

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**RESOLUTION E-4244
June 18, 2009**

REDACTED

R E S O L U T I O N

Resolution E-4244. Southern California Edison (SCE) requests approval of a renewable resource procurement contract with Puget Sound Energy, Inc. SCE's Advice Letter (AL) 2319-E is approved without modification.

By Advice Letter 2319-E filed on February 9, 2009 and Advice Letter 2319-E-A filed on May 11, 2009.

SUMMARY

SCE's renewable contract complies with the renewable portfolio standard (RPS) procurement guidelines and is approved

Southern California Edison (SCE) filed Advice Letter (AL) 2319-E on February 9, 2009, requesting Commission review and approval of a power purchase agreement (PPA) executed with Puget Sound Energy, Inc (Puget). This short-term bilateral contract results from a competitive bidding process initiated by Puget for 2,000 gigawatt-hours (GWh) of energy from two operating wind facilities located in Washington. SCE filed supplemental AL 2319-E-A to disclose the relationship between this PPA and a settlement that is pending at the Federal Energy Regulatory Commission (FERC). The Puget Contract is conditioned upon, among other things, approval by the FERC and CPUC of the Settlement.

Generating facilities	Type	Term (Years)	Capacity (MW)	Energy (GWh)	Expected Online Date	Location
Hopkins Ridge and Wild Horse	Wind	Until 2,000 GWhs are delivered (estimated 2 years)	387	Estimated: 969 in 2009 and 1,030 in 2010	Once conditions precedent are satisfied (incl. CPUC approval)	Columbia County and Kittitas County, Washington

The advice letter was protested by the Division of Ratepayer Advocates and The Utility Reform Network. The Commission denies both protests.

The proposed contract price is reasonable, and all costs of the contract are fully recoverable in rates over the life of the contract, subject to Commission review of SCE's administration of the contract.

AL 2319-E-A and AL 2319-E-A are approved without modification.

Confidential information about the contract should remain confidential

This resolution finds that certain material filed under seal pursuant to Public Utilities Code Section 583, General Order (G.O.) 66-C, and D.06-06-066 should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

BACKGROUND

The RPS Program requires each utility to increase the amount of renewable energy in its portfolio

The California RPS Program was established by Senate Bill (SB) 1078¹, and has been subsequently modified by SB 107² and SB 1036³. The RPS program is set out at Public Utilities (PU) Code Section 399.11, et seq. An RPS policy generally requires that a retail seller of electricity, such as SCE, purchase a certain percentage of electricity generated by Eligible Renewable Energy Resources

¹ SB 1078 (Sher, Chapter 516, Statutes of 2002)

² SB 107 (Simitian, Chapter 464, Statutes of 2006)

³ SB 1036 (Perata, Chapter 685, Statutes of 2007)

(ERR). Under the California RPS, each utility is 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 2010. Also, on November 17, 2008, Governor Schwarzenegger issued Executive Order S-14-08, setting a goal for energy retailers to deliver 33 percent of electrical energy from renewable resources by 2020.⁴

In response to SB 1078, SB 107, and SB 1036, the Commission has issued a series of decisions and resolutions 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.03-06-071.⁵
- Instructions for utility evaluation of each offer to sell ERRs requested in an RPS solicitation were provided in D.04-07-029⁶, as required by PU Code Section 399.14(a)(2)(B). The bid evaluation methodology is known as ‘least-cost, best-fit’.
- The Commission adopted standard terms and conditions (STCs) for RPS power purchase agreements in D.04-06-014, as required by PU Code Section 399.14(a)(2)(D). These STCs are compiled in D.08-04-009⁷, as modified by D.08-08-028⁸, and as a result, there are now thirteen STCs of which four are non-modifiable.
- D.06-10-050, as modified by D.07-03-046, compiled the RPS reporting and compliance methodologies.⁹ In this decision, the Commission established methodologies to calculate a retail seller’s initial baseline procurement

⁴ <http://gov.ca.gov/executive-order/11072/>

⁵ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/27360.PDF

⁶ http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/38287.PDF

⁷ http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/81269.PDF

⁸ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/86954.pdf

⁹ D.06-10-050, Attachment A,

(http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/61025.PDF) as modified by D.07-03-046 (http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/65833.PDF)

amount, annual procurement target (APT) and incremental procurement amount (IPT).¹⁰

- The Commission adopted its market price referent (MPR) methodology in D.04-06-015¹¹ for determining the market price of energy, as defined in PU Code Sections 399.14(a)(2)(A) and 399.15(c); the MPR serves as a cost containment tool because the above-MPR contract costs of RPS contracts are limited (PU Code Section 399.15[d]). The Commission refined the MPR methodology for the 2005 RPS Solicitation in D.05-12-042.¹² Subsequent resolutions adopted MPR values for the 2005, 2006, 2007, and 2008 RPS solicitations.¹³
- In D.06-10-019¹⁴, the Commission adopted rules for the eligibility and approval of RPS short-term contracts (procurement contracts that are less than 10 years in duration) and bilateral contracts (procurement contracts that are negotiated outside of a competitive RPS solicitation).
- Resolutions E-4160¹⁵ and E-4199¹⁶ implemented SB 1036, which modified the RPS cost containment mechanism. The Commission established cost limitations for each investor-owned utility (IOU) and set forth guidelines for approving above-MPR RPS contracts negotiated through a competitive solicitation.

¹⁰ The IPT represents the amount of RPS-eligible procurement that the LSE must purchase, in a given year, over and above the total amount the LSE was required to procure in the prior year. An LSE's IPT equals at least 1% of the previous year's total retail electrical sales, including power sold to a utility's customers from its DWR contracts.

¹¹ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/37383.pdf

¹² http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/52178.pdf

¹³ Respectively, Resolution E-3980:

http://www.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/55465.DOC, Resolution E-4049: http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/63132.doc, Resolution E-4118: http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/73594.pdf

Resolution E-4214: http://docs.cpuc.ca.gov/Published/Final_resolution/95553.htm

¹⁴ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/60585.PDF

¹⁵ http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/81476.PDF

¹⁶ http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/98603.PDF

The Commission has established RPS bilateral procurement guidelines

While the focus of the RPS program is procurement through competitive solicitations, D.03-06-071¹⁷ allows for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process. Specifically, D.03-06-071 states that bilateral contracts will only be allowed if they do not require Public Goods Charge (PGC) funds. In D.06-10-019, the Commission interprets D.03-06-071, stating that bilaterals are not subject to the MPR, not eligible for Supplemental Energy Payments (SEPs)¹⁸, must be at least one month in duration, and must be deemed reasonable. Further, bilateral contracts of any length must be submitted to the Commission for approval by advice letter.¹⁹

As D.06-10-019 notes, the Commission will be developing evaluation criteria for bilateral RPS contracts.²⁰ However, in the interim, utilities' bilateral contracts can be evaluated as long as they follow the four requirements mentioned above:

- The contract was submitted for approval by advice letter
- The contract does not get applied to an IOU's cost limitation
- The contract is at least one month in duration
- The Commission deems the contract reasonable.

The Commission has established rules for short-term, existing RPS contracts

The RPS legislation and program rules have always expressed a preference for long-term, as opposed to short-term, RPS contracts because it is widely understood that long-term contracts are an important tool in developing new RPS-eligible generation facilities.²¹ The original RPS legislation, SB 1078,

¹⁷ http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/27360.htm

¹⁸ Since D.06-10-019 was adopted, SB 1036 eliminated the SEP fund for above-MPR RPS resources, and instead requires the Commission to approve above-MPR costs in rates up to a prescribed cost limitation. As with the SEPs program, only contracts that are negotiated through a competitive solicitation are eligible for the cost limitation.

¹⁹ D.06-10-019 p. 31

²⁰ On May 5, 2009, ALJ Simon mailed a Proposed Decision Establishing Price Benchmarks and Contract Review Processes for Short-term and Bilateral Procurement Contracts for Compliance with the California RPS (<http://docs.cpuc.ca.gov/efile/PD/100582.pdf>)

²¹ Long-term contracts are at least 10 years in duration

prohibited the solicitation of short-term contracts unless the CPUC approved of a contract of shorter duration. In D.03-06-071, the CPUC reaffirmed the requirement for the utilities to only offer contracts of 10, 15 and 20 years duration in their annual solicitations. Bidders, however, could offer shorter term contracts, which would be subject to CPUC-approval.

SB 107, codified in PU Code §399.14(b)(2), both made explicit our ability to allow short-term contracts to fulfill RPS obligations and put conditions on the use of such contracts.²² Before the Commission may approve an RPS contract of less than ten years' duration, the Commission must establish "for each retail seller, minimum quantities of eligible renewable energy resources to be procured either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005." On May 3, 2007, the Commission approved D.07-05-028²³ establishing the minimum quantity requirement, and determined that

beginning in 2007, RPS-obligated load-serving entities may use energy deliveries from contracts of less than 10 years' duration with eligible renewable energy resources that commenced commercial operation prior to January 1, 2005 for RPS compliance, on one condition. That condition is that each year they also sign contracts of at least 10 years' duration and/or contracts with RPS-eligible generation facilities that commenced commercial operation on or after January 1, 2005, for energy deliveries equivalent to at least 0.25% of their prior year's retail sales.²⁴

If the load-serving entity exceeds the 0.25% requirement for a calendar year, it may carry forward (i.e. bank) the "excess" contracted-for energy and use it to meet the 0.25% requirement in later years.

If the minimum quantity is not met in a given year either by contracts signed in the current year or by using the banking mechanism, it may not count its short-term contracts with existing facilities signed in that year for RPS compliance, but

²² An additional condition is not addressed in this section: short-term contracts were ineligible for SEPs and now are ineligible for AMFs.

²³ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/67490.PDF

²⁴ p. 1

it will begin with a clean slate the following year. The requirement remains in place until an obligated load-serving entity reaches its 20% goal. Each retail seller must demonstrate in RPS compliance filings that the minimum quantity requirement has been met.

RPS statute requires the Energy Commission to implement a tracking system to verify compliance with the RPS

To verify compliance with the RPS, SB 1078 charged the California Energy Commission (CEC) with designing and implementing an accounting system “to verify compliance with the renewable portfolio standard by retail sellers, to ensure that electricity generated by an eligible renewable energy resource is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, and to verify retail product claims in this state or any other state.”²⁵

The Western Renewable Energy Generation Information System (WREGIS), designed to fulfill the CEC’s obligation to track and verify renewable energy generation, was launched in June 2007. WREGIS generates WREGIS Certificates, or renewable energy credits (RECs), which represent that one megawatt hour of renewable energy was generated. Consistent with the Energy Commission’s RPS Eligibility Guidebook,²⁶ 2008 was the first calendar year that WREGIS data will be reported to the Energy Commission to verify RPS procurement. All generating facilities, retail sellers, procurement entities, and third parties participating in California’s RPS were required to register with WREGIS by January 1, 2008, with the exception of California’s three large investor-owned utilities (IOUs),²⁷ which must have registered with and begun to use WREGIS to verify RPS compliance by May 1, 2008.

²⁵ Public Utilities Code Section 399.13 (b), as enacted by SB 1078

²⁶ *Renewables Portfolio Standard (RPS) Eligibility Guidebook* (<http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF>) (THIRD Edition), publication # CEC-300-2007-006-ED3-CMF, January 2008.

²⁷ California’s three largest investor-owned utilities are: Pacific Gas and Electric, San Diego Gas & Electric, and Southern California Edison.

Energy from RPS facilities located out-of-state must be delivered to California

The CEC is also responsible for verifying the delivery of renewable energy claimed for compliance with the RPS program. If a renewable energy facility has its first point of interconnection to the transmission network outside of California, it must satisfy all of the following additional requirements:²⁸

1. It is connected to the transmission network within the Western Electricity Coordinating Council (WECC) service territory.
2. It commences initial commercial operation after January 1, 2005.
3. Electricity produced by the facility is delivered to an in-state location.
4. It will not cause or contribute to any violation of a California environmental quality standard or requirement.
5. If the facility is outside of the United States, it is developed and operated in a manner that is as protective of the environment as a similar facility located in the state.
6. It participates in the Western Renewable Energy Generation Information System (WREGIS), the accounting system to verify compliance with the renewables portfolio standard by retail sellers

While facilities located in California or with their first point of interconnection in the state are automatically deemed “delivered”, eligible renewable energy from out-of-state facilities must be “scheduled for consumption by California end-use retail customers” to be counted for compliance with the RPS program.²⁹ The RPS statute also allows “electricity generated by an eligible renewable energy resource [to] be considered ‘delivered’ regardless of whether the electricity is generated at a different time from consumption by a California end-use customer.”³⁰ The CEC’s RPS Eligibility Guidebook³¹ says that in practical terms,

²⁸ Public Resources (PR) Code 25741(b)(2)(B)

²⁹ PR Code Section 25741(a)

³⁰ Id

³¹ <http://energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF>

this means that out-of-state energy may be “firmed” and “shaped”, or backed up or supplemented with delivery from another source, before it is delivered to California. The CEC’s Guidebook provides three examples of eligible firming and shaping transactions.³² For each advice letter requesting CPUC approval of a PPA with an out-of-state RPS facility, the CEC provides written documentation to the CPUC addressing whether a proposed RPS contract’s delivery structure would be eligible pursuant to the guidelines in the CEC’s Guidebook.

Interim Greenhouse Gas Emissions Performance Standard (EPS) established emission rate limitations for long-term electricity procurement

A greenhouse gas emissions performance standard (EPS) was established by Senate Bill 1368³³, which requires that the Commission consider emissions costs associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers.

On January 25, 2007, the Commission approved D.07-01-039 which adopted an interim EPS that establishes an emission rate quota for obligated facilities to levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine powerplant.³⁴ The EPS applies to all energy contracts for baseload generation that are at least five years in duration.³⁵ Renewable energy contracts are deemed EPS compliant from the EPS except in cases where intermittent renewable energy is shaped and firmed with generation from non-renewable resources. If the renewable energy contract is shaped and firmed with a specified energy source that is considered baseload generation, then the energy source must individually meet the EPS. If, however, the intermittent energy is firmed and shaped with an unspecified energy source (e.g. system power), then D.07-01-039 specifically defines the following eligibility condition:

³² pg 23-24

³³ Chapter 464, Statutes of 2006 (SB 1368)

³⁴ D.07-01-039 adopted an emission rate of 1,100 pounds of carbon dioxide per megawatt-hour for the proxy CCGT (section 1.2, page 8)
http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/64072.PDF

³⁵ “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%.” § 8340 (a)

*For specified contracts with intermittent renewable resources (defined as solar, wind and run-of-river hydroelectricity), the amount of substitute energy purchases from unspecified resources is limited such that total purchases under the contract (whether from the intermittent renewable resource or from substitute unspecified sources) do not exceed the total expected output of the specified renewable powerplant over the term of the contract.*³⁶

SCE requests Commission approval of a renewable energy contract

On February 9, 2009, SCE filed AL 2319-E seeking approval of a power purchase agreement (PPA) between SCE and Puget. The short-term PPA results from bilateral negotiations. The output from two of Puget's wind facilities will be firmed and shaped and delivered to SCE at the Mid-Columbia trading hub; SCE will deliver the energy to California. The PPA will contribute energy deliveries towards SCE's renewable procurement goal required by California's RPS statute.³⁷

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

1. Approval of the Puget Contract in its entirety
2. A finding that any electric energy sold or dedicated to SCE pursuant to the Puget Contract constitutes procurement by SCE from an eligible renewable energy resource ("ERR") for the purpose of determining SCE's compliance with any obligation that it may have to procure from ERRs pursuant to the RPS Legislation³⁸ or other applicable law concerning the procurement of electric energy from renewable energy resources
3. A finding that all procurement under the Puget Contract counts, in full and without condition, towards any annual procurement target

³⁶ D.07-01-039, Conclusion of Law 40. Note: These compliance rules specifically apply to IOUs, additional compliance rules may apply to other RPS-obligated load serving entities.

³⁷ The California Energy Commission is responsible for determining the RPS-eligibility of a renewable generator. See PU Code Section 399.12 and D.08-04-009, as modified by D.08-08-028.

³⁸ As defined by SCE, "'RPS Legislation' refers to the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11 *et seq.*"

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

4. A finding that all procurement under the Puget Contract counts, in full and without condition, towards any incremental procurement target established by the RPS Legislation or the Commission which is applicable to SCE
5. A finding that all procurement under the Puget Contract counts, in full and without condition, towards the requirement in the RPS Legislation that SCE procure 20% (or such other percentage as may be established by law) of its retail sales from ERRs by 2010 (or such other date as may be established by law)
6. A finding that the Puget Contract, and SCE's entry into the Puget Contract, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the Puget Contract, subject only to further review with respect to the reasonableness of SCE's administration of the Puget Contract
7. Any other and further relief as the Commission finds just and reasonable.

SCE's Procurement Review Group participated in review of the contracts

In D. 02-08-071, the Commission required each utility to establish a "Procurement Review Group" (PRG) whose members, subject to an appropriate non-disclosure agreement, would have the right to consult with the utilities and review the details of:

1. Overall transitional procurement strategy;
2. Proposed procurement processes including, but not limited to, RFO; and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review.

SCE's PRG was formed on or around September 10, 2002. Participants include representatives from the Commission's Energy and Legal Divisions, the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), the Natural Resources Defense Council, California Utility Employees, the Union of Concerned Scientists, Aglet Consumer Alliance and the California Department of Water Resources.

SCE asserts that its PRG was consulted during each step of the renewable procurement process. On December 15, 2008 SCE informed the PRG that it would participate in the Puget auction and described how the bid price would be calculated. On January 6, 2009, SCE briefed the PRG concerning the successful conclusion of discussions with Puget.

Although Energy Division is a member of the PRG, it reserved its judgment on the contracts until the resolution process. Energy Division reviewed the transactions independent of the PRG, and allowed for a full protest period before concluding its analysis.

NOTICE

Notice of AL 2319-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

SCE's Advice Letter AL 2319-E was timely protested by DRA and TURN on March 2, 2009. SCE responded to the protests of DRA and TURN on March 9, 2009. The redacted portions of the protests and responses are summarized below, and the confidential parts are addressed in Appendix B.

DRA recommends that the CPUC reject the proposed Puget contract without prejudice based on four counts:

- The Puget contract violates D.07-05-028, which establishes a minimum long-term and new contracting requirement in order to count short-term RPS contracts with existing facilities,
- The Puget contract is a "short-term, out-of-state renewable energy credit contract with an existing facility and non-transparent price terms",
- The Puget contract price is "disadvantageous to ratepayers at a price above the MPR",
- The Puget contract would not benefit ratepayers because of its cost and because it is located outside California, and
- SCE did not comply with D.06-06-066 in filing its confidentiality declaration.

TURN recommends that the CPUC reject the proposed Puget contract because:

- Ratepayers should not pay a premium price for a short-term purchase of excess energy from operating out-of-state facilities that were built to satisfy another state's long-term RPS needs,
- If the proposed SB 14 is adopted, it could make the Puget transaction ineligible to count for the RPS because the bill would modify the delivery rules for out-of-state RPS projects, and
- The "competitive process" designed by Puget and by which SCE negotiated this contract is concerning and incompletely described in the public version of the advice letter.

SCE responded to DRA's and TURN's protests, stating:

- D.07-05-028 does not apply to this contract because the facilities are considered "new" pursuant to RPS legislation and CPUC decisions. AL E-2319 incorrectly stated that the facilities delivering under the Puget contract were not "new", but in fact, the Hopkins Ridge and Wild Horse facilities commenced operations in November 2005 and December 2006 and thus, qualify as "new".
- The Puget contract provides near-term deliveries of renewable energy that will substantially benefit SCE's customers. It is inconsistent with RPS legislation and prior CPUC decisions to reject a contract because it is short-term or out-of-state.
- The contract price is below the MPR, is a reasonable price as compared to other RPS market opportunities, and in fact, bilateral contracts are not subject to the MPR. Further, the CPUC has previously rejected DRA's argument that operating and out-of-state facilities should be priced lower than new RPS resources in-state.
- The contract is compliant with the California Energy Commission's delivery requirements for bundled contracts. Also, the proposed delivery requirements in SB 14 are not current law, and the CPUC should not expect that, if adopted, they will be retroactive.

DISCUSSION

Description of the project

The following table summarizes the substantive features of the proposed PPA. See confidential Appendix A for a discussion of the contracts’ confidential terms and conditions.

Generating facilities	Type	Term (Years)	Capacity (MW)	Energy (GWh)	Expected Online Date	Location
Hopkins Ridge and Wild Horse	Wind	Until 2,000 GWhs are delivered (estimated 2 years)	387	Estimated: 969 in 2009 and 1,030 in 2010	Once conditions precedent (incl. CPUC approval) are satisfied	Columbia County and Kittitas County, Washington

The Puget contract is a bilateral contract for wind generation from two operating facilities in Washington. At the end of 2008, Puget Sound Energy, Inc established a competitive process to sell up to 2,000 GWh of wind energy. SCE bid into the process and was selected as the winner of the full 2,000 GWh. Puget will start selling the energy to SCE after certain contractual conditions are met (as discussed in Confidential Appendix A). SCE anticipates that the duration of the contract will be 2 years.

Puget will firm and shape the wind energy with its own resources and will deliver a firm product to SCE at the Mid-Columbia trading hub. SCE will import the energy into California consistent with CEC delivery guidelines.

This contract was evaluated on the following criteria:

- Consistency with SCE’s 2008 Procurement Plan
- Compliance with relevant Commission decisions regarding bilateral contracting guidelines, standard terms and conditions and the Emissions Performance Standard
- Price reasonableness
- Project viability
- Consistency with the RPS delivery rules, as set forth in the CEC’s RPS Eligibility Guidebook

PPA is consistent with SCE's 2008 RPS Procurement Plan

The Commission must accept or reject proposed PPAs based on their consistency with the utility's approved renewable energy procurement plan (Plan).³⁹ SCE's 2008 Plan includes an assessment of supply and demand for renewable energy and bid solicitation materials, including a pro-forma agreement and bid evaluation methodology documents.

The Commission conditionally approved SCE's 2008 RPS procurement plan, including SCE's bid solicitation materials, in D.08-02-008.⁴⁰ As ordered by D.08-02-008, on February 29, 2008 SCE filed and served its amended 2008 Plan. The proposed PPA is consistent with SCE's Commission-approved RPS Plan.

PPA fits with SCE's identified renewable resource needs

SCE'S 2008 RPS Plan states that SCE seeks to procure renewable resources to augment those under contract from prior solicitations and to ensure that SCE meets the overall goal of 20% renewables as soon as possible, and with a reasonable margin of safety.⁴¹ Accordingly, SCE states that it needs both near-term and long-term renewable energy but its evaluation criteria will favor proposals for near-term deliveries. SCE's stated preference is to receive the RPS energy in SP-15, but SCE will consider proposals based upon any designated delivery point within California. SCE will seek resources both from generation facilities located in California and outside the state (but within the WECC), if the Seller complies with the requirements for "out-of-state facilities" in the California Energy Commission (CEC) Guidebook for RPS Eligibility.⁴²

The Puget project meets SCE's resource needs because the facilities are operating, and thus, the energy is immediately available to deliver renewable energy and satisfy SCE's near-term RPS energy need. Also, the facilities are located in the

³⁹ PU Code §399.14(d)

⁴⁰ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/78817.pdf

⁴¹ SCE reports that it intends to procure renewables based on its High Need Case scenario. SCE's its Base Case assumes a 100% on-time delivery of all currently executed contracts, and its High Need Case assumes 70% delivery from executed, but not yet delivering, contracts.

⁴² <http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF>

WECC and have obtained both CEC certification for RPS-eligibility (April 28, 2009)⁴³ and approval of their delivery structures (See Appendix C).

The Puget contract compares favorably to SCE's 2008 solicitation

Although the Puget contract was negotiated bilaterally, SCE conducted a least-cost best-fit (LCBF) bid evaluation of the Puget contract to compare it to SCE's 2008 solicitation bids. The bid evaluation includes a quantitative and qualitative analysis. The quantitative analysis results in relative benefit-to-cost ratios for each bid and the qualitative review assesses a project's technical viability, its overall viability and its developer experience. The LCBF evaluation is generally used to establish a shortlist of proposals from SCE's solicitation with whom SCE will engage in contract discussions, but was conducted for Puget in order to determine whether the project would have been shortlisted and to review its value in relation to SCE's other RPS options.

SCE found that the Puget contract is attractive relative to proposals received in response to SCE's 2008 solicitation and provides "significant value to SCE's customers relative to the proposals received in SCE's solicitation" because 1) its benefit-to-cost ratio is acceptable, 2) the project is viable and 3) its ability to commit to near-term deliveries is valuable.

PPA is consistent with RPS bilateral contracting guidelines

The proposed PPA is consistent with Commission decisions regarding RPS bilateral contracts for the following reasons:

1. The PPA will not be applied to SCE's cost limitation.⁴⁴
2. Pursuant to D.06-10-019, the PPA was submitted by advice letter.⁴⁵

⁴³ http://www.energy.ca.gov/portfolio/documents/LIST_RPS_CERT.PDF

⁴⁴ The PPA is ineligible for the cost limitation because it did not result from a competitive solicitation and is a short-term contract. (PU Code §399.15[d][2])

⁴⁵ "For now, utilities' bilateral RPS contracts, of any length, must be submitted for approval by advice letter." (D.06-10-019, p.31)

3. The PPA is at least one month in duration.⁴⁶
4. The PPA is reasonably priced.⁴⁷

Contract price is reasonable

According to D.06-10-019, bilateral contracts are not subject to the MPR, but the prices must be deemed reasonable. The Commission intends to adopt more explicit standards for evaluating the reasonableness of bilateral and short-term RPS contracts in a decision in the near future.⁴⁸ Until such a decision is approved, the Commission will continue to consider the evaluation of RPS short-term bilateral contracts on a case-by-case basis.

As SCE notes in its Reply to Protests of TURN and DRA, there is no 2008 MPR for 2-year contracts coming online in 2009, and comparing the Puget contract to the 2008 MPR for a 10-year contract coming online in 2009 is imperfect. In the case of Puget, the Commission has considered its price relative to SCE's 2008 solicitation bids and SCE's other available RPS procurement options. While there were no short-term contracts shortlisted in SCE's solicitation, SCE provided the Commission with a confidential analysis of how SCE determined its bid price for the Puget auction and what the project's value is relative to its other 2008 offers.

SCE's analysis demonstrates that the Puget contract price is reasonable as compared to its 2008 shortlist, and that the project provides value because of its high viability, commitment to delivering firm power⁴⁹ and ability to satisfy SCE's need for near-term RPS deliveries.

⁴⁶ "All RPS-obligated LSEs are also free to enter into bilateral contracts of any length with RPS-eligible generators, as long as the contracts are at least one month in duration, to enable the CEC to verify RPS procurement claims." (D.06-10-019 p. 29)

⁴⁷ The contract price of bilaterals must be deemed reasonable by the Commission. (D.06-10-019, p. 31)

⁴⁸ On May 5, 2009, ALJ Simon mailed a Proposed Decision Establishing Price Benchmarks and Contract Review Processes for Short-term and Bilateral Procurement Contracts for Compliance with the California RPS (<http://docs.cpuc.ca.gov/efile/PD/100582.pdf>)

⁴⁹ Because the deliveries to SCE will be firming and shaped, SCE will not incur additional fees above the contract price associated with firming and shaping the out-of-state intermittent power.

PPA is consistent with adopted standard terms and conditions

The terms and conditions in the Puget contract⁵⁰ comply with the non-modifiable terms required in RPS contracts as set forth in D.08-04-009, and amended by D.08-08-028.

Contract is not subject to the EPS

The EPS does not apply to a contract of less than five years. Because the Puget contract term is only two years, the EPS is not triggered.

Project is viable

SCE asserts that there are no viability concerns with the Puget project because the facilities are already operating. The Commission finds no project viability risk associated with the Puget contract.

Proposed delivery structure complies with CEC's guidelines

The CEC is responsible for determining whether out-of-state RPS projects satisfy the delivery requirements for the RPS program. Pursuant to the CEC's RPS Eligibility Guidebook, these requirements are automatically satisfied for projects that are located in California or that are located on the border of the state and have their first point of interconnection to the WECC transmission system within California. If, however, a facility is connected to the WECC not within California, the energy from the facility must be scheduled for consumption by California end-use retail customers. The guidelines for eligible delivery structures can be found in Section III(D) of the CEC's RPS Eligibility Guidebook. For each out-of-state project that the CPUC reviews, the CEC provides the CPUC with written documentation addressing whether the proposal satisfies the delivery requirements.

On April 13, 2009, the CEC provided the CPUC with a letter declaring that the proposed Puget delivery structure satisfies the RPS delivery requirements. This letter, which also includes a brief overview of Puget's delivery structure, can be found in Appendix C.

⁵⁰ The contract includes the WSPP Agreement and WSPP Agreement Confirmation Letter between Puget Sound Energy, Inc and SCE.

Commission denies DRA's protest that SCE violated D.07-05-028

D.07-05-028 established a condition (called the "minimum quantity") on the ability of utilities to count an eligible contract of less than 10 years duration with a facility that commenced commercial operations prior to January 1, 2005 for compliance with the RPS program.⁵¹ The decision says that in the calendar year that the short-term contract with an existing facility is executed, the utility must also enter into long-term contract(s) or contract(s) with new facilities equivalent to at least 0.25% of the utility's previous year's retail sales.

DRA protested the Puget contract, in part, on the grounds that SCE has not yet satisfied the minimum quantity requirement. While SCE did say that the Puget facilities were "existing" in AL E-2319, SCE corrected this statement in its reply to DRA's protest. SCE clarified that the Hopkins Ridge and Wild Horse facilities are operating, but they came online in 2005 and 2006 respectively. Because the definition of "new" includes all facilities that commenced commercial operations on or after January 1, 2005, the Puget facilities are considered new. Thus, the minimum quantity requirement does not apply to the Puget contract, and the Commission rejects DRA's protest.

Commission denies DRA's and TURN's protests that Puget should be rejected because it is a short-term, out-of-state contract

Both DRA and TURN protest the Puget contract for being a short-term contract located outside of California, arguing that such contracts have little benefit to ratepayers. Both parties also object to SCE's proposal for delivering the out-of-state energy to California; DRA argues that the transaction should be considered a tradable renewable energy credit (TREC) contract, which is not an approved procurement method, and TURN asserts that proposed SB 14 may make the proposed structure ineligible for the RPS program, so it should not be approved now. TURN further protests the contract on the grounds that ratepayers would be temporarily subsidizing renewable generation built for another state's RPS needs.

The Commission denies DRA's and TURN's protests that this project should be rejected because it is a short-term out-of-state project. First, the Puget contract is

⁵¹ Contracts of less than 10 years duration are considered "short-term" contracts and facilities that commenced commercial operations prior to January 1, 2005 are considered "existing".

not subject to the limitation on short-term contracts because it is only applicable to existing facilities, and the CEC has determined that the project satisfies its RPS eligibility and delivery guidelines for out-of-state projects. Also, as SCE notes in its reply to protests, the contract has value for ratepayers because the project's price, benefit-to-cost ratio, and viability are reasonable as compared to SCE's 2008 shortlisted bids. Further, the contract is consistent with SCE's 2008 procurement plan, which specifies a need for contracts that can deliver in the near-term, regardless of the contract term or project location. Because SCE has long-term renewable energy needs that must be satisfied, we are not suggesting that SCE should primarily depend on short-term out-of-state contracts to meet RPS targets. However, SCE's RPS portfolio of largely long-term in-state RPS contracts (that have been executed, but many are not yet delivering), we expect that its RPS requirements will ultimately be satisfied by those contracts rather than short-term in-state contracts.⁵²

The Commission also denies without prejudice DRA's protest that the Puget contract is a TREC transaction. In SCE's reply to protests, it refers to CPUC resolutions denying without prejudice DRA's previous claims that proposed out-of-state RPS contracts that utilize firming and shaping are TREC transactions. As the Commission has previously said, "A thorough examination of the issues related to the use of unbundled and tradable RECs for RPS compliance is taking place in R.06-02-012 and we do not wish to prejudge the outcome of that proceeding."⁵³ A final decision has not yet been issued in R.06-06-012.

With regard to TURN's protest concerning SB 14, we recognize that the CEC would have to modify the RPS delivery guidelines in its RPS Eligibility Guidebook if the bill were enacted into law. However, we note that the bill has been amended four times since its introduction and has only passed one house of the Legislature. It is speculative to assume that the bill will be enacted into law or, even if it is, that it will be enacted in its current form. In short, we will not disapprove this reasonable contract based on speculation that this bill may become law in its current form.

⁵² See the RPS website for a list of RPS projects:
<http://www.cpuc.ca.gov/PUC/energy/Renewables/index.htm>

⁵³ Resolution E-4192, p. 15

Also, TURN protested the Puget contract on the grounds that ratepayers would be temporarily subsidizing renewable generation built for another state's RPS needs. We deny TURN's protest because the Puget contract meets the requirements of the program as defined in statute, Commission decisions and by the CEC's eligibility rules. It is not the Commission's policy to layer on an additional de facto eligibility requirement based on the location of the facility and an ad hoc analysis of whether the facility is *additional*, as TURN would essentially have us do. To do so in a resolution will create unacceptable regulatory uncertainty. Moreover, such policy level questions are not appropriate to address by resolution and are best examined in the RPS policy proceeding.

Commission denies DRA's and TURN's protests that the Puget contract price is unreasonable

DRA objects to the Puget contract price because it is above the MPR and because DRA doesn't believe that firmed and shaped out-of-state projects have value for ratepayers. DRA also asserts that energy from operational facilities "normally costs less than energy from a new facility". TURN protests the contract because it is not prudent to pay a price "far above the cost of ownership" for existing renewable generation that was built to meet future RPS requirements in other states. TURN argues that the purchase does nothing to further the development of renewable resources.

The Commission finds that the contract price is reasonable and that the Puget contract has value, and thus, rejects the protests of DRA and TURN. First, as discussed previously, bilateral contract prices are not subject to the MPR but must be deemed reasonable. As discussed previously, the Commission finds the Puget price reasonable because it is competitive relative to SCE's 2008 shortlist, is highly viable, is compliant with CPUC decisions, and additionally serves SCE's need for near-term RPS-eligible energy deliveries. See the section "Contract price is reasonable" above and Confidential Appendix A, which includes SCE's analysis that compares the Puget contract price to the 2008 shortlist bid prices and that describes the methodology that SCE used to develop Puget's bid price.

Also, see Confidential Appendix B for further discussion of DRA's confidential protest regarding price.

Commission denies TURN's and DRA's protest that SCE violated the confidentiality rules

TURN's public protest argues that "crucial elements of this 'competitive process' are only discussed in the confidential version of Edison's advice letter, so that a reader of the public version of the advice letter would remain ignorant of significant factors aside from the normal confidential terms and conditions of the contract." DRA asserts that the confidentiality claim filed with AL 2319-E is not in compliance with D.06-06-066.

In their response, SCE claims that they complied with D.06-06-066 in drafting the confidentiality declaration and followed the Energy Division advice letter template, which prescribes what information should be contained in the public and confidential sections of an RPS advice letter.

It appears that TURN's concerns about the confidentiality of certain information relating to the process whereby SCE and Puget entered into this contract have been addressed by SCE's supplemental AL 2319-E-A, in which SCE disclosed the relationship between this PPA and a Settlement that is pending at FERC.⁵⁴ Also, our review of the material SCE submitted as confidential shows that SCE complied with D.06-06-066 in its confidentiality declaration. Accordingly, the Commission denies both TURN's and DRA's protests.

COMMENTS

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

DRA commented on the Draft Resolution on June 1, 2009. DRA asserts that the Puget contract does not comply with RPS procurement guidelines because Puget

⁵⁴ The Settlement specifies that the CPUC will conduct an independent review of the Puget contract pursuant to the standards generally applicable to its review of RPS contracts, and this Resolution is such an independent review under our normally applicable standards.

“already claims the resources under the approved contract for meeting retail RPS responsibility to its customers” on Puget’s website, so using the resources for compliance with California’s RPS would be double counting. DRA notes that the CEC is responsible for ensuring that RPS resources are not double counted,⁵⁵ and WREGIS says that California RPS claims can not be made if a claim has been made in another jurisdiction. DRA requests that the contract require Puget to “cease and desist from the marketing, reporting, and representation” of the Puget wind farms in the utility’s portfolio for the duration of the contract.

In SCE’s reply to DRA’s comments, SCE asserts that the Puget contract contains terms and conditions conveying the green attributes to SCE and preventing double counting of the Puget resource.

While it is ultimately the CEC’s responsibility to ensure that RPS resources are not double counted, Energy Division staff contacted Puget and requested that they respond to DRA’s comments to describe the steps they would take to prevent double counting. On June 12, 2009, Puget responded to DRA’s comments. In its response, Puget asserts that SCE has the exclusive rights to the green attributes from both facilities and that Puget will not be claiming the generation for Washington’s RPS or for Puget’s internal renewable goals. Puget says that they will ensure that they do not “appear to double count renewable attributes” and will commit to reviewing its website and making any necessary changes any necessary changes to ensure that references to its renewable energy portfolio and the Hopkins Ridge and Wild Horse Facilities are not misleading by June 17, 2009.”

The Commission finds that Puget’s actions appropriately address DRA’s concerns of double counting.

⁵⁵ PU Code §399.13

FINDINGS

1. The RPS Program requires each utility, including SCE, to increase the amount of renewable energy in its portfolio to 20 percent by 2010, increasing by a minimum of one percent per year.
2. D.08-04-009, as modified by D.08-08-028, sets forth four non-modifiable and nine modifiable standard terms and conditions to be incorporated into RPS power purchase agreements.
3. D.03-06-071 allows for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process.
4. D.08-02-008 directed the utilities to issue their 2008 renewable RFOs, consistent with their renewable procurement plans.
5. The Commission required each utility to establish a Procurement Review Group (PRG) to review the utilities' interim procurement needs and strategy, proposed procurement process, and selected contracts.
6. SCE filed Advice Letter 2319-E on February 9, 2009, requesting Commission review and approval of a bilateral renewable energy contract with Puget.
7. SCE filed Advice Letter 2319-E-A on May 11, 2009 to disclose the relationship between the Puget PPA and a Settlement that is pending at FERC.
8. On March 5, 2009, DRA and TURN filed timely protests to AL 2319-E. On March 9, 2009, SCE filed a reply to the protests of DRA and TURN.
9. On June 4, 2009, DRA commented on the Draft Resolution. On June 9, 2009 SCE filed a reply to DRA's comments.
10. On June 12, Puget Sound Energy submitted a late filed response to DRA's comments on the Draft Resolution, which was accepted by Energy Division.
11. The Commission has reviewed the proposed Puget contract and finds it to be consistent with SCE's approved 2008 renewable procurement plan and bilateral procurement rules.
12. The Puget contract is contingent on, among other things, the approval by FERC and the CPUC on a Settlement that is pending at FERC.
13. SCE briefed its PRG on December 15, 2009 about the Puget auction and on January 6, 2009 about SCE's successful bid for 2,000 GWh of energy from Puget.

14. The proposed contract price is reasonable.
15. The CEC provided the Commission with written confirmation that the proposed delivery structure for the Puget contract complies with the RPS Eligibility Guidebook.
16. The Commission denies DRA's protest that SCE violated D.07-05-028 because this decision does not apply to the Puget contract since it is for energy from new wind facilities.
17. The Commission denies DRA's and TURN's protests that Puget should be rejected on the grounds that it is a short-term, out-of-state contract because the contract complies with all RPS rules related to short-term and out-of-state contracts, because the contract has value to ratepayers and is reasonable in light of SCE's procurement plan.
18. The Commission denies DRA's and TURN's protests that the contract price is unreasonable because Puget is competitive relative to SCE's other RPS options, is viable, is compliant with CPUC decisions and is able to deliver RPS-eligible energy in the near-term, which is consistent with SCE's 2008 procurement plan.
19. After a review of SCE's confidentiality declaration and confidential appendices, the Commission denies TURN and DRA's protests that SCE violated D.06-06-066.
20. Any electric energy sold or dedicated to SCE pursuant to the Puget contract, constitutes procurement by SCE from an ERR for the purpose of determining SCE's compliance with any obligation that it may have to procure from ERRs pursuant to the RPS Legislation or other applicable law concerning the procurement of electric energy from renewable energy resources.
21. All procurement under the Puget contract, counts, in full and without condition, towards any annual procurement target established by the RPS statute or the Commission which is applicable to SCE.
22. All procurement under the Puget contract counts, in full and without condition, towards any incremental procurement target established by the RPS statute or the Commission which is applicable to SCE.
23. All procurement under the Puget contract counts, in full and without condition, towards the requirement in the RPS Legislation that SCE procure 20 percent (or such other percentage as may be established by law) of its

retail sales from ERRs by 2010 (or such other date as may be established by law).

24. The Puget contract is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the Puget contract subject only to further review with respect to the reasonableness of SCE's administration of the Puget contract.
25. Any indirect costs of renewables procurement identified in Section 399.15(a)(2) shall be recovered in rates.
26. The Puget contract proposed in AL 2319-E should be approved without modification.
27. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should not be disclosed. Accordingly, the confidential appendices, marked "[REDACTED]" in the redacted copy, should not be made public upon Commission approval of this resolution.

THEREFORE IT IS ORDERED THAT:

1. The proposed renewable energy contract between Southern California Edison and Puget Sound Energy, Inc in Advice Letter 2319-E is approved without modification.
2. The costs of the contracts between Southern California Edison and Puget Sound Energy, Inc are reasonable and in the public interest; accordingly, the payments to be made by Southern California Edison are fully recoverable in rates over the life of the project, subject to Commission review of Southern California Edison's administration of the contract.
3. The protests from the Division of Ratepayer Advocates and The Utility Reform Network are denied.
4. 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 June 18, 2009; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON
PAUL CLANON
Executive Director

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

Confidential Appendix A
Contract Summary

[REDACTED]

Confidential Appendix B
Response to Confidential Protests

[REDACTED]

Appendix C
CEC Letter Regarding Eligibility of Puget's
Proposed Delivery Structure

CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



April 13, 2009

The California Energy Commission, through its staff, has reviewed the proposed contracting structure between Puget Sound Energy, Inc. (Hopkins Ridge and wild Horse generating facilities) and Southern California Edison, as described in "Attachment A" and shown in the schematic design titled, "Attachment B--Puget Sound Energy Delivery Structure" received via a data request issued by the California Public Utilities Commission.

The Energy Commission staff has determined that this structure would meet the RPS delivery requirements according to the *Renewables Portfolio Standard Eligibility Guidebook* (CEC-300-2007-006-ED3-CMF, January 2008).

ATTACHMENT A
SCE/Puget Sound Energy Inc.

Under the Puget Contract, SCE will take delivery of the electric energy and green attributes from the 157 MW Hopkins Ridge generation facility and the 230 MW Wild Horse generation facility at the Mid-Columbia trading hub and will use Puget's resources to manage the intermittent energy from the facilities within both BPA's and Puget Sound Energy's control areas. All firming and shaping costs are embedded in the pricing of the Puget Contract. SCE will then import the energy into California in a manner that is compliant with the California Energy Commission's (CEC's) out-of-state renewables portfolio standard (RPS) delivery requirements. The delivery term of the Puget Contract will last until Puget has delivered 2,000 GWhs of RPS-eligible energy and associated green attributes to SCE.

In managing the electric energy, SCE will employ the same fundamental economic principles as it does with its current (non-eligible renewable resource) power purchase agreements for out-of-state resources by:

- Scheduling the energy directly into California upon receipt of the energy, and/or
- Selling the energy outside California, whichever yields the most value to SCE's customers.

Analogous to the scenarios described immediately above, SCE will self-manage the green attributes as follows by:

- Scheduling Hopkins Ridge and Wild Horse firmed and shaped energy with green attributes directly into California as an import, and/or
- Selling Hopkins Ridge and Wild Horse energy without green attributes into the local market, and later (within the same calendar year that the facilities produced the energy) tagging import schedules with the green attribute identifier consistent with the CEC delivery requirements.

In all scenarios, SCE will demonstrate delivery of the Hopkins Ridge and Wild Horse generation to an in-state market hub or in-state location as specified in the CEC's "Delivery Requirements" as required by the CEC in the CEC RPS Eligibility Guidebook, including by:

- Importing energy into California within the same calendar year the Puget facilities produce the respective energy, and
- Participating in the CEC's approved RPS tracking and verification system.

ATTACHMENT B

PUGET SOUND ENERGY DELIVERY STRUCTURE

