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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION | RESOLUTION E-4070
April 12, 2007

REDACTED

RESOLUTION

Resolution E-4070. San Diego Gas & Electric (SDG&E) Company requests approval of the AES Delano renewable resource procurement contract. This contract is approved without modifications

By Advice Letter 1872-E filed on February 2, 2007.

SUMMARY

SDG&E's renewable contract complies with the Renewable Portfolio Standard (RPS) procurement guidelines and is approved

SDG&E filed Advice Letter (AL) 1872-E on February 2, 2007 requesting Commission review and approval of a power purchase agreement (PPA) executed with AES Delano. The Agreement between AES Delano and SDG&E is for 10 years of biomass energy from an existing plant. The PPA would extend an existing contract between the parties, which is set to expire in December 2007.[1]

Generating Facility	Type	Term Years	MW	MWh	Start Date	Location
AES Delano	Biomass	10	49	364,854	1/08	Delano, CA

Deliveries from this PPA are reasonably priced, and the contract price is fully recoverable in rates over the life of the contract, subject to Commission review of SDG&E's administration of the contracts. The contract price is below the MPR, and because AES Delano is an existing facility, the PPA is not eligible for supplemental energy payments (SEPs) from the California Energy Commission (CEC).

[1] The existing contract was approved by the Commission with Resolution E-3803 on December 5, 2002.

Confidential information about the contract should remain confidential

This resolution finds that certain material filed under seal pursuant to Public Utilities (Pub. Util.) 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 Renewables Portfolio Standard (RPS) Program was established by Senate Bill 1078 (Chapter 516, statutes of 2002, effective January 1, 2003) and codified at California Public Utilities Code Section 399.11, et seq. The statute requires that a retail seller of electricity such as SDG&E 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 percent of annual retail sales per year so that 20 percent of its retail sales are supplied by ERRs by 2017.

The State's Energy Action Plan (EAP) called for acceleration of this RPS goal to reach 20 percent by 2010[2]. This was reiterated again in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004[3], which encouraged the utilities to procure cost-effective renewable generation in excess of their RPS annual procurement targets[4] (APTs), in order to make progress towards the goal expressed in the EAP.[5] On September 26, 2006, Governor Schwarzenegger signed Senate Bill 107[6], which officially accelerates the State's RPS targets to 20 percent by 2010.

[2] The Energy Action Plan was jointly adopted by the Commission, the California Energy Resources Conservation and Development Commission (CEC) and the California Power Authority (CPA). The Commission adopted the EAP on May 8, 2003.

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

[4] APT - An LSE's 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.

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

[6] SB 107, Chapter 464, Statutes of 2006

In response to SB 1078, 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 its Market Price Referent methodology[7] for determining the Utility's share of the RPS seller's bid price, as defined in Public Utilities Code Sections 399.14(a)(2)(A) and 399.15(c). On the same day the Commission adopted standard terms and conditions for RPS power purchase agreements in D.04-06-014 as required by Public Utilities Code Section 399.14(a)(2)(D). Instructions for evaluating the value of each offer to sell products requested in a RPS solicitation were provided in D.04-07-029.

In addition, the Commission established an APT for each utility, which consists of two separate components: the baseline, representing the amount of renewable generation a utility must retain in its portfolio to continue to satisfy its obligations under the RPS targets of previous years; and the incremental procurement target[8] (IPT), defined as at least one percent of the previous year's total retail electrical sales, including power sold to a utility's customers from its DWR contracts.

SDG&E requests approval of an extension to a renewable energy contract

On February 2, 2007, SDG&E filed Advice Letter (AL) 1872-E requesting Commission approval of a renewable procurement contract, which is an extension to an existing PPA between SDG&E and AES Delano. The PPA results from SDG&E's September 30, 2005 solicitation for renewable bids, which was authorized by D.05-07-039. The Commission's approval of the PPA will authorize SDG&E to accept future deliveries of incremental supplies of renewable resources and contribute towards the 20 percent renewables procurement goal required by California's RPS statute.[9] Procurement from this the Proposed Agreement will contribute towards SDG&E's APT starting in 2008.

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[7] D.04-07-015

[8] IPT - The incremental procurement target (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

[9] California Public Utilities Code section 399.11 et seq., as interpreted by D.03-07-061, the "Order Initiating Implementation of the Senate Bill 1078 Renewables Portfolio Standard Program", and subsequent CPUC decisions in Rulemaking (R.) 04-04-026.

SDG&E requests final "CPUC Approval" of PPA

SDG&E requests the Commission to issue a resolution containing the findings required by the definition of "CPUC Approval" in Appendix A of D.04-06-014. In addition, SDG&E requests that the Commission issue a resolution that finds the following:

1. The Proposed Agreement is approved in its entirety, including payments to be made by SDG&E, subject to CPUC review of SDG&E's administration of such agreement. Costs to SDG&E may include items such as congestion and transmission upgrades.
2. Any procurement pursuant to the Proposed Agreement is procurement from an eligible renewable energy resource for purposes of determining SDG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.03-06-071, or other applicable law.
3. Any procurement pursuant to the Proposed Agreement constitutes incremental procurement or procurement for baseline replenishment by SDG&E from an eligible renewable energy resource for purposes of determining SDG&E's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard, CPUC D.03-06-071, or other applicable law.[10]

SDG&E'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.

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[10] SDG&E requests this approval only to the extent that it is applicable in light of recent changes to RPS compliance procedures set forth in Decision 06-10-050 dated October 19, 2006, which may eliminate the need to distinguish between baseline and incremental procurement.

The PRG for SDG&E consists of: California Department of Water Resources (DWR), the Commission's Energy Division, Natural Resources Defense Council (NRDC), Union of Concerned Scientists (UCS), Division of Ratepayer Advocates (DRA), and The Utility Reform Network (TURN).

SDG&E first briefed its PRG on December 5, 2005 regarding SDG&E's preliminary assessment of the bids received in response to the RFO. SDG&E provided further briefings on January 24, 2006, to summarize its recommendations for a preliminary shortlist. On March 24, 2006, SDG&E briefed the PRG on its final shortlist and provided an update on the status of its negotiations. The March 24 meeting included a summary of the terms of the Proposed Agreement. On June 13, 2006, SDG&E provided further analysis of the final shortlist to the PRG, including contributions to the 20% RPS target and summaries of the qualitative and quantitative factors used to evaluate each project on the shortlist.

NOTICE

Notice of AL 1872-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

Advice Letter 1872-E was not protested.

DISCUSSION

Description of the project

The following table summarizes the substantive features of the PPA. See confidential Appendix C for a detailed discussion of contract terms and conditions and confidential Appendix B for an analysis of the contract price:

Generating Facility	Type	Term Years	MW	MWh	Start Date	Location
AES Delano	Biomass	10	49	364,854	1/08	Delano, CA

PPA is consistent with SDG&E's CPUC adopted 2005 RPS Plan

California's RPS statute (SB 107) 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 (Plan).[11] On September 7, 2005 the Energy Division notified SDG&E that no protests were received in response to its revised 2005 plan and authorized SDG&E to issue its 2005 RPS solicitation. The Proposed PPA is consistent with SDG&E's Commission-approved RPS plan.

PPA fits with identified renewable resource needs

SDG&E's 2005 RPS plan called for SDG&E to issue competitive solicitations for eligible renewable resources from both large-scale generation projects and small, distributed renewable projects. The requests for offers (RFOs) were entitled: "Eligible Renewable Resources" and "Distributed Renewable Technologies." Both solicitations were issued on September 30, 2005 and responses were due on November 1, 2005. Offers from both solicitations were evaluated collectively under one LCBF analysis. One short list was created that encompassed offers from both RFOs.

For Eligible Renewable Resources, SDG&E sought large-scale generation for as-available or unit-firm capacity and/or energy from:

1. Re-powered facilities
2. Incremental capacity upgrades of existing facilities
3. New facilities
4. Existing facilities with expiring contracts; or
5. Eligible resources currently under contract with SDG&E that offer extending terms or expanded contracted capacities.

AES Delano fits SDG&E's request for extensions of existing agreements. Also, SDG&E conducted a best fit analysis for all short-listed bids, including AES Delano, to verify that the project fits into its long-term portfolio.

[11] Pub. Util. Code Section 399.14(c)

PPA selection consistent with RPS Solicitation Protocol

In order to submit proposals under the solicitation, the Projects had to have participated in the 2005 Transmission Ranking Cost Report ("TRCR") study applicable to the specific utility's transmission grid to which each of the Projects will tie-in. Responses from Respondents who had system impact studies approved by the CAISO were also acceptable and deemed in conformance of the RFO.

The RFO provided that Respondents could offer 10, 15 or 20-year PPAs with deliveries commencing in 2006, 2007 or 2008. Resources located in Imperial Valley were required to commence in 2010, unless the resource had adequate transmission capability to deliver to SP-15 sooner. The RFO required that any PPA executed for resources from Imperial Valley without such adequate transmission capability be contingent upon SDG&E obtaining approval for and being able to license and construct a new 500 kV line from Imperial Valley to the San Diego area.

In addition to the PPAs described above, Respondents offering new renewable resources were also allowed to provide an option price for SDG&E to acquire the facility along with all environmental attributes, land rights, permits and other licenses – thus enabling SDG&E to own and operate the facility at the end of the PPA term. Respondents were also allowed to propose turnkey projects to develop, permit, and construct new, RPS-eligible generating facilities to be acquired by SDG&E. The same transmission contingency applied to turnkey projects as to PPA offers. An open and competitive playing field was established for the procurement effort.

Bid evaluation process consistent with Least-Cost Best Fit (LCBF) decision

The LCBF decision[12] 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. Much of the bid ranking criteria described in the LCBF decision is incorporated in SDG&E's Solicitation Protocol as part of its RPS Plan, and is discussed below.

[12] D.04-07-029

Market Valuation

SDG&E assessed various cost elements associated with a qualifying offer, including average all-in bid price, transmission cost adders, congestion cost/benefit, and Reliability Must Run (RMR) benefits. Once all cost elements were determined, SDG&E summed up the four $/MWh cost elements in 2006 dollars to determine the overall unit cost ("OUC") of a proposed project for ranking purposes. SDG&E ranked each project in the order of least cost, and initially shortlisted those with acceptable costs.

Portfolio Fit

SDG&E's plan stated that SDG&E does not have a preference for a particular product or technology type and that SDG&E has latitude in the resources that it selects. The AES Delano project, therefore, was not selected due to a pre-determined preference for the product type or technology type. SDG&E fairly reviewed all offers and selected the Projects due to factors applicable to its LCBF analysis, as explained above.

Consideration of Transmission Adders

As required by D.04-06-013[13] and D.05-07-040[14], SDG&E estimated transmission upgrade costs necessary to accommodate the proposed projects. However, because the AES Delano project is already online, there were no transmission cost adders associated with it.

Qualitative Factors

As stated in the RFO, SDG&E differentiates offers of similar cost by reviewing qualitative factors including (in no particular order of preference):

1. Location
2. Benefits to minority and low income areas
3. Resource diversity
4. Environmental stewardship

Minority/low-income areas and environmental stewardship were not factors in SDG&E's ranking process because those factors were not applicable to the offers.

[13] http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/37402.htm
[14] http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/48196.htm

However, SDG&E did consider its own service territory and resource diversity as qualitative factors in its LCBF ranking.

Consistency with Adopted Standard Terms and Conditions

The Commission set forth standard terms and conditions to be incorporated into RPS agreements in D.04-06-014. Standard Terms and Conditions identified in confidential Appendix B of that decision as "may not be modified" have not been modified. During the course of negotiations, the parties identified a need to modify some of the "modifiable" standard terms in order to reach agreement. These terms had all been designated as subject to modification upon request of the bidder in D.04-06-014.

Contract price is below the 2005 MPR

The exact contract price is not final because the California Energy Commission has not determined the level of Public Goods Charge (PGC) funding awarded to the project.[15] The PPA allows for SDG&E to pay a specified higher price depending on the amount of PGC funding the project receives. However, even with a reduction in PGC funding, the higher contract price is below the MPR. Thus, the contract price for the Proposed Agreement is below the 2005 MPR as set forth in Resolution E-3980 issued on April 13, 2006. Confidential Appendix D demonstrates that the levelized contract payments, which have been adjusted for the appropriate project on-line date, are below the 2005 MPR.

No supplemental energy payments are necessary for the proposed PPA.

When the contract price is settled, the Commission requests that SDG&E submit a filing informing Energy Division of the final contract price.

PPA is viable project

SDG&E believes that the project is viable because AES Delano is an existing facility and online, currently delivering energy to SDG&E. Therefore, it does not face any transmission, interconnection, permitting, construction or project financing risk. However, as is typical with California biomass facilities, some fuel supply risk exists.

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[15] The project currently receives PGC funding, but it is unclear whether the extent to which this funding will continue.

Production Tax Credit

The PPA is not contingent upon, nor is the pricing dependent on, the extension of federal production tax credits as provided in Section 45 of the Internal Revenue Code of 1986, as amended.

Sponsor's creditworthiness and experience

The Proposed Agreement contains performance assurances intended to motivate the developer to perform in accordance with all terms and conditions. In addition, the developer has prior experience developing projects similar to that contemplated by the Proposed Agreement.

Fuel Supply

In recent years, the California supply of wood waste has been declining because of a downturn in housing development. Moreover, the industry norm is to secure fuel supplies in short term contracts, which results in fuel supply risk and potential for fuel price volatility for California biomass generators. Given that AES Delano is a large facility dependent on wood waste and the contract is for 10 years, AES Delano faces some risk due to future fuel supply uncertainty. However, the Commission deems the risk to the ratepayer be largely mitigated for the proposed project because 1) the developer has many years of experience running the biomass plant and securing a fuel supply for the facility, and 2) the contract is structured to protect ratepayers from unreasonable risk due to fuel price volatility.

Confidential information about the contracts should remain confidential

Certain contract details were filed by SDG&E under confidential seal. Energy Division recommends that 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 be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

COMMENTS

All parties have stipulated to reduce the 30-day waiting period required by PU Code section 311(g)(1) to 10 days. Accordingly, this matter will be placed on the first Commission's agenda ten days following the mailing of this draft resolution. By stipulation of all parties, comments shall be filed no later than 6 days following the mailing of this draft resolution, reply comments shall be filed no later than 10 days following the mailing, of this draft resolution.

FINDINGS OF FACT

1. The RPS Program requires each utility, including SDG&E, 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.04-06-014 set forth standard terms and conditions to be incorporated into RPS PPAs.
3. D.05-07-039 directed the utilities to issue their 2005 renewable RFOs, consistent with their renewable procurement plans.
4. D.04-07-029 adopted least-cost, best-fit criteria which the utilities must use in their selection process after the RFO has been closed.
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. Levelized contract prices 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.
7. SDG&E issued its RFO on September 30, 2005.
8. SDG&E filed Advice Letter 1872-E on February 2, 2006, requesting Commission review and approval of a renewable energy contract with the existing AES Delano biomass facility.
9. SDG&E briefed its Procurement Review Group on December 5, 2005, January 24, 2006, March 24, 2006, and June 13, 2006 on issues related to its 2005 RFO and shortlist.
10. The Commission has reviewed the proposed contracts and finds them to be consistent with SDG&E's approved 2005 renewable procurement plan.
11. The proposed contract price is below the 2005 MPR released in Resolution E-3980.

CONCLUSIONS OF LAW

1. The Commission has reviewed the proposed contract and finds it to be consistent with SDG&E's approved 2005 renewable procurement plan.
2. This Agreement is reasonable and should be approved in its entirety.

3. The costs of the contract between SDG&E and Sellers is reasonable and in the public interest; accordingly, the payments to be made by SDG&E are fully recoverable in rates over the life of the project, subject to CPUC review of SDG&E's administration of the PPA.
4. 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.
5. Procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.
6. Procurement pursuant to this Agreement constitutes incremental procurement or procurement for baseline replenishment by Buyer from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard, CPUC Decision 03-06-071, or other applicable law;
7. Any indirect costs of renewables procurement identified in Section 399.15(a)(2) shall be recovered in rates;
8. AL 1872-E should be approved without modifications.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter AL 1872-E is approved without modifications
2. The costs of the contract between SDG&E and Sellers are reasonable and in the public interest; accordingly, the payments to be made by SDG&E, at or below the MPR, are fully recoverable in rates over the life of the project, subject to CPUC review of SDG&E's administration of the PPA.
3. SDG&E file the final contract price with the CPUC within two weeks after the price is settled.
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 April 12, 2007; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director

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

Confidential Appendix A

Overview of 2005 Solicitation Bids

[REDACTED]

Confidential Appendix B

LCBF Bid Evaluations

[REDACTED]

Confidential Appendix C

Contract Summary: AES Delano

[REDACTED]

Confidential Appendix D

Contract Price Analysis

[REDACTED]

Confidential Appendix E
Project Viability Matrix

[REDACTED]

Confidential Appendix F
Contribution to RPS Goals

[REDACTED]