

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**RESOLUTION E-4150
April 10, 2008**

REDACTED

R E S O L U T I O N

Resolution E-4150. San Diego Gas & Electric (SDG&E) Company requests approval of the amended Bull Moose Energy, LLC (Bull Moose) renewable resource procurement contract. This contract is approved without modification.

By Advice Letter 1946-E filed on November 20, 2007.

SUMMARY

SDG&E’s amended renewable contract complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved without modification

SDG&E’s original power purchase agreement with Bull Moose Energy, LLC (Bull Moose) was filed by Advice Letter 1845-E on November 20, 2006 and approved on March 15, 2007 by Resolution E-4073. On November 20, 2007, SDG&E filed Advice Letter (AL) 1946-E requesting Commission approval of an amended renewable procurement contract with Bull Moose. The amended renewable contract provides for an increase in price, project capacity, and energy output. The contract duration, contract terms and conditions, and project’s Commercial Operation Deadline (COD) are not affected by the amended contract.

Generating facility	Type	Term Years	Net MW Capacity	Net GWh Energy	Online Date	Location
Bull Moose	Biomass	20	25 MW	168 GWh	12/31/08	San Diego, CA

SDG&E’s amended renewable contract complies with the Renewable Portfolio Standard (RPS) procurement guidelines and is approved. The energy acquired from the contract will count towards SDG&E’s Renewable Portfolio Standard (RPS) requirements.

In addition, the price for the contract has been deemed by the Commission to be reasonable and fully recoverable in rates over the life of the contracts, subject to Commission review of SDG&E's administration of the contracts.

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 Decision (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 California Renewables Portfolio Standard (RPS) Program was established by Senate Bill 1078¹ and codified by California Pub. Util. Code Section 399.11, et seq. The statute required that a retail seller of electricity such as PG&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 until 20 percent is reached, subject to the Commission's rules on flexible compliance, no later than 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 (APTs)⁴, in order to make progress towards the goal expressed in the EAP. On September 26, 2006, Governor Schwarzenegger signed

¹ Chapter 516, statutes of 2002, effective January 1, 2003 (SB 1078)

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.

Senate Bill (SB) 107,⁵ which officially accelerates the State's RPS targets to 20 percent by 2010, subject to the Commission's rules on flexible compliance⁶.

CPUC has established procurement guidelines for the RPS Program

The Commission has issued a series of decisions that establish the regulatory and transactional parameters of the utility renewables procurement program. On June 19, 2003, the Commission issued its "Order Initiating Implementation of the Senate Bill 1078 Renewable Portfolio Standard Program," D.03-06-071. On June 9, 2004, the Commission adopted its Market Price Referent (MPR) methodology⁷ for determining the Utility's share of the RPS seller's bid price, as defined in Pub. Util. Code Sections 399.14(a)(2)(A) and 399.15(c). Instructions for evaluating the value of each offer to sell products requested in a RPS solicitation were provided in D.04-07-029.

Additionally, on December 15, 2005, the Commission adopted D.05-12-042 which refined the MPR methodology for the 2005 RPS Solicitation.⁸ Subsequent resolutions adopted MPR values for the 2005, 2006 and 2007 RPS Solicitations.⁹ In addition, D.06-10-050, as modified by D.07-03-046, further refined the RPS reporting and compliance methodologies.¹⁰ In this decision, the Commission established methodologies to calculate an LSE's initial baseline procurement amount, annual procurement target (APT) and incremental procurement amount (IPT).¹¹

⁵ Chapter 464, Statutes of 2006 (SB 107)

⁶ Pub. Util. Code Section 399.14(a)(2)(C)

⁷ D.04-07-015

⁸ http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/52178.pdf

⁹ 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-4110: http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/73594.pdf

¹⁰ 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).

¹¹ 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.

More recently, the standard terms and conditions for RPS power purchase agreements, adopted in D.04-06-014, have also been modified. Decision (“D.”) 07-11-025, Opinion on Amended Petition for Modification of Decision 04-06-014 Regarding Standard Terms and Conditions (“Standard Terms and Conditions decision”).

In addition, the Commission has implemented Pub. Util. Code 399.14(b)(2), which states that before the Commission can 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 (long-term contracts) or from new facilities commencing commercial operations on or after January 1, 2005.” On May 3, 2007, the Commission approved D.07-05-028 that established a minimum percentage of the prior year’s retail sales (0.25%) that must be procured with contracts of at least 10 years’ duration or from new facilities commencing in order for short-term contracts to be used towards RPS compliance.

Governor Schwarzenegger’s Executive Order encourages bioenergy development

Governor Schwarzenegger’s Executive Order S-06-06 encourages bioenergy development in California, stating that “sustained biomass development offers strategic energy, economic, social and environmental benefits to California, creating jobs through increased private investment within the state.” The Executive Order encourages the Commission to “initiate a new proceeding or build upon an existing proceeding to encourage sustainable use of biomass and other renewable resources.” The Bull Moose PPA represents an opportunity for the Commission to promote near-term biomass development in California.

SDG&E requests approval of an amended renewable energy contract

On November 20, 2007, SDG&E filed Advice Letter (AL) 1946-E requesting Commission approval of an amended renewable procurement contract with Bull Moose Energy, LLC (Bull Moose). Resolution E-4073 approved the original power purchase agreement on March 15, 2007. The PPA results from SDG&E’s September 30, 2005 solicitation for renewable bids, which was authorized by D.05-07-039 on July 21, 2005.¹²

¹² http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/48266.pdf

The Commission's approval of the PPA will authorize SDG&E to accept future delivery of incremental renewable generation, which will contribute towards the 20 percent renewables procurement goal required by California's RPS statute.¹³

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.

1. Approves of the proposed amendment without modification, including approval of full cost recovery in rates of all payments to be made by SDG&E, subject to Commission review of SDG&E's administration of the Agreement;
2. Finds that any generation procured pursuant to the proposed amendment constitutes generation 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 program (Public Utilities Code §§ 399.11, et seq. or other applicable law) and relevant Commission decisions; and,
3. Finds that any generation procured pursuant to the proposed amendment constitutes incremental procurement 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 program (Public Utilities Code §§ 399.11, et seq. or other applicable law) and relevant Commission decisions.

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;

¹³ California Pub. Util. 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, R.06-02-012 and R.06-05-027.

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.

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), Aglet Consumer Alliance (Aglet), and The Utility Reform Network (TURN).

SDG&E provided its PRG with information regarding the proposed amendment on September 17, 2007. None of the PRG members opposed the repricing.

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 1946-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 1946-E was not protested.

DISCUSSION

Description of the project

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

Generating facility	Type	Term Years	Net MW Capacity	NetGWh Energy	Online Date	Location
Bull Moose	Biomass	20	23	161	12/31/08	San Diego, CA

The Original PPA arose from SDG&E's 2005 RPS solicitation. Advice Letter 1845-E was filed on November 20, 2006 requesting approval of the PPA. CPUC Resolution E-4073 approved the original PPA on March 15, 2007.

While D.04-06-014 has since been amended by D.07-11-025, the most recent decision is not applicable to this amended contract since the contract's terms and conditions were previously approved in Resolution E-4073 and not affected by this amendment.

SDG&E's Advice Letter concerns an amendment to Commission approved PPA

- SDG&E's PPA with Bull Moose is amended to modify pricing terms throughout the contract term.
- SDG&E's PPA with Bull Moose is amended for additional capacity and increased energy output

In August 2007, Bull Moose requested an amendment to the original PPA for a pricing increase. The pricing increase was necessary to cover the increased costs of raw materials, equipment, and Engineering, Procurement and Construction ("EPC") Contractor. (See confidential Appendix D)

PPA is amended for equipment and design upgrades. The steam turbine generator will be upsized from the 23 MW gross to 25 MW gross increasing annual generation from 158 to 168 GWh. The cooling towers will also be upgraded to air cooled instead of wet cooled. This upgrade will result in reduced water use. Additionally, the emission control system will be upgraded to a Selective Catalytic Reduction ("SCR") from a Selective Noncatalytic Reduction ("SNCR"). This upgrade is in anticipation of more stringent emissions standards.

The PPA's Standard Terms and Conditions are consistent with previously approved and adopted Standard Terms and Conditions

In D.04-06-014 the Commission set forth standard terms and conditions to be incorporated into RPS agreements. The original PPA was found to be consistent with all non-modifiable Standard Terms and Conditions as defined in D.04-06-014, Appendix A. The PPA amendment does not affect Standard Terms and Conditions of the original Commission approved PPA; thus the amended PPA conforms to all non-modifiable Standard Terms and Conditions as defined in D.04-06-014, Appendix A.

The PPA's levelized price is reasonable

The contract price in the Original PPA was less than the 2005 MPR. Due to increases in equipment costs, however, Bull Moose and SDG&E renegotiated the contract price. SDG&E states in AL 1946-E that the amended levelized contract price is at or below the 2007 MPR values for 20-year contracts with an online date in 2008.¹⁴ It is also below the 2006 MPR.

The Commission has rigorous requirements on whether or not a price reopener is considered. A project requesting a price amendment will only be considered if it is compared with bids in the recent RPS solicitation, and the request is filed with extensive documentation in the forms of balance of plan, cash flow and shadow models, and detailed documentation (from manufacturer and/or developer) clearly showing the reasoning for the increase. SDG&E provided all of this documentation in AL-1946-E.

SDG&E's Treasurer and Finance Department performed several analyses during the price amendment negotiations. They reviewed sources of costs increase and Bull Moose's financial model. SDG&E found both the increased costs and the financial model reasonable. Additionally, the Finance Department's analysis found that the new price with increased costs and annual output produced a new rate of return comparable to original contract's rate of return, and thus deemed reasonable. Additionally, SDG&E advises that the price in the amended PPA is competitive with bids received in the 2007 solicitation, and would have been shortlisted.

Thus, the Commission finds the contract price is reasonable.

The PPA is a viable project

SDG&E believes that the project is viable because:

Project Milestones

The PPA identifies the agreed-upon project milestones, including the interconnection agreement, project financing, construction start and commercial operation deadlines.

¹⁴ Set forth in Resolution E-4118 issued on October 4, 2007

Site Control

The project site is 100% secured. Escrow closed in November 2007.

Financeability of resource

Financing is advancing as planned and the project will be available to deliver energy under the terms of the agreement.

Production Tax Credit (PTC)

The PPA, but not the pricing of the contract will depend on federal production tax credits (PTCs) as provided in Section 45 of the Internal Revenue Code of 1986. PTCs are currently set to expire on December 31, 2008. Thus, the project must meet its COD to qualify for PTCs.

Maturity of Technology and Fuel Availability

Biomass is a proven technology, and many other projects are generating energy using the project's proposed generator. Fuel supply contracts for urban wood waste are being finalized. The Commission feels that any possible risk to the ratepayer due to fuel availability is mitigated by contract structure.

Transmission Upgrades

Interconnection is not expected to be an issue since the project is adjacent to an interconnecting substation. Feasibility and system impact studies have been completed. The facilities study (pending), however, has not been completed and the network and gen-tie upgrades will not be known until it is complete.

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 Pub. Util. Code Section 583, 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

Public Utilities 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. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

On April 1, 2008 timely comments were filed by SDG&E. No reply comments were filed.

SDG&E's request that information be removed from the final resolution regarding the PPA's price, pursuant to Public Utilities Code Section 583 is erroneous and therefore SDG&E's request is rejected

On April 1, 2008, SDG&E filed comments to draft Resolution E-4150. In its comments, SDG&E objected to information included in the draft Resolution stating that certain disclosed information " ...would provide third parties with insight into the pricing terms of the PPA"¹⁵, and that such disclosure was in violation of Pub. Util. Code Section 583. SDG&E requested that this information be deleted from the final Resolution.

Pub.Util. Code Section 583 states that no information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding.

The Commission has been following the dictates of California Public Utilities Code Section 583 in all resolutions approving or rejecting RPS contracts governed by the RPS solicitation process by not revealing the specific pricing information disclosed in the RPS contracts. The MPR methodology is adopted by the Commission in a public proceeding and the MPR values are adopted annually by Resolution, which is subject to public comment. Thus, since the

¹⁵ SDG&E Comments filed April 1, 2008, p.2

MPR is public, it has been the practice of the Commission to disclose in RPS Resolutions approving RPS-eligible contracts whether a contract price is below or above the MPR. Moreover, no specific contract prices are disclosed. For these reasons we reject SDG&E's claim that Pub. Util. Code Section 583 was violated and therefore, SDG&E's protest is rejected.

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. SDG&E filed Advice Letter 1946-E on November 20, 2007, requesting Commission review and approval of the amended renewable energy contract with Bull Moose Energy, LLC's biomass facility in San Diego.
3. The Commission previously approved the PPA in Resolution 4073-E on March 15, 2007.
4. D.05-07-039 directed the utilities to issue their 2005 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. SDG&E briefed its PRG on the proposed amendment to the Bull Moose Energy, LLC PPA on September 17, 2007.
7. D.04-06-014 set forth standard terms and conditions to be incorporated into RPS PPAs.
8. The amended PPA has an increased contract price.
9. The contract terms and conditions are unchanged in the amended PPA.
10. The amended contract price is below the 2007 MPR released in Resolution E-4118.
11. Energy Division reviewed the amended PPA and finds it reasonable.
12. Comments to the Draft Resolution E-4150 were filed by SDG&E on April 1, 2008.
13. MPR values which are adopted by the Commission are public.
14. Draft Resolution E-4150 did not disclose the PPA's price which is confidential.

CONCLUSIONS OF LAW

1. The cost of the contract between SDG&E and Seller are 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.
2. This amended Agreement with an increased contract price is reasonable and should be approved in its entirety.
3. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583, General Order (G.O.) 66-C and, 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.
4. Procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining SDG&E's compliance with any obligation 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.
5. All procurement under the Bull Moose Contract counts, in full and without condition, towards any annual procurement target established by the RPS Legislation or the Commission which is applicable to SDG&E.
6. All procurement under the Bull Moose Contract counts, in full and without condition, towards any incremental procurement target established by the RPS Legislation or the Commission which is applicable to SDG&E
7. A finding that all procurement under the Bull Moose Contract counts, in full and without condition, towards the requirement in the RPS Legislation that SDG&E 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).
8. Any indirect costs of renewables procurement identified in Section 399.15(d) shall be recovered in rates.
9. AL 1946-E should be approved without modification.
10. Pub. Util. Code Section 583 requires that no confidential information furnished to the Commission by a public utility should be made public

except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding.

11. The PPA's price was not disclosed.
12. SDG&E's comment is rejected.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter AL 1946-E is approved without modification.
2. Consistent with the Findings of Facts and Conclusions of Law above, the costs of the contracts between SDG&E and Sellers are 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.
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 10, 2008; 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
Overview of 2007 Solicitation Bids
[REDACTED]

Confidential Appendix B
SDG&E's LCBF Ranking of 2007 Bids
[REDACTED]

Confidential Appendix C
Contract Summary
[REDACTED]

Confidential Appendix D
Contract Price
[REDACTED]

Confidential Appendix E
Projects' Contribution Toward RPS Goals
[REDACTED]