

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4157

July 10, 2008

R E D A C T E D

Resolution E-4157. Southern California Edison Company requests approval of three renewable portfolio standard power purchase agreements with Daggett Ridge Wind Farm, LLC (Daggett Wind), ORNI #21, LLC (ORNI 21), and FSE Blythe 1, LLC (FSE). The FSE contract is approved without modifications. The Commission defers judgment on the Daggett Wind and ORNI 21 contracts.

By Advice Letter 2198-E Filed on December 31, 2007 and AL 2198-E-A filed on January 11, 2008.

SUMMARY**Southern California Edison's FSE contract complies with the Renewable Portfolio Standard (RPS) procurement guidelines and is approved**

Southern California Edison (SCE) filed advice letter (AL) 2198-E on December 31, 2007 requesting Commission review and approval of three renewable energy power purchase agreements (PPAs) executed with Daggett Ridge Wind Farm, LLC (Daggett Wind), ORNI #21, LLC (ORNI 21), and FSE Blythe 1, LLC (FSE). SCE filed one supplemental advice letter to AL 2198-E in order to include the Independent Evaluation Report for SCE's 2007 renewable resource solicitation. The Commission defers judgment without prejudice on the Daggett Wind and ORNI 21 contracts at this time. These contracts will be addressed in subsequent resolution(s).

Generating facility	Type	Term Years	MW Capacity	GWh Energy	Online Date	Location
FSE Blythe	Solar photovoltaics (PV), new	20	7.5 - 21	17.7 - 49.7	October 2009	Blythe, CA (Riverside County)

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 RPS Program was established by Senate Bill (SB) 1078,¹ effective January 1, 2003. It requires that a retail seller of electricity such as SCE purchase a certain percentage of electricity generated by Eligible Renewable Energy Resources (ERR). The RPS program is set out at Public Utilities Code Section 399.11, et seq. 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 2017.

The State's Energy Action Plan (EAP) called for acceleration of this RPS goal to reach 20 percent by 2010. This was reiterated again in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004², which encouraged the utilities to procure cost-effective renewable generation in excess of their RPS annual procurement targets³ (APTs), in order to make progress towards the goal expressed in the EAP.⁴ On September 26, 2006, Governor Schwarzenegger signed Senate Bill 107⁵, which codified the State's RPS targets to 20 percent by 2010.

¹ <http://www.energy.ca.gov/portfolio/documents/SB1078.PDF>

² http://www.cpuc.ca.gov/Published/Final_decision/36206.htm

³ 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.

⁴ Most recently reaffirmed in D.06-05-039

⁵ SB 107, Chapter 464, Statutes of 2006

CPUC has established procurement guidelines for the RPS Program

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.03-06-071⁶. Instructions for utility evaluation (known as ‘least-cost, best-fit’) of each offer to sell products requested in a RPS solicitation were provided in D.04-07-029.⁷ 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). In addition, D.06-10-050, as modified by D.07-03-046, refined the RPS reporting and compliance methodologies.⁸ 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).⁹

On June 9, 2004, the Commission adopted its market price referent (MPR) methodology¹⁰ for determining the Utility’s share of the RPS seller’s bid price (the contract payments at or below the MPR), as defined in Public Utilities Code Sections 399.14(a)(2)(A) and 399.15(c). On December 15, 2005, the Commission adopted D.05-12-042 which refined the MPR methodology for the 2005 RPS Solicitation.¹¹ Subsequent resolutions adopted MPR values for the 2005, 2006 and 2007 RPS Solicitations.¹²

⁶ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/27360.PDF

⁷ http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/38287.PDF

⁸ 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).

⁹ 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.

¹⁰ D.04-06-015; http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/37383.pdf

¹¹ http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/52178.pdf

¹² Respectively, Resolution E-3980: http://www.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/55465.DOC, Resolution E-

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, which 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 in order for short-term contracts to be used towards RPS compliance.

Commission requires certain terms and conditions in all RPS power purchase agreements

On June 9, 2004, the Commission adopted Standard Terms and Conditions (STCs) for RPS power purchase agreements as required by Pub. Util. Code Section 399.14(a)(2)(D). Of the fourteen STCs adopted in D.04-06-014, the Commission specified five that could be modified by parties, and nine that may not be modified or only modified in part. Two parties jointly filed a petition for modification on this decision, and subsequently an amended petition for modification. The Commission granted relief in substantial part in D.07-11-025, the "Opinion on Amended Petition for Modification of Decision 04-06-014 Regarding Standard Terms and Conditions".¹³

As a result of the D.07-11-025, the non-modifiable terms and conditions that must be in every RPS power purchase agreement include: CPUC Approval, RECs and Green Attributes, Eligibility and Applicable Law. The Commission also required that pending advice letters with contracts which have not yet been approved or rejected should be amended to comply with D.07-11-025. Most recently, the Commission compiled the most updated STCs in D.08-04-009, and excluded the supplemental energy payments term. As a result, there are now thirteen STCs of which four are non-modifiable.

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

¹³ http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/75354.PDF

Pursuant to SB 1036, above-MPR costs can now be recovered in rates

Pursuant to SB 1078 and SB 107, the California Energy Commission (CEC) was authorized to “allocate and award supplemental energy payments” to cover above-market costs¹⁴ of long-term RPS-eligible contracts executed through a competitive solicitation.¹⁵ The statute required that developers seeking above-market costs apply to the CEC for supplemental energy payments (SEPs).

The mechanism for awarding above-market costs to eligible renewable energy contracts negotiated through a competitive solicitation was modified by SB 1036, which became effective on January 1, 2008.¹⁶ SB 1036 authorizes the CPUC to provide above market funds (AMFs) for contracts resulting from competitive solicitations that are deemed reasonable. AMFs have a ‘cost limitation’ equal to the amount of funds currently accrued in the CEC’s New Renewable Resources Account, which had been established to collect SEP funds, plus the portion of funds that would have been collected through January 1, 2012.

The CEC and CPUC are currently working collaboratively to implement SB 1036, which has an effective date of January 1, 2008.

SCE requests approval of three renewable energy contracts

On December 31, 2007, SCE filed Advice Letter (AL) 2198-E requesting Commission approval of three renewable power procurement contracts: Daggett Ridge Wind Farm, LLC (Daggett Wind), ORNI #21, LLC (ORNI 21), and FSE Blythe 1, LLC (FSE).

The ORNI 21 and FSE PPAs resulted from SCE’s 2007 solicitation for renewable bids, which was authorized by D.07-02-011, and Daggett Wind resulted from SCE’s 2006 solicitation for renewable bids, which was authorized by D.06-05-039. The Commission’s approval of the PPAs will authorize SCE to accept future deliveries of incremental supplies of renewable resources and contribute towards

¹⁴ “Above-market costs” refers to the portion of the contract price that is greater than the appropriate market price referent (MPR).

¹⁵ Pub. Util. Code 399.15(d)

¹⁶ Chapter 685, Statutes of 2007 (SB 1036)

the renewable energy procurement goals required by California's RPS statute.¹⁷ Procurement from FSE is expected to contribute approximately 17.7 GWh to 49.7 GWh towards SCE's APT in 2009.

The Daggett Wind and ORNI 21 contracts will be evaluated separately

In AL 2198-E, SCE requests approval of three new renewable energy contracts: Daggett Wind, ORNI 21, and FSE. The Commission has decided to address these three contracts in separate resolutions because the Daggett Wind contract was protested and the Commission requires additional information to evaluate ORNI 21. This resolution will address the FSE contract. A future resolution(s) will address the Daggett Wind and ORNI 21 contracts.

SCE requests "Final CPUC Approval" of PPA

SCE requests a Commission resolution containing the following findings in order to satisfy the "CPUC Approval" terms in the FSE Agreement:

1. Approval of the FSE Contract in its entirety;
2. A finding that any electric energy sold or dedicated to SCE pursuant to the FSE 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 Legislation or other applicable law concerning the procurement of electric energy from renewable energy resources;
3. A finding that all procurement under the FSE 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 FSE 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;

¹⁷ 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.

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

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

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

1. Overall transitional procurement strategy;
2. Proposed procurement processes including, but not limited to, 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. Current participants include representatives from the Commission's Energy Division, the Division of Ratepayer Advocates, The Utility Reform Network, the Natural Resources Defense Council, the Consumers' Union, California Utility Employees, and the California Department of Water Resources.

On June 27, 2007, SCE advised the PRG of its proposed short list of bids for its 2007 RPS solicitation. On September 27, 2007, SCE updated the PRG as to the status of negotiations with bidders into the solicitation. On November 27, 2007, SCE briefed the PRG concerning the successful conclusion of discussions with FSE.

Although Energy Division is a member of the PRG, it reserved its conclusions for review and recommendation on the PPA to the advice letter process.

NOTICE

Notice of AL 2198-E was made by publication in the Commission’s Daily Calendar. Southern California Edison 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 2198-E was protested.

SCE’s Advice Letter AL 2198-E was timely protested by The Utility Reform Network (TURN) and the Division of Ratepayer Advocates (DRA) on January 22, 2008. Since TURN only protested the Daggett Wind project, TURN’s protest will not be considered in this resolution.

SCE responded to the protests of TURN and DRA, on January 29, 2008. The Independent Energy Producers Association (IEP) responded to TURN’s protest on January 30, 2008.

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 price, terms, and conditions:

Generating facility	Type	Term Years	MW Capacity	GWh Energy	Online Date	Location
FSE Blythe	Solar photovoltaics (PV), new	20	7.5 - 21	17.7 - 49.7	October 2009	Blythe, CA (Riverside County)

The FSE Blythe project represents the first utility-scale thin-film PV facility with a California IOU. First Solar Electric is the developer of the FSE Blythe project and is a manufacturer of thin-film solar arrays. First Solar’s technology is different from conventional silicon based PV manufacturers since it uses cadmium telluride (CdTe), which according to the National Renewable Energy Laboratory

(NREL), is an excellent choice for use as a semiconductor in solar panels because it is perfectly matched to the solar spectrum. Cadmium sulfide provides semiconductor properties, and its transparency allows sunlight to pass through to the CdTe layer, which provides the potential for high-efficiency modules with low-cost manufacturing processes. These attributes have led NREL to recognize CdTe's potential for achieving the lowest production costs among current thin film technologies.

Approval of FSE is consistent with the State's objective of supporting renewable technologies, and will ensure California continues to increase its supply of least-cost best-fit renewable resources. This contract is below the 2007 MPR and will not be applied to SCE's cost limitation.

Energy Division examined the contract on multiple grounds:

- PPA is consistent with SCE's CPUC adopted 2007 RPS Plan and was executed through a competitive solicitation
- SCE's Bid evaluation process is consistent with CPUC's least-cost best-fit (LCBF) decision
- PPA conforms to CPUC adopted Standard Terms and Conditions
- The projects is viable
- The contract price is reasonable and at or below the MPR.

The PPA is consistent with SCE's CPUC adopted 2007 RPS Plan

California's RPS statute requires the Commission to review the results of a renewable energy resource solicitation submitted for approval by a utility.¹⁸ The Commission will then accept or reject proposed PPAs based on their consistency with the utility's approved renewable procurement plan (Plan). SCE's 2007 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 2007 RPS procurement plan, including its bid solicitation materials, in D.07-02-011.

As ordered by D.07-02-011, on March 2, 2007 SCE filed and served its amended 2007 Plan. The proposed PPA is consistent with SCE's Commission-approved RPS Plan.

PPA fits with identified renewable resource needs

SCE's 2007 RPS Plan called for SCE to issue competitive solicitations for electric energy generated by eligible renewable resources from either existing or new generating facilities that would deliver in the near term or long term. SCE also considered any new or repowered facilities that operate on co-fired fuels or a mix of fuels that include fossil fuel hybrid. SCE's 2007 request for proposals (RFP) solicited proposals for projects that would supply electric energy, environmental attributes, capacity attributes and resource adequacy benefits from eligible renewable energy resources. SCE requested proposals based upon standard term lengths of 10, 15 or 20 years with a minimum capacity of 1 MW. SCE indicated a preference to take delivery of the electric energy at SP-15, but considered proposals based upon any designated delivery point within California. Additionally, SCE solicited for contracts that were located either within California, or if outside California, have the first point of interconnection in the WECC transmission system and have access to a transmission pathway capable of delivering the energy to a location within California.

FSE fits SCE's identified renewable resource needs. FSE is expected to commence deliveries by October 2009 and its first point of interconnection is in California.

¹⁸ Pub. Util. Code, Section §399.14

PPA selection is consistent with RPS Solicitation Protocol

SCE distributed an RFP package that included a procurement protocol, which set forth the terms and conditions of the RFP, requirements for proposals, selection procedures, approval procedures and the RFP schedule. As part of the bid submission, SCE required bidders to submit comments on SCE's *pro forma* agreement, to execute non-disclosure agreements and to send a letter stating that the bidder agrees to be bound by the terms and conditions of the protocol. The protocol also requested that proposals contain complete, accurate, and timely information about the project's supplier, generating facility, and commercial terms and the pricing details of the proposal.

Consistent with D.07-02-011, SCE retained an independent evaluator (IE) to report to SCE's procurement review group about the 2007 RPS solicitation and to ensure that the solicitation was conducted fairly and that the best resources were acquired. According to the IE Report submitted in supplemental AL 2198-E-A, the IE performed his duties overseeing the 2007 solicitation and has provided assessment reports to the PRG and the CPUC. See Appendix E for a detailed discussion of the IE's review of these projects.

SCE says that all proposed agreements were solicited, negotiated and executed in a manner consistent with SCE's 2007 RFP Protocol. All bids offered power from eligible renewable energy resources, submitted the standard forms, agreed to be bound by the protocol and signed a non-disclosure agreement.

Bid evaluation process consistent with least-cost best fit (LCBF) decision

The CPUC's LCBF decision¹⁹ directs the utilities to use certain criteria in their bid ranking. It offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence serious negotiations.

SCE's LCBF bid review process used for its 2007 solicitation is in compliance with the applicable Commission decisions. SCE's LCBF analysis evaluates both

¹⁹ D.04-07-029

quantitative and qualitative aspects of each proposal to estimate its value to SCE's customers and relative value in comparison to other proposals.

Quantitative Assessment

SCE quantitatively evaluates bids based on individual benefit-to-cost (B-C) ratios. It is this B-C ratio that is used to rank and compare each project. The B-C ratios measure total benefits divided by total costs according to the following equation:

$$\text{B-C Ratio} = \frac{\text{Capacity Benefit} + \text{Energy Benefit}}{\text{Payments} + \text{Integration Cost} + \text{Transmission Cost} + \text{Debt Equivalence}}$$

The capacity benefits are assigned based on SCE's forecast of capacity value and a technology-specific effective load carrying capability (ELCC). SCE evaluates the project energy benefits using a production simulation model that compares the total production costs of SCE's base resource portfolio with the total production costs of the portfolio including the proposed RPS project. This calculation takes into account forecasted congestion charges, dispatchability and curtailability. This modeling methodology evaluates the impact of portfolio fit for all projects.

The market valuation of each project includes an assessment of the payments, an all-in price for delivered energy adjusted in each time-of-delivery period, and integration costs. By Commission policy (D.04-07-029 and clarified by D.07-02-011), integration cost adders for all proposals must be zero. Further, the transmission upgrade costs are estimated using SCE's transmission ranking cost report for resources that do not have an existing interconnection to the electric system or a completed Facilities Study.

The benefit-to-cost ratios for the FSE project was favorable in comparison to the bids in SCE's 2007 solicitations and was one of the highest ranking bids for a solar project. See Confidential Appendix A for more detailed bid comparisons.

Independent evaluator (IE) oversaw SCE's RPS procurement process

Consistent with D.07-02-011, SCE retained an IE, Sedway Consulting, to report to SCE's procurement review group about the 2007 RPS solicitation and to ensure that the solicitation was conducted fairly and that the best resources were

acquired. According to the IE Report submitted in AL 2198-E-A, Sedway Consulting performed its duties overseeing the 2007 solicitation and has provided assessment reports to the PRG and the CPUC.

In its Independent Evaluator Report, Sedway Consulting concluded that SCE “conducted a fair and effective evaluation of the proposals that it received in response to its 2007 RPS RFO and made the correct selection decisions in its short list.” Sedway Consulting performed its own evaluation of all 2007 proposals using its own proprietary model developed to simulate SCE’s LCBF ranking results. The IE ranked all proposals using its model and compared the results to SCE’s bid ranking results. The IE’s ranking results were similar to SCE’s, and as a result, Sedway Consulting agreed with SCE’s short-listing decisions. In addition, the IE monitored SCE’s short-listing discussions, contract negotiations and meetings with management where SCE made decisions, for example, regarding bid prioritizations and negotiation positions. Overall, the IE concludes that SCE conducted a fair and effective evaluation of its 2007 renewable energy proposals.

For the IE’s contract-specific evaluations, see Confidential Appendix E.

Consistency with adopted Standard Terms and Conditions

STCs for FSE comply with D.08-04-009.

Contract price is at or below the MPR

The levelized contract price for FSE is at or below the 2007 MPR,²⁰ and as a result, the Commission finds that the contract price is per se reasonable. Additionally, the project’s benefit to cost ratios compares favorably to SCE’s 2007 short-listed RPS bids.

The net present value of the sum of payments to be made under each PPA are less than the net present value of payments that would be made at the market price referent for the anticipated delivery. Therefore, for each contract, the contract price payments are at or below the MPR and per se reasonable as

²⁰ 2007 MPR, Resolution E-4118

http://docs.cpuc.ca.gov/PUBLISHED/Final_resolution/73594.htm

measured according to the net present value calculations explained in D.04-06-015, D.04-07-029, and D.05-12-042.

PPA is a viable project

SCE believes that the viability of the FSE project is high. The Commission agrees with SCE's assessments. However, the Commission is aware that the project may face some project viability risks. More specifically, FSE may face project viability risks since the price is dependent on the expiring solar investment tax credit. On balance, the Commission finds that approval of the project will benefit the ratepayers since certain risks are balanced by the fact that the project developer is very experienced and that the contract price is at or below the MPR.

Project Milestones

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

Financeability of Resource

FSE is in the process of obtaining financing. First Solar, the project owner for FSE, is a vertically integrated company with experience in all facets of developing, financing, building, operating, and maintaining a solar generation facility. As a result, SCE does not anticipate any problems obtaining financing for the project.

Investment Tax Credit (ITC)

FSE is contingent upon the extension of the federal Investment tax credit (ITC) as provided in Section 48 of the Internal Revenue Code of 1986, as amended, if the project comes online before December 31, 2008 or is eligible for the 10% ITC if it comes online after 2008. Expiration of the ITC poses a project viability concern for this project since it is uncertain if and when it will be extended.

Sponsor's Creditworthiness and Experience

First Solar, FSE Blythe's developer, is an experienced PV solar manufacturer and has experience in all aspects of the development of a solar project. First Solar purchased the project from Turner Renewable Energy, and Turner's personnel,

who have experience in financing, constructing, and operating of solar generating facilities, will remain involved in the development of the project.

Transmission Upgrades

FSE will interconnect at the distribution level and has filed an application for interconnection with SCE. Thus, FSE does not anticipate the need for any transmission upgrades.

Fuel/Technology

The capacity factor for the FSE project is 27%. The FSE project's capacity factor is high compared to distributed solar PV, but seems achievable for a utility-scale solar facility. For comparison, the California Solar Initiative currently assumes that the prevailing capacity factor for PV projects in California is between 18% and 20%.²¹ The PV project will deliver energy during peak periods, which is particularly favorable to SCE's load profile, and is located in the desert with high solar insolation and little cloud cover, thus supporting a high capacity factor.

Confidential information about the contract should remain confidential

Certain contract details were filed by SCE 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.

The Commission rejects DRA's protest

DRA recommends that the Commission limit its approval of SCE's proposed contracts as follows:

- The Commission should limit its approval of AL 2198-E to only the initial project size for all contracts.
- The Commission should require SCE to disclose whether the prices of the three contracts are above or below the MPR for purposes of SCE's entitlement to SEPs.

²¹ CSI Calculator v2 User Guide, p.8. <http://www.csi-epbb.com/CSICalculatorV2UserGuide.pdf>

The pricing, terms and conditions of the FSE PPA are the same regardless of whether the developer exercises the expansion option or only builds the initial project capacity. Thus, the Commission does not find a need to limit approval of the FSE contract to only the initial project size. Commission approval of the contract with the expansion options is in the ratepayer interest since this contract is at or below the MPR, viable, and will contribute towards SCE's RPS obligations.

As for DRA's second point, SCE disclosed in the reply comments whether the contract was above or below the MPR. The Commission rejects DRA's protest on both accounts.

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.

SCE filed timely comments on June 30, 2008, and DRA filed timely reply comments on July 7, 2008. We carefully considered comments and made appropriate changes to the draft resolution.

SCE seeks CPUC approval and recovery in rates of all payments under the FSC Contract

SCE seeks a finding in this resolution that approves recovery in rates of all payments made pursuant to the PPA instead of the finding in the draft resolution that approves all payments to be made by SCE, at or below the MPR.

SCE states that the finding in the draft resolution will not give SCE "CPUC Approval" of the FSE Contract as the term is defined in the FSE Contract and the

CPUC's non-modifiable standard terms and conditions. In addition, SCE states that both SCE and FSE have responsibility for making various payments under the contract that are outside of the energy price and that SCE needs a finding that approves all payments under the PPA in order to fulfill its contractual obligations.

SCE's 2007 Pro Forma Renewable PPA identifies possible payments outside of the energy price

SCE's 2007 Pro Forma Renewable Power Purchase and Sale Agreement, filed in docket R.06-05-027 on September 25, 2006, as part of SCE's 2007 Renewable Portfolio Standard Procurement Plan notes that such payments may include, among other items, payments for certain CAISO charges resulting from a seller's actions or omissions, costs associated with SCE's accounting for, or otherwise claiming, environmental attributes, capacity attributes, and resource adequacy benefits, as well as simple interest payments on items such as development fees and performance assurance (calculated using the Federal Funds Effective Rate). The specifics of such pro forma payment terms are set forth in greater detail in the Pro Forma Agreement. As SCE also notes in the Procurement Protocols attached to the September 2006 filing, "The Pro Forma Agreement . . . is intended to set forth the terms and conditions of a potential Agreement between SCE and Seller with respect to this RFP." These are the same type of payments at issue in this contract.

DRA seeks rejection of SCE's request and that SCE make public its Comments

DRA recommends that the Commission reject SCE's proposed modification since in DRA's view, "the proposed modification seeks to leave the price term of the PPA open, indefinitely and without a cap." DRA requests that the Commission clarify that the total costs of the contract cannot exceed the MPR.

DRA also states that some of the factors SCE seeks to recover payments for under the contract are not contract terms or conditions. This statement is not correct since the payments SCE seeks recovery for are defined under the terms and conditions of the contract.

Lastly, DRA requests that the information on page 1 of SCE's comments be made public since in DRA's view, the new information in SCE's comments are non-

price terms and do not reveal any utility strategies that are too sensitive for disclosure.

SCE is granted cost-recovery of the payments pursuant to the PPA

DRA's requests are rejected. The Commission will allow recovery of these payments since these payments are expected to be small and could result from regulatory requirements outside of SCE or the Seller's control. SCE, however, is required to report these payments to the Commission when SCE files its annual Energy Resource Recovery Account (ERRA) application.

SCE is directed to work with Commission staff through the 2009 RPS procurement plan proceeding,²² or subsequent proceedings, to establish how SCE should report these payments, how Energy Division should review these costs, and how they should be factored into the calculation of AMFs if they bring the total cost of the contract above the MPR. All future costs that increase the total contract price above the 2007 MPR will be subject to the rules and guidelines established through SB 1036 implementation or other RPS proceedings.

A general description of these payments is available through SCE's 2007 Pro Forma Renewable PPA.²³ . We will not require SCE to make public the confidential language in its comments to the draft resolution since D.06-06-066 requires that confidential terms in a contract should be kept confidential.

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.04-06-014 set forth standard terms and conditions to be incorporated into RPS power purchase agreements.

²² R.05-06-027

²³ SCE's 2007 Pro Forma Renewable PPA is no longer available online, but SCE will provide it upon request.

3. D.08-04-009 granted an amended petition for modification of D.04-06-014, and set forth four non-modifiable standard terms and conditions to be incorporated into RPS power purchase agreements.
4. D.07-02-011 directed the utilities to issue their 2007 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. Levelized contract prices at or below the 2007 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. SCE filed Advice Letter 2198-E on December 31, 2007, requesting Commission review and approval of three renewable energy contracts with Daggett Ridge Wind, ORNI 21, and FSE Blythe 1.
8. SCE filed supplemental Advice Letter 2198-E-A on January 11, 2008 to include the IE report.
9. On January 22, 2008, TURN protested the Daggett Wind contract and DRA protested all the contracts in AL 2198-E.
10. It is reasonable for the Commission to evaluate one of the contracts for which SCE requested approval in AL 2198-E and to reserve judgment on the other projects for a subsequent resolution(s).
11. SCE briefed its PRG on its proposed shortlist and status of negotiations for the 2007 RPS solicitation. SCE also briefed the PRG concerning the successful conclusion of discussions with FSE.
12. The Commission has reviewed the proposed contract and finds it to be consistent with SCE's approved 2007 renewable procurement plan.
13. The proposed Seller bid price for the FSE project is below the 2007 MPR released in Resolution E-4118.
14. The Agreement is reasonable and should be approved in its entirety.
15. The costs of the contract between SCE and Seller is reasonable and in the public interest; accordingly, the payments to be made by SCE are fully recoverable in rates over the life of the project, subject to CPUC review of SCE's administration of the PPA.

16. SCE is required to report costs outside of the energy price to the Commission when SCE files its annual Energy Resource Recovery Account (ERRA) application.
17. SCE is directed to work with Commission staff through the 2009 RPS procurement plan proceeding, or subsequent proceedings, to establish how SCE should report these payments, how Energy Division should review these costs, and how they should be factored into the calculation of AMFs if they bring the total cost of the contract above the MPR.
18. All future costs that increase the total contract price above the 2007 MPR will be subject to the rules and guidelines established through SB 1036 implementation or other RPS proceedings.
19. 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.
20. 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.
21. 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.
22. The FSE contract proposed in AL 2198-E should be approved without modifications.
23. CPUC evaluation of the Daggett Wind and ORNI 21 contracts will be deferred.

THEREFORE IT IS ORDERED THAT:

1. The FSE contract proposed in AL-2198-E is approved without modifications.
2. The cost of the contract between SCE and Seller is reasonable and in the public interest; accordingly, the payments to be made by SCE are fully recoverable in rates over the life of the project, subject to CPUC review of SCE'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 July 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
LCBF Bid Evaluations

[REDACTED]

Confidential Appendix C
FSE Contract Summary

[REDACTED]

Confidential Appendix D:
Project Viability Matrices

[REDACTED]

Confidential Appendix E:
Independent Evaluator's
Contract-Specific Assessments

[REDACTED]

Confidential Appendix F:
Projects' Contributions Toward RPS Goals

[REDACTED]