicitation.
9. SCE has voluntarily agreed to incur the above-market price referent costs of the Mountain View project that exceed SCE's cost limitation.
10. The independent evaluator reviewed the developer's cash flow model and determined that the requested contract price increase is justifiable given current market conditions.
11. AL 2511-E complies with the requirements in Resolution E-4199 for Commission-approved contracts that are above the market price referent (MPR) and eligible for above-MPR funds.
12. Payments made by SCE under the amended and restated PPA are fully recoverable in rates over the life of the amended and restated PPA, subject to Commission review of SCE's administration of the amended and restated PPA.
13. 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 (RPS) (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.
14. 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 this PPA.

15. The confidential appendices, 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.
16. AL 2511-E should be approved effective today without modification.

THEREFORE IT IS ORDERED THAT:

1. Southern California Edison Company's Advice Letter 2511-E, requesting Commission review and approval of its amended and restated power purchase and sale agreement with Mountain View Power Partners IV, LLC, is approved.
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 2, 2010; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A
Contract Evaluation

[REDACTED]

Confidential Appendix B
**Report of Independent Evaluator Sedway
Consulting, Inc. for the Amended and Restated
Mountain View PPA**

[REDACTED]