

Decision 07-11-047 November 16, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) for Approval of a Contingent Settlement Agreement and an Associated Power Purchase and Sale Agreement and Resource Adequacy Confirmation Between SCE, and Calpine Energy Services and Geysers Power Company.

Application 07-06-007
(Filed June 4, 2007)

OPINION APPROVING SETTLEMENT AGREEMENT AND ASSOCIATED POWER PURCHASE AGREEMENT AND RESOURCE ADEQUACY CONFIRMATION

1. Summary

This decision grants the request of Southern California Edison Company (SCE) as follows:

1. A contingent settlement agreement between SCE, Calpine Energy Services, LP (CES) and Geysers Power Company, LLC (Geysers) is approved.
2. An associated renewables portfolio standard (RPS) power purchase agreement (PPA) is approved. The contract will provide SCE with eligible renewable energy from the existing Geysers northern California geothermal facility for a term of 10 years.
3. An associated resource adequacy (RA) confirmation for 2009 through 2011 is approved. RA benefits are provided from Calpine's Pastoria Energy Facility as opposed to the Geysers facility. In addition to satisfying system RA needs during this period, this transaction may also count toward meeting any contemplated Big Creek/Ventura local RA requirement, all at a competitive price and terms.

2. SCE's Request

SCE seeks approval of a settlement between SCE, CES, and Geysers regarding CES's attempted rejection of an existing, below market renewable PPA (the Existing PPA) with SCE.¹

The agreements that set forth the terms of the settlement and replace the Existing PPA include the following:

1. The Contingent Settlement (CSA).
2. A new Power Purchase and Sale Agreement between SCE and Geysers (the Geysers or New PPSA).
3. A Resource Adequacy Confirmation for 2007 (the 2007 RA Confirmation).
4. A Resource Adequacy Confirmation for 2008 (the 2008 RA Confirmation).
5. A Resource Adequacy Confirmation for 2009 through 2011 (the 2009-2011 RA Confirmation).
6. A new Energy Trading Agreement (the New ETA).²

¹ On October 18, 2005, CES submitted a bid to SCE's 2005 Renewable RFP for renewable energy from the Geysers Project in northern California. On December 20, 2005, CES filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code, and on the same day filed a motion to reject the Existing PPA with SCE. On January 27, 2006, the U.S. District Court for the Southern District of New York granted SCE's motion to dismiss CES's rejection motion, and ruled that CES must present its claim for rejection of the Existing PPA to the Federal Energy Regulatory Commission (FERC). CES appealed the District Court decision to the U.S. Court of Appeals for the Second Circuit. The parties briefed the appeal and oral argument was heard on April 10, 2006. The matter is still pending.

² The New ETA between SCE and CES is intended to provide the contractual means by which the parties can periodically buy and sell energy under the terms and conditions set forth in a standard EEI Agreement. SCE indicates that it has been authorized under its Commission-approved Long Term Procurement Plan (LTPP) to execute such agreements with counterparties.

On April 12, 2007, SCE, CES, and Geysers executed the CSA, the New PPSA, the 2007 RA Confirmation, the 2008 RA Confirmation, and the 2009-2011 RA Confirmation. CES filed a motion with the Bankruptcy Court on April 13, 2007 seeking approval of the agreements. The Bankruptcy Court issued an order on May 9, 2007, approving the agreements. The Court's approval became final and non-appealable on May 19, 2007. SCE and Geysers Power began performing under the terms of the New PPSA on June 1, 2007.³

SCE's application request is for Commission approval of the CSA, the Geysers PPSA, and the 2009-2011 RA Confirmation. SCE indicates that it is currently authorized to enter into the 2007 RA Confirmation, the 2008 RA Confirmation, and the New ETA pursuant to its approved LTPP, and is therefore not requesting approval of these agreements in this application.

SCE requests that the Commission grant approval of the CSA, Geysers PPSA (referred to by SCE as the New PPSA), and the 2009-2011 RA Confirmation as the term "CPUC Approval" is defined in the CSA:

"CPUC Approval" means a final and Non-Appealable order of the CPUC, without conditions or modifications unacceptable to SCE, which contains the following terms:

- (a) Approves the [CSA], the New PPSA, and the 2009-2011 RA Confirmation in their entireties and without modification, including payments to be made by SCE, subject to CPUC review of SCE's administration of the New PPSA and the 2009-2011 RA Confirmation; and
- (b) Finds that any procurement pursuant to the New PPSA is procurement from an ERR [eligible renewable energy resource] for

³ Although performance under the PPA has begun, some terms providing ratepayer benefits, including SCE's option to purchase renewable power above the baseload amounts contemplated by the PPA, do not become effective until the Commission has approved the PPA.

purposes of determining SCE's compliance with any obligation that it may have to procure electric energy from ERRs pursuant to the RPS Legislation, CPUC Decision 03-06-071], or other applicable laws.

While there were no protests to SCE's application request, Calpine Corporation (Calpine) filed a response on July 6, 2007. Calpine indicated that it supports approval of the application and requested that the Commission issue a decision approving the application no later than November 16, 2007.⁴ Calpine stated that it filed its reorganization plan on June 20, 2007 and expects to successfully emerge from bankruptcy in the fourth quarter of 2007 or the first quarter of 2008, and Commission approval of SCE's application prior to Calpine's emergence from bankruptcy will provide certainty regarding the settlement for both SCE and Calpine, as Calpine moves forward with its reorganization plan.

On October 3, 2007, SCE filed a Notice of a Stipulation of Dismissal of the Appeal of Calpine Corporation and Calpine Energy Services in the United States Court of Appeals for the Second Circuit. In this notice, SCE states that CES recently concluded a settlement agreement with the last of the counterparties to the group of contracts it had sought to reject when it filed its bankruptcy case in late 2005. As part of this recent settlement, CES agreed to withdraw its appeals in the Second Circuit and to effectively waive its right under the bankruptcy code to pursue the rejection of the contracts that are the subject of the appeals, including its Existing PPA with SCE. On September 18, 2007, CES and all other parties to the appeal proceedings in the Second Circuit filed a stipulation to

⁴ In its application, SCE requested an expedited schedule with a final Commission decision date of December 6, 2007.

dismiss the appeals. The Court has not yet entered an order dismissing the appeals, but is expected to do so.⁵

The dismissal of the appeals would leave intact the District Court decision dismissing the CES rejection motion and ruling that if CES were to pursue relief from performing the contracts, it must present its request to the FERC.

However, Calpine's plan of reorganization that it has filed in Bankruptcy Court⁶ provides for its assumption of the contracts, which indicates its intention to continue performing under the contracts. Thus, the issues raised by Calpine's attempt to reject the contracts have effectively been resolved whether or not the CPUC approves SCE's new agreements with CES. Nevertheless, since SCE believes the new agreements provide substantial customer value, it urges the Commission to promptly approve the CSA and associated contracts.

In this decision, we will evaluate the reasonableness of the Geysers PPSA and the RA Confirmation for 2009-2011 and whether each should be approved. We will also evaluate whether the CSA as a whole provides ratepayer benefit when compared to the Existing PPA and should be approved.

3. The Geysers PPSA

⁵ SCE states that, in the event that the Court does not enter an order dismissing the appeals, the status of Calpine's litigation attempting to reject the contracts will be as set forth in SCE's application, and the Commission should approve the new agreements with CES for the reasons stated therein.

⁶ Calpine's plan of reorganization has not yet been approved by the Court.

Facility	Type	Term Years	MW Capacity	GWh Energy	Expected Online Date	Location
Geysers Project	Geothermal	10	225 MW	1,971	June 1, 2007	Middletown, CA

SCE seeks approval of the Geysers PPSA, awarded in part through SCE's 2005 RPS solicitation and in part as a settlement of CES' attempted rejection of the Existing PPA in its bankruptcy proceeding. The existing PPA is for 200 MW and is set to expire on April 30, 2008. The new PPSA's term commences on June 1, 2007 and replaces the final year of the existing agreement. The base load capacity in the new PPSA will increase to 225 MW after CPUC approval of the agreement, thus adding an incremental 25 MW of RPS-eligible power towards SCE's RPS requirements. The PPSA also includes an option for SCE to purchase additional renewable power above the baseload amounts. In summary, deliveries from the Geysers PPSA are reasonably priced and the contract price should be fully recoverable in rates over the life of the contract, subject to Commission review of SCE's administration of the contract. This PPA is not eligible for supplemental energy payments from the California Energy Commission.⁷

⁷ Pursuant to the CEC RPS Eligibility Guidebook, an RPS-eligible facility must either be "new," meaning the facility first commences commercial operations on or after January 1, 2002, or "repowered" to qualify as eligible for SEPs. Additionally, on October 14, 2007, the Governor signed SB 1036 which transfers the SEP award authority from the California Energy Commission to California Public Utilities Commission.

4. RPS Program Background

4.1. The RPS Program requires Each Utility to increase the Amount of Renewable Energy in its Portfolio

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.*⁸ 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 1% of annual retail sales per year so that 20% 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 2010.⁹ This position was reiterated again in Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004, which encouraged the utilities to procure cost-effective renewable generation in excess of their RPS annual procurement targets¹⁰ (APTs), in order to make progress towards the goal

⁸ Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

⁹ 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.

¹⁰ 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.

expressed in the EAP.¹¹ This acceleration was codified in 2006 by the enactment of SB 107.¹²

4.2. R.04-04-026 established Procurement Guidelines for the RPS Program

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 Market Price Referent (MPR) methodology for determining the utility's share of the RPS seller's bid price, as defined in §§ 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 § 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. More recently, on December 15, 2005, the Commission adopted D.05-12-042 which refined the MPR methodology for the 2005 RPS Solicitation. Subsequent resolutions adopted MPR values for the 2005, 2006 and 2007 RPS Solicitations.¹³ In addition, D.06-10-050, as modified by D.07-03-046, further refined the RPS reporting and compliance methodologies.¹⁴ In this decision, the Commission established methodologies to calculate an LSE's initial baseline

¹¹ Most recently reaffirmed in D.06-05-039.

¹² SB 107, Chapter 464, Statutes of 2006.

¹³ Respectively, Resolution E-3980, Resolution E-4049 and Resolution E-4110.

¹⁴ D.06-10-050, Attachment A, as modified by D.07-03-046.

procurement amount, annual procurement target (APT) and incremental procurement amount (IPT).¹⁵

5. The Geysers PPSA should be approved

As discussed below, we have considered SCE's request and have determined that the Geysers PPSA should be approved without modification.

5.1. 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, the 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 California Department of Water Resources. SCE consulted with its PRG during each step of the renewable procurement process. Among other things,

¹⁵ 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 utility's customers from its DWR contracts.

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 April 11, 2007, SCE briefed the PRG concerning the successful conclusion of discussions with CES. Although Energy Division is a member of the PRG, it reserved its conclusions for review and recommendation on the PPA to the application process.

**5.2. The Geysers PPSA is Consistent with
SCE's CPUC 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.¹⁶ 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 materials 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, consideration of compliance flexibility mechanisms established by the Commission, and a bid solicitation setting forth the need for renewable generation of various operational characteristics.¹⁷

¹⁶ Section 399.14(c).

¹⁷ Section 399.14(a)(3).

5.3. The Geysers PPSA 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 ten contracts from its 2005 solicitation, including the Geysers PPSA.

5.4. The Geysers PPSA 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 Protocol encouraged existing, new, expanded, and repowered renewable resources to participate in the RFP.

The Geysers project fits SCE's renewable resource needs as a baseload geothermal facility that is currently online and generating energy for SCE. The contract will contribute significantly to SCE's RPS goal, providing the equivalent of 2.35% of SCE's 2010 retail sales.¹⁸

¹⁸ Exhibit 1 (Confidential) and Exhibit 2 (Public) Appendix G.

5.5. The Bid Evaluation Process is Consistent with the Least-Cost Best-Fit (LCBF) Decision

The LCBF decision¹⁹ 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.²⁰ 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.

In addition to the factors always considered in SCE’s LCBF evaluation, SCE included an analysis of the monetary loss associated with terminating the Existing Agreement. Overall, the Geysers project compares favorably to other projects in SCE’s 2005 solicitation. In particular, the Geysers project will substantially and immediately assist SCE towards its RPS goals without having to overcome any permitting, transmission, construction, financing or environmental issues before it begins operation.

5.6. Contract Pricing is Reasonable

As explained in D.04-06-015, D.04-07-029, and D.05-12-042, if the net present value of the sum of payments to be made under a PPA is at or below the

¹⁹ D.04-07-029.

²⁰ Exhibit 1 (Confidential) and Exhibit 2 (Public), pp. 9-16.

net present value of payments that would be made at the MPR for the anticipated delivery, the PPA will be considered *per se* reasonable.

SCE has negotiated a contractual pricing mechanism²¹ that results in a price that is currently at or below the 2005 MPR. The mechanism includes an indexed unit price and a fixed premium unit price. For that reason, the actual prices that will be charged are unknown. For the purposes of this application, we find this pricing mechanism to be reasonable. However, this finding should not be considered as a precedent for the use of such a pricing mechanism. Our finding of reasonableness here is based on the fact that it currently yields a reasonable price and in many other respects the contract is desirable. It provides near-term delivery of significant quantities of renewable energy; it requires no transmission upgrades; and it has a favorable benefit-cost ratio. Also, the application is unopposed.

5.7. Viability of Project

SCE asserts that the Geysers project is viable. In general, we agree. As described below, the only potential concern is Calpine's ability to emerge from its current Chapter 11 bankruptcy.

Project Milestones

The PPA concerns an existing facility that is already delivering energy to SCE. There is no development necessary or any associated milestones.

Project Financing

²¹ A description of the pricing mechanism is included in Exhibit 1 (Confidential), p. 22. The PPSA also includes an option for SCE to purchase additional renewable power above the baseload amounts. The price set forth in the PPA for this additional power is also at or below the 2005 MPR.

The project is online, so viability concerns are moderate. Although Calpine is currently in Chapter 11 bankruptcy, the company filed its reorganization plan on June 20, 2007, which is a positive sign that Calpine will soon successfully emerge from bankruptcy.

Fuel Source and Technology Risk

The project is currently online and generating energy.

Production Tax Credit

The PPA is not contingent upon the extension of the federal production tax credits as provided in Section 45 of the Internal Revenue Code of 1986, as amended.

Sponsor's Creditworthiness and Experience

Geysers parent company, Calpine, is in bankruptcy. While SCE is concerned, SCE is closely monitoring Calpine's progress and sees that certain recent actions represent positive signs that Calpine will successfully emerge from bankruptcy. In addition, to mitigate the risk that the seller will not perform as required by the PPA or will default following the commencement date, Geysers is required to post performance assurances.

5.8. Consistency with 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 the STC, some of which are categorized as "may not be modified." The Geysers PPSA contains modifications to certain STCs.²² SCE states that these

²² A comparison of the standard terms from D.04-06-014 to SCE's 2006 pro forma and the Geysers PPSA can be found in Appendix B of Exhibit 1 (Confidential).

modifications were commercially necessary for Geysers or were not materially different from the STCs contained in D.04-06-014.

SCE states that a number of modifications were necessary, (1) to change the standard terms to reflect the fact that the Geysers PPSA is structured around the purchase of portion of the energy produced by all of the Geysers generating facilities and not, as the standard terms assume, energy produced by a single generating facility whose entire output is dedicated to SCE, (2) to reflect the fact that the hourly energy scheduled by Calpine from all of its generating assets with SCE will be paid at an index price, and (3) to include the renewable power premium payment for Calpine's monthly allocation of Green Attributes, based upon the meter readings at each individual generating facility.

Modifications that SCE considered to be immaterial affected the definition of "CPUC Approval" and "Green Attributes" and the contract sections that described the term, eligibility, assignment and applicable 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.

We have reviewed SCE's changes to the STCs and agree they were either necessary to reflect the facts of the Geysers PPSA, or in providing clarity, are minor as compared to the terms and conditions approved in SCE's 2005 Procurement Plan and R.04-04-026.

6. The RA Confirmations

SCE and CES negotiated and executed three separate RA Confirmations as part of the CSA. They are for 2007, 2008 and 2009-2011. For 2008 and 2009-2011, SCE procured Local RA capacity from the Pastoria Energy Facility as a trade for Local RA capacity from the Geysers units, although the Geysers units will continue to provide energy to SCE as an RPS resource.

7. RA Background

7.1. The Commission issued D.02-10-062 authorizing the Investor Owned Utilities (IOUs) to re-enter the Process of Procurement

In D.02-10-062, the Commission ordered the IOUs to recommence procurement and to facilitate more long-term planning. The decision set January 1, 2003 for the recommencement of IOU driven procurement, and for implementation of Assembly Bill 57. This decision approved short-term procurement plans, but maintained the flexibility for the Commission to create more structure later. It also authorized the IOUs to enter into agreements of less than five years in duration, and authorized a list of procurement products and transactions into which the IOUs can enter. Preparation and approval of LTPPs were left until a later decision.

7.2. D.04-12-048 found Reasonable and approved LTPPs for the Three IOUs.

D.04-12-048 extended the procurement authority of IOUs to ten years, and maintained the requirement to consult with the PRG. Specifically the decision found reasonable SCE's net short position and resource scenarios and found its bottom up approach with respect to the Loading Order to be in compliance. This decision updated and reiterated the findings of D.02-10-062. In closing its net open position, SCE is restricted to a set of authorized products, including RA capacity, and types of transactions, including some restricted use of bilateral transactions, authorized in its LTPP.

7.3. The CPUC has established System RA Requirements as well as a Local RA Obligation.

The RA Program established by D.05-10-042 requires all LSEs under CPUC jurisdiction to submit annual and monthly compliance filings to demonstrate procurement of sufficient capacity to meet their forecasted peak load plus a planning reserve margin.

The CPUC has also established a Local RA obligation that requires LSEs to procure capacity resources within certain transmission constrained Local Areas. D.07-06-029 established the Local RA obligation in the Big Creek/Ventura (BC/V) Local Area.

The California Independent System Operator (CAISO) performs an annual study to determine the amount and location of capacity needed to satisfy minimum operating reliability criteria (LCR study). This obligation is allocated out to the LSEs each year with a Year Ahead compliance filing currently due in October of each year. The CAISO lists resources such as the Pastoria Energy Facility that are able to provide BC/V Local capacity.

8. The 2007 RA Confirmation

The 2007 RA Confirmation essentially carries forward and memorializes the resource adequacy product that CES is currently providing under the Existing PPA, with terms adopted from industry developed resource adequacy contracts. Such terms did not exist at the time the Existing PPA was executed. There is no separate RA capacity payment associated with this transaction, as the compensation to be paid under the Existing PPA (and under the Geysers PPSA during the Interim Period) is already deemed to include a resource adequacy component. SCE indicates that it executed the 2007 transaction within its authority to procure under its current LTPP, and is therefore not seeking

approval as part of the application. SCE states that this transaction will be included as part of SCE's next quarterly procurement compliance report and will be reviewed under that process.

9. The 2008 RA Confirmation

The 2008 RA Confirmation provides resource adequacy benefits from Calpine's Pastoria Energy Facility (714 MW) as opposed to the Geysers (225 MW). No tolling rights are provided. The Pastoria Energy Facility is located in Lebec, CA. CES believed that it could obtain more value for Geysers RA from northern California based parties than it could from SCE, and SCE believed that Pastoria RA provided more value to it than Geysers by enabling SCE to meet any potential BC/V RA requirements that may be imposed. SCE states that the 2008 RA transaction is priced competitively with similar transactions entered into by SCE in the 2006 All Source Request for Offers (RFOs). Similar to the 2007 RA Confirmation, SCE indicates that it executed the 2008 transaction within its authority to procure under its current LTPP, is therefore not seeking approval as part of the application, and will include this transaction as part of SCE's next quarterly procurement compliance report.

10. The 2009-2011 RA Confirmation

The 2009-2011 RA Confirmation also provides resource adequacy benefits from the Pastoria Energy Facility. According to SCE, this RA transaction is competitive when compared to the RA and Tolling offers that SCE received in its 2006 All Source RFOs; and, in addition to satisfying system RA needs during this period, this transaction may also count toward meeting any contemplated BC/V local RA requirement, all at a competitive price and terms. In this proceeding, SCE specifically requests Commission approval of the 2009-2011 RA Confirmation.

11. The 2009-2011 RA Confirmation should be approved

The Pastoria Energy Facility will provide a needed RA product for the BC/V Local Area. Also, as discussed below, SCE has reasonably demonstrated that the 2009-2011 RA Confirmation meets our requirements for approval. We conclude that the transaction should be approved without modification.

11.1. Requirements for Approval under D.04-12-048

In D.04-12-048, the Commission established a list of specific criteria to judge whether an RA agreement is in accordance with our policies and procurement requirements.²³ Specifically SCE must demonstrate:

1. that there is a residual capacity need to be met with this transaction;
2. this transaction fits within the EAP Loading Order only after cost effective higher order resources are procured first;
3. that this transaction occurs via approved transaction types, and SCE is transacting in approved products for approved durations;
4. the RFO was open to all offers and transparent, within the constraints of the product offered;
5. that the product transacted gives the highest ratepayer value compared with alternatives using the Least-Cost Best-Fit Methodology; and
6. that the RFO, bid valuation, and selection were thoroughly reviewed with the PRG.

Each of these requirements, as they relate to SCE's request for approval of the 2009-2011 RA Confirmation, is discussed below.

²³ D.04-12-048, p. 154, exempts contracts of five years or less from the requirement to add a GHG adder to all fossil bids.

11.1.1. Capacity Need

The LCR study performed by the CAISO locates and describes transmission constraints in various Local Areas in California. Pursuant to Commission decision (D.06-06-064 and D.07-06-029) we establish the appropriate level of Local Capacity obligations and allocate them out to the LSEs based on load share within IOU service areas. To satisfy the Commission's Local RA obligation, SCE has been required to procure their share of Local RA capacity in the BC/V Local Area. Since the Pastoria Energy Facility is located within the BC/V Local Area, it is eligible to provide Local RA product. SCE's Local RA obligation in the BC/V Local Area justifies this purchase for 2008, and the Commission finds it reasonable for SCE to procure capacity from the Pastoria Energy Facility to meet a forecasted Local RA obligation of a similar magnitude in the years 2009 - 2011.

11.1.2. Compliance with the EAP Loading Order

The EAP Loading Order, published May 8, 2003 and endorsed again in D.04-12-048, contains explicit direction regarding the state's preferences for meeting identified resource needs, and the IOUs are to prioritize their resource selections accordingly."²⁴ Cost effective procurement of Demand Response (DR), Distributed Generation (DG), and Renewable Energy are to occur prior to any procurement of fossil resources.

In D.04-12-048, the Commission chose to accept compliance with the EAP by finding that the LTPPs "are EAP-compliant to the extent they include EAP targets established in the RPS, DR and EE proceedings; included, at a minimum,

²⁴ D.04-12-048, p. 31.

the DG forecasts in the 2003 IEPR, and added transmission and clean central-station generation to meet remaining energy and capacity needs.”²⁵ Chapter IV of SCE’s LTPP laid out the goals for the growth of DR, DG, and RPS eligible resources in a table alongside projections of need for fossil resources. Chapter IV discussed the “bottom-up” methodology that SCE would use to compute residual need for cost effective fossil generation after all the higher order resources are accounted for and subtracted. In order to protect resource mixes and other commercially sensitive information, we merely say here that this agreement does not constitute a departure from the EAP, since it is in line with SCE’s LTPP and fits within the residual net short after preferred higher order resource targets are achieved.

11.1.3. Types of Approved Transactions and Products

D.02-10-062 lists a set of approved products and transactions, including the approval for restricted bilateral agreements and the procurement of RA Capacity.²⁶

11.1.4. Open and Transparent RFO

In this application, SCE seeks approval of procurement via direct bilateral contracting, not via an open and transparent RFO. D.03-12-062 allows direct bilateral contracting such as this only in four cases – (1) Short-term transactions of less than 90 days’ duration and with delivery beginning less than 90 days forward; (2) Longer-term non-standard products provided that the IOU includes a product justification in quarterly compliance filings; (3) Standard products in

²⁵ D.04-12-048, p. 45.

²⁶ D.02-10-062, pp. 37-38.

cases where there are five or fewer counterparties (for gas storage and pipeline capacity, only; and (4) to enhance Local Area Reliability. Since this transaction is the product of a settlement with some bilateral negotiating involved, this transaction falls under condition (2) above, the longer term non-standard product for which the IOU must report on in the quarterly compliance filing. SCE does provide a product justification in A.07-08-007, but, for purposes of fulfilling the requirements of D.03-12-062,²⁷ must include this justification in subsequent quarterly compliance reports, which will allow the Commission to review the transaction in that context.

11.1.5. Highest Value to Ratepayers via LCBF

D.04-12-048 requires the use of a LCBF methodology.²⁸ Since this is an RA only product, discussions of potential dispatch are not included here. Since this is a BC/V Local RA product, need is determined via SCE's BC/V Local RA obligation for 2008, and implied continuation of that obligation into the future years of this contract. LCBF is measured in comparing the NPV of this transaction versus possible transactions for similar products. In this case, SCE presented NPVs based on bids received from generators offering BC/V Local RA product in the quantities transacted here. SCE showed that this transaction would create net present costs less than comparable transactions bid into the RFO, and significantly lower than the residual BC/V Local RA offered into the

²⁷ D.03-12-062 Ordering Paragraph 11.

²⁸ D.04-12-048, page 127, orders IOUs to use "Qualitative and quantitative attributes include performance risk, credit risk, price diversity (10- vs. 20-year price terms), and operational flexibility etc." when evaluating bids in an all source RFO.

RFO that was not procured. Even though this transaction was not the result of an RFO, it is cost competitive in terms of NPV over the term of the contract.

11.1.6. Consultation with PRG

SCE consulted with the PRG on April 11, 2007 regarding the settlement with CES that restructured their existing contract for capacity and energy from the Geysers facilities. In this meeting, SCE presented the structure of the settlement, including provisions for extension of the RPS eligible purchases from the Geysers facilities. SCE also presented a swap of RA capacity from the Geysers units for capacity from the Pastoria Energy Facility and an increase in the total amount of RA capacity purchased. SCE presented valuations which demonstrated that this swap represents an increase in value for SCE, particularly given that SCE has a Local RA obligation in BG/V, but not in the area in which the Geysers is located (North Coast/North Bay Local Area), and that this transaction increases the total amount of capacity SCE has under contract.

SCE's presentation also compared the value of the NPV of this transaction against the NPV of bids for similar products made in their recent RFO. The presentation made by SCE presented a comparison of the proposed pricing of Local RA capacity from the Pastoria Energy Facility against bids it received for other Local RA capacity (both LA Basin and BC/V) in its recent All Source RFO for products that can deliver in 2008 and beyond. All offers were adjusted to cover the entire 2008-2011 timeframe, and a comparison of the NPV of the Pastoria settlement versus the NPV of the first unaccepted offer of similar size and location was provided. Since the initial PRG meeting to the current application, the pricing has increased somewhat, but the Commission is satisfied that SCE has adequately fulfilled its obligation to consult with the PRG.

**11.2. Required Elements of an RA Contract
under D.05-10-042 and D.06-07-031**

D.05-10-042, while not adopting a standard capacity contract, lays out certain required elements that must be included in a valid RA capacity contract. D.06-07-031 builds off those required elements and adds more definition to them. It also specifically elaborates on the elements of a standard tradable product. The RA contract between SCE and CES regarding the Pastoria Energy Facility has incorporated those provisions, including scheduling and deliverability obligations to the CAISO, flexibility regarding the treatment of outages, CAISO net qualifying capacity rating procedures, good utility practice and compliance with GO 167, and provisions regarding the resale of the designated RA capacity from Pastoria Energy Facility. The RA contract approved here sufficiently obligates the Seller to the RA provisions of the CAISO Tariff, including reporting, performance, scheduling and deliverability, as well as installs the proper safeguards against double selling and verification. The Commission is satisfied that the provisions of D.05-10-042 and D.06-07-031 are met.

12. The CSA should be approved

The CSA sets forth terms by which SCE, CES and Geysers agreed to settle their dispute related to CES' motion in Bankruptcy Court to reject the Existing PPA with SCE. The terms of the CSA involve (1) the Existing PPA and (2) the Geysers PPSA, the 2007 RA Confirmation, the 2008 RA Confirmation and the 2009-2011 RA Confirmation, all of which would replace the Existing PPA.

We have considered SCE's request to approve the CSA. As discussed below, the CSA meets our criteria for settlement approval and should therefore be approved.

12.1. Standard of Review for Settlements

We have specific rules regarding approval of settlements:

“The Commission will not approve settlements whether contested or uncontested, unless settlement is reasonable in light of the whole record, consistent with law, and in the public interest.”²⁹

12.2. The CSA is Reasonable in Light of the Record

Earlier in this decision, we determined that the Geysers PPSA and the 2009-2011 RA Confirmation were reasonable and that those transactions should be approved. Also, SCE is currently authorized to enter into the 2007 RA Confirmation and the 2008 RA Confirmation pursuant to its approved LTPP. Under the CSA, these transactions would replace the Existing PPA.

Based on SCE’s filing, in order to determine whether the CSA itself is reasonable, it would be appropriate to consider whether the CSA constitutes a reasonable compromise of the litigation positions of the parties.³⁰ That is whether it provides value to SCE’s ratepayers within a reasonable range between the CES prevails scenario and the SCE prevails scenario, reflecting the relative merits of the parties’ claims. However, based on the October 3, 2007 information

²⁹ Rule 12.1(d) of the Commission’s Rules of Practice and Procedure.

³⁰ Had SCE prevailed in the dispute and preserved the Existing PPA, it would have preserved for its ratepayers the entire value of the remaining PPA. Had CES prevailed, the Existing PPA would have terminated subject to a claim by SCE in Calpine’s bankruptcy for the below market portion of the Existing PPA that remained as of the rejection date. That claim would have been secured up to the \$20 million amount held by SCE as collateral for Calpine’s obligations, and unsecured for any balance. SCE’s ratepayers stood to lose whatever portion of its bankruptcy claim that was not secured and payable as part of a Chapter 11 reorganization plan or in liquidation.

provided by SCE (the pending dismissal of the appeal and Calpine's plan of reorganization which provides for the assumption of the old contracts) it appears that Calpine will more than likely continue to perform under the old contract. Therefore, under these circumstances, it would be more appropriate to directly compare the CSA to the Existing PPA to determine the reasonableness of the CSA.

In its RPS LCBF quantitative analysis, SCE counted the full remaining value of the Existing PPA as a cost.³¹ The analysis showed that the Geysers PPSA provided customer value in relation to continuing the Existing PPA through April 30, 2008³² and utilizing of one of the other available short list alternatives for the remainder of the Geysers PPSA contract term. Given the choice of one or the other, SCE's ratepayers would be in a stronger position with the Geysers PPSA than they would be with the Existing PPA.

Regarding RA, the CSA provides comparable or better benefits than would the Existing PPA over the remaining life of the Existing PPA (through April 30, 2008). The 2008 RA Confirmation would provide a needed 714 MW of RA product for SCE's BC/V Local Area. The Existing PPA would provide 200 MW of capacity, none of which would be eligible to serve SCE's Local Area RA needs. Beyond that, the 2009-2011 RA Confirmation would also provide the

³¹ An amount equal to the net present value of the monthly difference of the Existing PPA (June 1, 2007 through April 30, 2008) from a forecast of the payments that SCE would have had to make if it had procured 200 MW of renewable energy at prices equal to those in the forecast of SP-15 power prices.

³² In accordance with the unilateral termination rights under the Existing PPA, CES notified SCE on January 16, 2007 that it elected to terminate the agreement after the first five years.

same 714 MW for SCE's BC/V Local Area, at a competitive price, after the Existing PPA would have ended. From the RA perspective, SCE's ratepayers are therefore in a stronger position than they would have been in under the Existing PPA.

Since SCE ratepayers would be in a better position under the CSA than they would under the Existing PPA, the CSA is reasonable.

12.3. The CSA is Consistent with Law

As discussed above, the Geysers PPSA and the 2009-2011 RA Confirmation are consistent with a number of previous related Commission decisions that detail policies and requirements. Also, we do not detect that any element of the CSA is inconsistent in any way with Public Utilities Code Sections, other Commission decisions, or the law in general.

12.4. The CSA is in the Public Interest

The CSA is also in the public interest in that ratepayers are better off under the terms of the CSA than they would be under the Existing PPA. Also, we do not detect that any element of the CSA is inconsistent in any way with the public interest.

13. Testimony and Exhibits

On October 22, 2007, pursuant to Rule 13.8(d) of the Rules of Practice and Procedure, SCE filed a motion to offer its testimony into evidence. The motion will be granted. SCE's testimony is identified as follows and will be received into evidence:

Exhibit 1 - Prepared Testimony in Support of Application for Approval of:
(1) A Contingent Settlement Agreement between Southern California Edison Company (SCE), Calpine Energy Services, LP (CES), and Geysers Power Company, LLC (Geysers); (2) A Renewables Portfolio Standard Power Purchase and Sale Agreement between SCE and Geysers; and (3) A Resource Adequacy Confirmation between SCE and CES. (Confidential Version)

Exhibit 2 - Prepared Testimony in Support of Application for Approval of:
(1) A Contingent Settlement Agreement between Southern California Edison Company (SCE), Calpine Energy Services, LP (CES), and Geysers Power Company, LLC (Geysers); (2) A Renewables Portfolio Standard Power Purchase and Sale Agreement between SCE and Geysers; and (3) A Resource Adequacy Confirmation between SCE and CES. (Public Version)

14. Confidential Information

On October 22, 2007, concurrent with its motion to offer testimony into evidence, SCE filed a motion to seal the evidentiary record. SCE has provided declarations regarding the confidentiality of data provided in prepared testimony in support of its application request. The declarations identify information subject to requested confidential treatment, the appropriate reference to the Matrix Category in Appendix A of D.06-06-066³³ regarding confidential treatment of investor owned utility data, and the assertion that the detailed information is required for the application and cannot be aggregated, summarized, redacted masked or otherwise protected in a way that allows partial disclosure.

³³ D.06-06-066, Appendix A, Part VII (G) provides that RPS contract summaries, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date are public. Other terms are to remain confidential for three years, or until one year following expiration, whichever comes first.

SCE requests Exhibit 1 be received into evidence under seal. An examination of the information contained in Exhibit 1 confirms the need for confidential treatment as indicated by SCE. The request will be granted.

15. 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.

16. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and David K. Fukutome is the assigned ALJ in this proceeding.

Findings of Fact

1. There were no protests to this application.
2. Except for modified terms and conditions to SCE's 2005 proforma, the Geysers PPSA is consistent with SCE's approved 2005 renewable procurement plan.
3. Levelized contract prices at or below the 2005 MPR are considered *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. The contractual pricing mechanism for baseload power and additional power set forth in the Geysers PPSA currently reflect prices that are at or below the relevant 2005 MPR.
5. R.04-04-026 set forth standard terms and conditions to be incorporated into RPS power purchase agreements.

6. SCE's modifications to the standard terms and conditions are either necessary to reflect the facts of the Geysers PPSA or, in providing clarity, are minor as compared to the terms and conditions approved in SCE's 2005 Procurement Plan and R.04-04-026.

7. The 2009-2011 RA Confirmation is accordance with Commission policies and procurement requirements as specified in D.04-12-048.

8. The 2009-2011 RA Confirmation is a bilateral contract and is subject to the case, as specified in D.03-12-062, where longer-term non-standard products are allowed provided that the IOU include a product justification in quarterly compliance filings.

9. The CSA is reasonable in light of the record.

10. The CSA is consistent with law.

11. The CSA is in the public interest.

Conclusions of Law

1. The Geysers PPSA should be approved without modification.

2. SCE should be allowed to fully recover the Geysers PPSA payments in rates over the life of the project, subject to Commission review of SCE's administration of the PPSA.

3. Procurement pursuant to the Geysers PPSA 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. SCE should be allowed to recover in rates any indirect costs of renewables procurement identified in § 399.15(a)(2).

5. The 2009-2011 RA Confirmation should be approved without modification.

6. For purposes of fulfilling the requirements of D.03-12-062, SCE should include a product justification for the 2009-2011 RA Confirmation in subsequent quarterly compliance reports.

7. SCE should be allowed to fully recover the 2009-2011 RA Confirmation payments in rates, subject to Commission review of SCE's administration of the 2009-2011 RA Confirmation.

8. The CSA should be approved.

9. This decision should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The Contingent Settlement Agreement between Southern California Edison Company (SCE), Calpine Energy Services, LP (CES) and Geysers Power Company, LLC (Geysers), as detailed in Appendix J of Exhibit 1, is approved.

2. The Renewable Power Purchase and Sale Agreement between SCE and Geysers (Geysers PPSA), as detailed in Appendix K of Exhibit 1, is approved.

3. The 2009-2011 Resource Adequacy (RA) Confirmation between SCE and CES for Pastoria Resource Adequacy Capacity, as detailed in Appendix N of Exhibit 1, is approved.

4. SCE shall include a product justification for the 2009-2011 RA Confirmation in subsequent quarterly compliance reports.

5. SCE is authorized to recover in rates payments made pursuant to the Geysers PPSA and the 2009-2011 RA Confirmation, subject to further review with respect to reasonableness of SCE's administration of the Geysers PPSA and the 2009-2011 RA Confirmation.

6. SCE's October 22, 2007 motion to offer testimony into evidence is granted. As described in the body of this decision, the pieces of SCE's testimony are identified as Exhibits 1 and 2 and are received into evidence.

7. SCE's October 22, 2007 motion to seal portions of the evidentiary record is granted as set forth below. Exhibit 1 shall be placed under seal and shall remain sealed for a period of three years from the effective date of this decision.

8. Application 07-06-007 is closed.

This order is effective today.

Dated November 16, 2007, at San Francisco, California.

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