

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**RESOLUTION E-4316
April 8, 2010**

REDACTED

R E S O L U T I O N

Resolution E-4316. Southern California Edison (SCE) Company requests approval of Amendments 3 and 4 to a renewable power purchase agreement with Imperial Valley Resource Recovery Company, LLC (IVRR).

PROPOSED OUTCOME: This Resolution approves, with modification, cost recovery for an amended renewable energy power purchase agreement (PPA) between SCE and IVRR.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter (AL) 2414-E filed on December 4, 2009.

SUMMARY

Southern California Edison's Imperial Valley Resource Recovery power purchase agreement, as amended by Amendments 3 and 4, complies with the Renewable Portfolio Standard (RPS) procurement guidelines and is approved with modification.

Southern California Edison (SCE) filed advice letter (AL) 2414-E requesting Commission review and approval of amendments to its previously approved power purchase agreement (PPA) executed with Imperial Valley Resource Recovery Company, LLC (IVRR). The original PPA resulted from SCE's 2005 RPS solicitation and was approved by the Commission on April 12, 2007 in Commission Decision (D.) 07-04-039.

The amendments adjust the contract price to account for increasing wood-waste and diesel fuel prices and cap the contract energy price for the duration of the

contract for ratepayer protection. The amendments also extend the startup deadline and modify credit provisions.

SCE shall modify the amended PPA to include the relevant non-modifiable standard terms and conditions required pursuant to Decision 10-03-021.

The following table summarizes the amended agreement:

Generating facility	Type	Term (Years)	Capacity (MW)	Energy (GWh)	Online Date	Location
Imperial Valley Resource Recovery LLC	Biomass, Wood chips	10	16.4	123.5-132 ¹	June, 2009	Imperial Valley, CA.

The IVRR project is a 16.4 MW biomass wood chip burning generating facility located in Imperial Valley, California. The IVRR plant initially went on-line in June, 2009 and commenced firm operation in December, 2009. The amended contract, including Amendments 3 and 4, is priced at or below the 2008 market price referent (MPR) for a 10-year contract and compares favorably to the contract prices from SCE's 2008 RPS solicitation. Deliveries from the amended PPA are reasonably priced and fully recoverable in rates over the life of the contract, subject to Commission review of SCE's administration of the contract.

AL 2414-E is approved with modification.

NOTICE

Notice of AL 2414-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.

¹ Output depends on whether it is a "maintenance year".

PROTESTS

No protests were received to this advice letter.

DISCUSSION

Overview of RPS Program

The RPS Program administered by the Commission requires each utility to increase its total procurement of eligible renewable energy resources by at least one percent of retail sales per year so that twenty percent of the utility's retail sales are procured from eligible renewable energy resources no later than December 31, 2010.²

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

SCE requests approval of Amendments 3 and 4 to its existing PPA with IVRR.

SCE signed the original IVRR PPA on November 15, 2006. The Commission approved the PPA in Decision D.07-04-039 on April 12, 2007 without any modifications. This 10-year PPA for a 16.4 MW biomass plant resource using wood waste as fuel was negotiated by SCE through its 2005 RPS solicitation.

SCE claims that in the recent past IVRR has suffered from unexpected fuel price fluctuations, and unless the contract is amended, IVRR will no longer be able to continue its operation. Currently, IVRR does not have a fixed price contract for the wood waste fuel over the 10-year life of the contract. In addition, the fuel prices of diesel fuel that is used to transport wood chips are also forecasted to increase.

Amendment 3 modifies the energy price, extends the startup deadline and modifies some credit provisions. Amendment 4 caps the contract price to protect the ratepayers.

² See Public Utilities (Pub. Utils.) Code § 399.15(b)(1).

SCE claims that the amended IVRR contract is in compliance with the Resolution E-4199, which states that if a developer requests an amendment that affects the price of an approved contract, the investor-owned utility (IOU) should re-evaluate the competitiveness of the amended contract as compared to the projects that the IOU is currently negotiating and to its most recent shortlist. The amended contract price should also be compared against the most recently approved MPRs.³

SCE states that the amended contract price is at or below the applicable 2008 MPR and compares favorably to the contract prices of its 2008 RPS solicitation short-list of renewable resources.

SCE requests the Commission to issue a resolution containing:

1. Approval of the IVRR Contract in its entirety;
2. A finding that any electric energy sold or dedicated to SCE pursuant to the amended IVRR 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 Legislation⁴ or other applicable law concerning the procurement of electric energy from renewable energy resources;
3. A finding that all procurement under the amended IVRR Contract counts, in full and without condition, towards any annual procurement target established by the RPS Legislation or the Commission which is applicable to SCE;
4. A finding that all procurement under the amended IVRR 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;

³ In this case, the 2008 MPR was the most relevant benchmark as it was most recently adopted MPR as of the filing date of the contract.

⁴ 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.*”

5. A finding that all procurement under the amended IVRR 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 amended IVRR Contract, and SCE's entry into the IVRR amendments, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the amended IVRR Contract, subject only to further review with respect to the reasonableness of SCE's administration of the amended IVRR Contract; and
7. Any other and further relief as the Commission finds just and reasonable.

Energy Division Review Of the Proposed PPA

Energy Division evaluated the PPA for the following criteria:

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

Consistency with SCE's 2008 RPS Procurement Plan

California's RPS statute requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.⁵ The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan. SCE's 2008 RPS Procurement Plan (Plan) was approved by D.08-02-008 on February 14, 2008. Pursuant to statute, SCE's Plan includes an assessment of supply and demand to

⁵ See Pub. Utils. Code, Section §399.14.

determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.⁶

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

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

The IVRR contract as initially approved in D.07-04-039 was consistent with the 2005 RPS Plan. IVRR is an operational plant certified by the CEC as an RPS-eligible facility. It is contributing to SCE's near-term needs and will contribute to SCE's long-term renewable energy needs for up to 10 years.

The IVRR resource was procured consistent with SCE's 2005 Plan and continues to comply with the resource needs identified in SCE's 2008 Plan.

Consistency with RPS Standard Terms and Conditions (STCs)

The IVRR contract was originally filed by application, rather than advice letter, principally because it did not contain the non-modifiable STCs required for RPS contracts at that time. In D.07-04-039, the Commission approved the IVRR contract without requiring that it conform to the RPS STCs required at that time.

⁶ See Pub. Utils. Code, Section §399.14(a)(3).

However, we note that the IVRR contract contains clauses similar to those non-modifiable STCs.

The current amendments modify the “CPUC Approval” language of the original IVRR contract, making the requirement more streamlined. Because the Commission previously approved the PPA without the non-modifiable STCs required for RPS contracts at that time and because the change made by the current amendments to the originally approved “CPUC Approval” language does not harm ratepayers, we do not revisit the determination in D. 07-04-039 regarding those contract clauses.

However, on March 11, 2010, the Commission approved D.10-03-021 which established new and revised non-modifiable STCs for RPS contracts to address tradable renewable energy credits (TRECs). All contracts approved after the date of that decision must include the non-modifiable STCs regarding TRECs. The PPA amendments here were executed and filed before D.10-03-021 was approved, as a result, the proposed PPA does not include the Commission adopted RPS “non-modifiable standard terms and conditions.”⁷

Thus, Commission approval of the proposed PPA is conditioned upon SCE and IVRR modifying the PPA to include the new non-modifiable standard terms and conditions as required in D.10-03-021. Within 30 days from the effective date of this Resolution SCE shall file a Tier 1 advice letter compliance filing demonstrating that the IVRR PPA adopted by this Resolution includes all of the relevant non-modifiable standard terms and conditions required by D.10-03-021.

Compliance with the Interim Greenhouse Gas Emissions Performance Standard (EPS)

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

D.07-01-039 adopted an interim EPS that establishes an emission rate quota for obligated facilities to levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. The EPS applies to all energy

⁷ See D.10-03-021, page 78 and Ordering Paragraph 35.

contracts for base-load generation that are at least five years in duration.⁸ Renewable energy contracts are deemed compliant with the EPS except in cases where intermittent renewable energy is firmed and shaped with generation from non-renewable resources.

Because the IVRR facility will be fueled by biomass that would otherwise be disposed of by open burning, forest accumulation, landfill, spreading or composting, the PPA meets the conditions for EPS compliance established in D.07-01-039.⁹

The IVRR Amended PPA complies with the EPS because it meets the conditions established in D.07-01-039.

Procurement Review Group (PRG) Participation

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

SCE briefed the PRG concerning the IVRR PPA amendments on May 13, 2009.

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

With regard to the PPA amendments, SCE has complied with the Commission's rules for involving the PRG.

⁸ "Baseload generation" is electricity generation at a power plant "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." Pub. Utils. Code § 8340(a).

⁹ See D.07-01-039, COL 35.

Comparison to the Results of SCE's 2008 Solicitation

The Commission's Least-Cost Best-Fit (LCBF) decision directs the utilities to use certain criteria in their bid ranking and provide guidance regarding the process by which the utility ranks bids in order to "shortlist" the bids eligible for contract negotiations.¹⁰

SCE states in AL 2414-E that the benefit-to-cost ratio for the amended IVRR contract "ranked high enough to demonstrate that the amended IVRR Contract provides significant value for SCE's customers relative to the proposals received during SCE's 2008 solicitation."¹¹

Confidential Appendix A, attached to this resolution, provides a more detailed comparison of the proposed project to SCE's 2008 shortlist of bids.

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

Cost Reasonableness

Appendix A attached to this resolution includes a detailed discussion comparing the cost between the original and amended IVRR contract. The appendix also includes the LCBF analysis and rankings of other resources in SCE's 2008 RPS solicitation as compared to the amended IVRR contract. The benefit-to-cost (B/C) ratio of the amended contract compares favorably to other proposals in the short list of the 2008 solicitation.

The total expected costs of the amended PPA, as estimated by SCE, are reasonable based on their relation to bids received in response to SCE's 2008 solicitation.

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

¹⁰ See D.04-07-029

¹¹ AL 2414-E at 6.

RPS ELIGIBILITY

Pursuant to Pub. Utils. Code § 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements.

To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable "eligibility" language in all RPS contracts. As stated above, the amended IVRR PPA does not contain the non-modifiable STCs, including that standard language, set forth as Standard Term and Condition 6 in Appendix A of D.08-04-009 (STC 6). However, Section 10.02 of the original PPA between IVRR and SCE contains warranties from IVRR comparable to those required under STC 6. Other provisions of the PPA provide that a breach of warranty shall be an event of default. Such language is sufficient to achieve the ratepayer protection purposes of STC 6, including providing SCE the ability to terminate payments under the contract in the event RPS eligibility warranties are breached.

CONFIDENTIAL INFORMATION

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

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

COMMENTS ON THIS RESOLUTION

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

day comment period for the draft of this resolution was neither waived nor reduced.

On March 19, 2010, SCE filed comments on the Draft Resolution, and on March 29, DRA filed a reply.

SCE comments that two of the Findings in the Draft Resolution should be modified to “provide certainty that SCE may recover payments made pursuant to the amended IVRR Contract in rates”. Specifically, SCE requests that Finding 8 be modified so that it 1) does not reference STC 6, which SCE notes is not in the PPA, and 2) does not condition SCE’s rate recovery on actions that only the Seller can control. SCE also requests changes to Finding 10 because it references STC 6, which is not in the PPA. DRA replies that the Draft Resolution should not be modified and SCE’s requests should be denied. DRA also notes that SCE filed Application 10-03-009 to modify previous resolutions that contained similar language. The Commission has not yet ruled on that application.

The Resolution has been modified to reflect the fact that the amended IVRR contract does not include STC 6. However, we deny SCE’s request to eliminate the language that requires the facility to maintain its RPS eligibility for SCE to obtain rate recovery because it is not unreasonable for rate recovery to be contingent upon the delivery of RPS-eligible energy under the PPA. This requirement clarifies that contract compliance is not solely within the control of the seller and that SCE has an affirmative duty to ensure that the seller complies with the RPS-eligibility terms of the contract, or does not receive payments under it.¹²

FINDINGS

1. The original power purchase agreement (PPA) between Southern California Edison (SCE) and Imperial Valley Resource Recovery Company, LLC (IVRR) resulted from SCE’s 2005 RPS solicitation and was approved by the Commission in Decision 07-04-039.

¹² Nothing herein prejudices SCE’s Application 10-03-009.

2. The amended IVRR PPA is consistent with the resource needs identified in SCE's 2008 Procurement Plan.
3. The PPA does not contain the current non-modifiable standard terms and conditions required for RPS contracts. This deviation from the non-modifiable terms and conditions for RPS contracts was approved in D.07-04-039, which approved the original PPA between the parties.
4. Commission approval of the proposed PPA should be conditioned upon SCE and IVRR modifying the PPA to include the new non-modifiable standard terms and conditions as required in D.10-03-021 to address tradable renewable energy credits.
5. The IVRR amended PPA complies with the EPS because it meets the conditions established in D.07-01-039.
6. With regard to the PPA amendments, SCE has complied with the Commission's rules for involving the PRG.
7. The amended PPA compares favorably to the results of SCE's 2008 solicitation.
8. The total expected costs of the amended PPA, as estimated by SCE, are reasonable based on their relation to bids received in response to SCE's 2008 solicitation.
9. Provided the generation is from an eligible renewable energy resource, payments made by SCE under the amended PPA are fully recoverable in rates over the life of the amended PPA, subject to Commission review of SCE's administration of the amended PPA.
10. Standard Term and Condition 6 in Appendix A of D.08-04-009 (STC 6) is not included in the contract at issue here. However, Section 10.02 of the original PPA between IVRR and SCE contains warranties from IVRR comparable to those required under STC 6. Other provisions of the PPA provide that a breach of warranty shall be an event of default. Such language is sufficient to achieve the ratepayer protection purposes of STC 6, including providing SCE the ability to terminate payments under the contract in the event RPS eligibility warranties are breached.
11. The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
12. AL 2414-E should be approved effective today with modification.

THEREFORE IT IS ORDERED THAT:

1. Southern California Edison Company's Advice Letter 2414-E, requesting Commission review and approval of its Amendments 3 and 4 to its power purchase agreement with Imperial Valley Resource Recovery LLC., is approved conditioned upon SCE and IVRR modifying the PPA to include the new non-modifiable standard terms and conditions as required in D.10-03-021.
2. Within 30 days from the effective date of this Resolution SCE shall file a Tier 1 advice letter compliance filing demonstrating that the IVRR PPA adopted by this Resolution includes all of the relevant non-modifiable standard terms and conditions required by D.10-03-021.
3. 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 April 8, 2010; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON
PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

Confidential Appendix A

CONTRACT EVALUATION

[REDACTED]