Decision 07-04-038 April 12, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) for Approval of Renewables Portfolio Standard Power Purchase Agreement with MM Tajiguas Energy LLC and for Authority to Recover the Costs for Such Power Purchase Agreements in Rates.	Application 07-01-001 (Filed January 2, 2007)

OPINION APPROVING RENEWABLES PORTFOLIO STANDARD POWER PURCHASE AGREEMENT BETWEEN SOUTHERN CALIFORNIA EDISON COMPANY AND MM TAJIGUAS ENERGY, L.L.C.

This decision approves a renewable resource power procurement agreement (PPA) between Southern California Edison Company (SCE) and MM Tajiguas Energy, LLC (Tajiguas). This PPA (Tajiguas PPA) commits the output of an existing 2.84 megawatt (MW) biomass facility in Goleta, California, as well as the output of an expansion that would raise total output to 4.34 MW, for a term of 20 years.[1] This decision authorizes the Tajiguas PPA to be considered as meeting certain of SCE's Renewable Portfolio Standard (RPS) requirements

[1] Tajiguas is an existing project currently operating under a Standard Offer 1 PPA with SCE. That contract will terminate and the term of the new PPA will commence on the first day of the first full calendar month after the date on which this decision, approving the new PPA, becomes final and non-appealable.

pursuant to Decision (D.) 05-07-039. Furthermore, as the contract price is at or below the Market Price Referent (MPR),[2] prices will be fully recoverable in rates over the life of the contracts, subject to Commission review of SCE's administration of the contracts. This proceeding is closed.

1. Introduction

The California RPS Program was established by Senate Bill (SB) 1078 (Chapter 516, statutes of 2002, effective January 1, 2003) and codified at California Public Utilities Code Section 399.11, et seq. The statute requires that a retail seller of electricity such as SCE 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 one percent of annual retail sales per year so that 20 percent of its retail sales are supplied by ERRs by 2017.

The Energy Action Plan (EAP) called for acceleration of this RPS goal to reach 20 percent by 2010.[3] This was position was reiterated again in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004,[4] which encouraged the utilities to procure cost-effective renewable generation in excess of their RPS annual procurement targets[5] (APTs), in order to make progress

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[2] See Exhibit 2, page 1.

[3] The EAP was jointly adopted by the Commission, the California Energy Resources Conservation and Development Commission and the California Power Authority. The Commission adopted the EAP on May 8, 2003.

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

towards the goal expressed in the EAP.[6] This acceleration was codified in 2006 by the enactment of SB 107.[7]

The Commission has issued a series of decisions that establish the regulatory and transactional parameters of the utility renewables procurement 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 in D.04-06-025, its MPR methodology for determining the Utility's share of the RPS seller's bid price, as defined in Public Utilities Code Sections 399.14(a)(2)(A) and 399.15(c). On the same day, the Commission adopted standard terms and conditions for RPS PPAs in D.04-06-014 as required by Public Utilities Code Section 399.14(a)(2)(D). Instructions for evaluating the value of each offer to sell products requested in a RPS solicitation were provided in D.04-07-029.

2. Procedural Background

SCE filed the present application on January 2, 2007, seeking approval of the Tajiguas PPA to purchase the output of a biomass facility located in Goleta, California. The present capacity of the plant is 2.84 MW, with a possible 1.5 MW expansion to a total of 4.34 MW. SCE served both confidential and public (redacted) testimony along with the application, which were designated as Exhibits C-1 and 1, respectively, in an Administrative Law Judge (ALJ) Ruling

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[5] A Load Serving Entity's (LSE) 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.

[6] Most recently reaffirmed in D.06-05-039.

[7] SB 107, Chapter 464, Statutes of 2006.

dated March 9, 2007. Exhibit C-1 was ordered to be sealed and remain confidential under the March 9, 2007 Ruling.

SCE filed an amendment to the application on January 19, 2007, along with a motion to shorten time in order to retain the original deadline for filing of protests to the application. Given that the changes were made prior to that deadline with sufficient time to consider those changes, the motion was granted.

SCE served supplemental testimony (non-confidential) on February 26, 2007, which was designated as Exhibit 2 in the March 9, 2007 Ruling.

No protests have been filed to the application.

3. The Tajiguas PPA Should Be Approved

As discussed below, we have considered SCE's request and determine that the Tajiguas PPA should be approved.

3.1 SCE'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, request for proposal (RFP); and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review.

SCE's PRG was formed on or around September 10, 2002. Recent participants include representatives from the Commission's Energy Division, the Division of Ratepayer Advocates, The Utility Reform Network, the Natural Resources Defense Council, the Consumers' Union, California Utility Employees, and the California Department of Water Resources. SCE consulted with its PRG during each step of the renewable procurement process. Among other things, SCE provided solicitation materials and pro forma contracts to the PRG for review and comment before commencing the RFP; informed the PRG of the initial results of the RFP; explained the evaluation process; and updated the PRG periodically concerning the status of contract formation.

On December 13, 2005, SCE met with the PRG to describe SCE's Least-Cost Best Fit (LCBF) methodology and assessment of need. On December 22, 2005, SCE met with the PRG to review SCE's proposed short list of bids. On March 29, 2006, SCE updated the PRG as to the status of negotiations with bidders into SCE's 2005 RPS solicitation. On November 15, 2006, SCE briefed the PRG concerning the successful conclusion of discussions with Tajiguas.

3.2 The Tajiguas PPA Is Consistent with SCE's Adopted 2005 RPS Plan

California's RPS statute requires the Commission to review the results of a renewable energy resource solicitation submitted for approval by a utility. The Commission will then accept or reject proposed PPAs based on their consistency with the utility's approved renewable procurement plan.[8] In accordance with the RPS legislation and D.03-06-071, SCE submitted its 2005 RPS procurement plan and bid solicitation materials for Commission approval. The Commission approved SCE's 2005 procurement plan and bid solicitation material in D.05-07-039. As required by statute, it includes an assessment of supply and demand to determine the optimal mix of renewable generation resources,

[8] Section 399.14(c).

consideration of compliance flexibility mechanisms established by the Commission, and a bid solicitation setting forth the need for renewable generation of various operational characteristics.[9]

3.3 The Tajiguas PPA Selection Is Consistent With RPS Solicitation Protocol

On September 2, 2005, SCE released its 2005 RPS solicitation consistent with its approved 2005 RFP protocol. Applying the evaluation criteria required by the RPS Legislation, as implemented by the Commission in D.04-07-029, SCE established a short list for the 2005 solicitation and subsequently entered into discussions with parties on the short list. SCE communicated with its PRG throughout the evaluation, selection and contracting process that ultimately led to the execution of nine contracts from its 2005 solicitation.

3.4 The Tajiguas PPA Fits With Identified Renewable Resource Needs

In its 2005 RPS RFP, SCE sought resources that would provide maximum benefit to SCE's customers and count towards the RPS program. As provided by Commission decisions and statute, SCE solicited proposals for PPAs with terms of 10, 15, and 20 year terms. The RFP Protocol encouraged existing, new, expanded, and repowered renewable resources to participate in the RFP. Because of SCE's demand profile, SCE prefers dispatchable products and/or on-peak products. Additionally, SCE values capacity that is resource adequacy-eligible, low-cost, and RPS-eligible.

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[9] Section (a)(3).

Tajiguas fits SCE's renewable resource needs in addition to providing RPS-eligible energy because it will count towards SCE's resource adequacy purposes, and the project will be online soon.

3.5 The Bid Evaluation Process Is Consistent With The LCBF Decision

The LCBF decision[10] directs the utilities to use certain criteria in their bid ranking. It offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence serious negotiations.

SCE's LCBF bid review process is detailed in its prepared testimony.[11] The described process is in compliance with the applicable Commission decisions. SCE's LCBF analysis evaluates both quantitative and qualitative aspects of each proposal to estimate its value to SCE's customers and relative value in comparison to other proposals. The benefit/cost ratio for Tajiguas was favorable when compared with other bids that SCE received in its 2005 solicitation.[12]

3.6 Contract Prices Are Below The 2005 MPR

The levelized contract price for the Tajiguas contract does not exceed the 2005 MPR.[13] Specifically, the net present value of the sum of payments to be made under the PPA is less than the net present value of payments that would

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[10] D.04-07-029.

[11] Exhibits 1 and C-1, pp. 4-5.

[12] Exhibits 1 and C-1, page 9.

[13] The 2005 MPR was adopted by Resolution E-3980. For the Tajiguas PPA, the levelized price identified in SCE's testimony has been determined to be below the 2005 MPR, as set forth on Exhibit 2, page 1.

be made at the market price referent for the anticipated delivery. Therefore, the contract price payments are *per se* reasonable as measured according to the net present value calculations explained in D.04-06-015, D.04-07-029, and D.05-12-042. Specifically, the net present value of the sum of payments to be made under the PPA is less than the net present value of payments that would be made at the market price referent for the anticipated delivery.

No supplemental energy payments are necessary for the proposed PPA.

3.7 Viability of Project

SCE states that the Tajiguas facility is an existing facility that is currently delivering renewable energy to SCE under a Standard Offer 1 (SO1) contract. The facility has all of the necessary permits and is progressing towards converting from an interconnection agreement pursuant to its SO1 contract to a Wholesale Distribution Access Tariff with SCE. Accordingly, there are no viability issues with the existing Tajiguas Project.[14] The Tajiguas facility uses landfill gas located onsite and has a lease for the first ten years of the PPA's term. In addition, Tajiguas bears the risk of future fuel supply and fuel price; the contract price is not contingent on fuel price changes. SCE states that the viability of expansion of an existing facility is very good, and that no interconnection upgrades will be needed.[15] These factors support SCE's assertion that the project is viable.

[14] Exhibit 1, page 15.

[15] Id.

3.8 Consistency with Adopted Standard Terms and Conditions

In D.04-06-014, the Commission set forth standard terms and conditions to be incorporated into RPS agreements. Appendix A of that decision identified Standard Terms and Conditions, some of which are categorized as "may not be modified." The Tajiguas PPA contains modifications to certain terms and conditions,[16] some of which were identified as non-modifiable by D.04-06-016. It was principally for this reason that SCE was prompted by the Energy Division to seek approval of the Tajiguas PPA through the filing of an application rather than an advice letter.

SCE states that these modifications to the standard terms were commercially necessary or substantively immaterial to the terms contained in D.04-06-014.

Modifications that SCE considered to be immaterial affected the definition of "CPUC Approval" and "Environmental Attributes" in Exhibit A to the PPA and Sections 1.02 Start Up Deadline, 1.04 Term, 3.01 Conveyance of Entire Output, Conveyance of Environmental Attributes and Capacity Attributes, 3.16 Obtaining and Maintaining CEC Certification and Verification, 10.02 Additional Warranties and 10.07 Governing Law. SCE states the modifications were very minor, were mutually agreed to by both parties and were made to provide more clarity to the PPA as a whole.

According to SCE, it was commercially necessary to modify the assignment term, a term which, by D.04-06-016, "may not be modified." The

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[16] A comparison of the standard terms from D.04-06-014 to SCE's 2005 pro forma and the Tajiguas PPA can be found in Appendix B of Exhibits 1 and C-1.

principal differences in the assignment term between the proposed Tajiguas PPA provision and the Commission standard term relate to the conditions under which the PPA may be assigned to a lender. The standard term provides that the lender must agree to be bound by the PPA, which according to SCE, is almost universally unacceptable to sellers, including Tajiguas.

Tajiguas requested the following modifications to this term: (i) notice of potential seller defaults, an opportunity to cure seller defaults and an extension of cure periods so that the lender can cure the default if it elects to do so; (ii) rights to approve material contract amendments; and (iii) no lender liability for monetary obligations under the PPA which are due and owing to SCE as of the date of any lender assumption of the PPA. SCE agreed those terms were reasonable and acceptable. In return, SCE requested that the lender agree to keep the PPA in force, or enter into a new PPA with substantially identical terms in the event that a lender or an agent or representative of lender takes control of the project in a foreclosure, workout, or bankruptcy scenario. Tajiguas agreed to this modification. SCE states that this additional assurance that the PPA will remain in force notwithstanding seller financial difficulties provides substantial value, both to SCE and to sellers and lenders. It is SCE's position that without this modification SCE would not have been able to execute the Tajiguas PPA.

Since the filing of this application, (1) Pacific Gas and Electric Company (PG&E) and SCE jointly filed a petition for modification of D.04-06-014 and (2) D.07-02-011 was issued. Both actions impact our resolution of the Tajiguas PPA standard term issue.

On February 1, 2007, PG&E and SCE filed a petition for modification of D.04-06-014 regarding standard terms and conditions required for RPS contracts. PG&E and SCE recommend that the Commission provide several clarifications and modifications to D.04-06-014, including lifting all current restrictions on negotiation of designated standard terms and conditions.

The petition for modification directly relates to SCE's request in this proceeding to modify contract terms deemed non-modifiable by D.04-06-014. It is more appropriate for this issue to be resolved generically through the petition for modification than specifically for SCE in this proceeding. We will adopt that course of action. However, until the issue is ultimately resolved, we must consider what to do now with SCE's request for approval of the Tajiguas PPA.

To address that question, we turn to D.07-02-011, which conditionally accepted the procurement plans for 2007 RPS solicitations and considered the issue of modifying contract terms and conditions. In that decision, we permitted the 2007 RPS plans to be filed without requiring that they conform to the precise standard terms and conditions adopted in D.04-06-014, reserving review of the issue of modification of terms and conditions for later consideration due to the importance of proceeding with implementation of the RPS program without delay.[17]

In the present proceeding we also feel it is important to expeditiously proceed with approval of this contract while reserving judgment on treatment of modifications to standard terms and conditions generally to the petition for modification of D.04-06-014. Therefore, consistent with our actions in D.07-02-011 regarding the 2007 solicitation and with the understanding that SCE has the responsibility to reasonably administer and implement the RPS program and to meet RPS targets, we will approve the Tajiguas PPA at this time without

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[17] D.07-02-011, *mimeo.*, pp. 50-51.

requiring that it precisely conform to the standard terms and conditions adopted in D.04-06-014. This approval is not contingent upon, nor does it prejudge in any way, our resolution of the petition for modification of D.04-06-014.

4. Categorization and Need for Hearings

In Resolution ALJ 176-3185 dated January 11, 2007, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given status public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3185.

5. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Victoria S. Kolakowski is the assigned ALJ in this proceeding.

Findings of Fact

1. There were no protests to this application.

2. The Tajiguas PPA is consistent with SCE's approved 2005 renewable procurement plan.

3. The Tajiguas PPA price is below the 2005 MPR released in Resolution E-3980 and is *per se* reasonable as measured according to the net

present value calculations explained in D.04-06-015, D.04-07-029, and D.05-12-042.

4. On February 1, 2007, PG&E and SCE filed a petition for modification of D.04-06-014 seeking clarification and modification of the RPS contract requirements related to standard contract terms and conditions.

5. To the extent that the Tajiguas PPA is otherwise acceptable, it is important to proceed with approval expeditiously, while reserving judgment on treatment of modifications to standard terms and conditions generally to the February 1, 2007 petition for modification of D.04-06-014.

Conclusions of Law

1. The Tajiguas PPA should be approved.

2. SCE should be allowed to fully recover the Tajiguas PPA payments in rates over the life of the project, subject to Commission review of SCE’s administration of the PPA.

3. Procurement pursuant to the Tajiguas PPA constitutes 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 (§ 399.11 et seq.), D.03-06-071, or other applicable law.

4. Procurement pursuant to the Tajiguas PPA constitutes incremental procurement or procurement for baseline replenishment by SCE from eligible renewable energy resources for purposes of determining SCE'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, D.03-06-071, or other applicable law.

5. SCE should be allowed to recover in rates any indirect costs of renewables procurement identified in § 399.15(a)(2).

6. This decision should be made effective immediately so that Tajiguas may begin providing renewable energy to SCE as soon as possible.

O R D E R

IT IS ORDERED that:

1. The Southern California Edison Company (SCE) renewables portfolio standard power procurement agreement (PPA) with MM Tajiguas Energy LLC is approved.

2. SCE is authorized to recover in rates payments made pursuant to the PPA, subject to further review with respect to reasonableness of SCE's administration of the PPA.

3. Application 07-01-001 is closed.

This order is effective today.

Dated April 12, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners