

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4171
July 31, 2008

REDACTED

R E S O L U T I O N

Resolution E-4171. San Diego Gas and Electric (SDG&E) Company requests approval of the Esmeralda Truckhaven Geothermal, LLC. renewable resource procurement contract. The contract is approved without modification.

By Advice Letter 1963-E filed February 1, 2008 and Supplemental Advice Letter 1963-E-A filed on March 21, 2008.

SUMMARY

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

SDG&E filed advice letter (AL) 1963-E on February 1, 2008 requesting California Public Utilities Commission (Commission) review and approval of a renewable energy power purchase agreement with Esmeralda Truckhaven Geothermal, LLC (Esmeralda). SDG&E filed AL 1963-E-A on March 21, 2008 to supplement AL 1963-E, in order to include the Independent Evaluator’s Report for SDG&E’s 2008 Renewable Power Purchase Agreement with Esmeralda.

Generating Facility	Type	Term Years	MW Capacity	Annual Deliveries	Online Date	Project Location
Esmeralda	Geothermal	20	40 MW	319 GWh	December 31, 2010	Imperial County, California

This contract is for new capacity. SDG&E’s 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.

Deliveries from the contract are reasonably priced and fully recoverable in rates over the life of the contract; subject to Commission review of SDG&E's administration of the contract.

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 1078¹ and codified by California Pub. Util. 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 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

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

annual procurement targets (APTs)⁴, in order to make progress towards the goal expressed in the EAP. On September 26, 2006, Governor Schwarzenegger signed Senate Bill (SB) 107,⁵ which codified the State's goal to procure 20 percent of its electricity from renewable resources by 2010, subject to the Commission's rules on flexible compliance⁶.

The Commission has established procurement guidelines for the RPS Program

The Commission has issued a series of decisions that describe the regulatory and transactional framework of the RPS 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). The Commission also adopted standard terms and conditions for RPS power purchase agreements in D.04-06-014 as required by Pub. Util. Code Section 399.14(a)(2)(D). Instructions for evaluating the value of offers made in response to each RPS solicitation were provided in D.04-07-029.

More recently, 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

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 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

established methodologies to calculate an LSE's initial baseline procurement amount, annual procurement target (APT) and incremental procurement amount (IPT).¹¹

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.

While it is preferred that the utilities procure RPS contracts through competitive solicitations, D.03-06-071¹² allows for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process. Specifically, D.03-06-071 states that bilateral contracts will only be allowed if they do not require Public Goods Charge (PGC) funds.¹³

In D.06-10-019 the Commission states that bilateral contracts must be deemed reasonable and submitted by advice letter. As directed in D.06-10-019 the Commission is looking further at evaluation criteria for bilateral RPS contracts in

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.

¹² http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/27360.htm

¹³ SB 107 (Public Resources Code section 25473(b)(1)(F)) confirms that bilateral contracts cannot receive Supplemental Energy Payments (SEPs), stating that to receive SEPs a project must have resulted from a competitive solicitation.

R.06-02-012. In the interim, however, utilities' bilateral contracts can be evaluated on a case-by-case basis prior to establishing formal evaluation criteria.

SDG&E requests approval of a new renewable energy contract

On February 1, 2008, SDG&E filed Advice Letter (AL) 1963-E requesting Commission approval of a renewable procurement contract with Esmeralda Truckhaven Geothermal LLC. (Esmeralda). The power purchase agreement (PPA) results from bilateral negotiations between SDG&E and Esmeralda. 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.¹⁴

SDG&E requests final "CPUC Approval" of Contract

SDG&E requests that the Commission issue a resolution containing the findings necessary for "CPUC Approval" as defined in Appendix A of D.04-06-014. In addition, SDG&E requests that the Commission issue a resolution that finds the following:

1. Approval of the Proposed Agreement 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. Any generation procured pursuant to the Proposed Agreement 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.

SDG&E'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

¹⁴ 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.

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.

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

SDG&E provided its PRG with reports on the Esmeralda project on several occasions. The first briefing occurred on February 9, 2007. Additional reports by SDG&E to the PRG occurred on March 16, 2007, June 20, 2007, September 17, 2007, and January 15, 2008. These presentations included a general overview of the negotiated terms and conditions of the PPA.

There was no opposition to SDG&E's execution of the PPA. Although Energy Division is a member of the PRG, it reserved its conclusions for review and recommendation on the contracts to the resolution process.

NOTICE

Notice of AL 1963-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter and Supplemental Advice Letter was mailed and distributed in accordance with Section IV of General Order 96-B.

PROTESTS

SDG&E's Advice Letter AL 1963-E was timely protested by Center for Biological Diversity (CBD) on February 20, 2008. AL 1963-E-A was also timely protested by CBD and the Sierra Club on March 27, 2008. In the February 20, 2008 protest, CBD protests the advice letter on two issues. First, CBD requests "the Commission modify the contract to remove any clause limiting delivery options to construction of the proposed Sunrise Transmission project". CBD argues that predicating the project on Sunrise Powerlink is inappropriate for several reasons, including:

- a) The request would be unjust, unreasonable, or discriminatory pursuant to General Order (GO) 96-B, Section 7.4.2(6). The requirement would unduly limit the contract.
- b) Requested relief in an advice letter may not be pending before the Commission in a formal proceeding and the Sunrise Transmission project is currently subject to a formal proceeding in A.06-08-010.
- c) Contract terms that exclude consideration of all available transmission options place an unreasonable restraint on meeting the requirement under the RPS, and
- d) Requested relief in an advice letter may not be unjust, unreasonable, or discriminatory (General Order (GO) 96-B, Section 7.4.2(6)). Linking energy delivery to construction of the STP discriminates against other transmission options.

Second, CBD seeks that Commission approval of the PPA be conditioned on California Environmental Quality Act (CEQA) review and approval of the Esmeralda project. CBD states that CEQA must be applied since the project is being approved by the Commission, a public agency. In the March 27, 2008 protest to AL 1963-E-A, CBD and the Sierra Club restates CBD's protests to AL 1963-E, and additionally requests that the clause "predicated on Sunrise Powerlink" be removed from the PPA on the additional basis that the Independent Evaluator (IE) report submitted on March 21, 2007 notes that "the contract is favorable whether or not the STP [Sunrise Transmission Project] is approved."

SDG&E responded to the CBD's protest of AL 1963-E on February 27, 2008. SDG&E argues that the clause preconditioning delivery obligations on Sunrise Powerlink is protecting SDG&E ratepayers from paying for a facility that is stranded without transmission. SDG&E also states that CEQA review is not required since the project is subject to the jurisdiction of the Bureau of Land Management (BLM). Additionally, SDG&E notes that BLM has reviewed the project in accordance with the National Environmental Policy Act (NEPA). On April 7, 2008 SDG&E responded to the March 27, 2008 protest filed by CBD and the Sierra Club. In their response, SDG&E argued that the protest's arguments were based on a misunderstanding of the IE's role and mischaracterization of statements made in the IE report.

DISCUSSION

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

Generating Facility	Type	Term Years	MW Capacity	Annual Deliveries	Online Date	Project Location
Esmeralda	Geothermal	20	40 MW	319 GWh	December 31, 2010	Imperial County, California

Energy Division examined the contract on multiple grounds:

- PPA is consistent with SDG&E’s Commission adopted 2007 RPS Plan
- PPA complies with RPS bilateral guidelines
- PPA conforms to Commission adopted Standard Terms and Conditions
- SDG&E made a sufficient showing that the project is viable
- SDG&E made a sufficient showing the project’s contract price is reasonable

PPA is consistent with SDG&E’s Commission adopted 2007 RPS Plan

California’s RPS statute requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.¹⁵ SDG&E’s 2007 RPS procurement plan (Plan) was approved by D.07-02-011 on February 15, 2007.¹⁶ Pursuant to statute, the Plan includes an assessment of supply and demand to 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.¹⁷

¹⁵ Pub. Util. Code, Section §399.14

¹⁶ http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/64640.htm

¹⁷ Pub. Util. Code, Section §399.14(a)(3)

PPA is consistent with identified resource needs

The stated goal of SDG&E's 2007 RPS Solicitation Plan has been to develop and maintain a diversified renewable portfolio that best fits SDG&E's resource needs. SDG&E's 2007 Renewable RFO supports this goal by promoting a diverse mix of renewable technologies and by allowing SDG&E to pursue a combination of both power purchase and ownership options including turn-key and joint venture. Consistent with its 2007 RFO, SDG&E solicited bids from renewable projects located both within California and out of state, provided that any renewable projects located outside of California meets the requirements set forth in PUC Code Section 399.16 and California Energy Commission (CEC) Eligibility Guidebook restrictions. The RFO solicited capacity and energy services from repowered, upgraded or new facilities. Products could include unit firm or as-available deliveries starting in 2008, 2009, 2010 or 2011. Thus, a wide range of diverse renewable projects was available to compare SDG&E's least-cost/best-fit analysis of the Esmeralda contract vis-à-vis the responses to the 2007 RFO. If approved, the 40 MW facility is expected to begin deliveries in 2011 of 319 GWh per year of geothermal generation, which is approximately 1.8 percent of SDG&E's forecasted 2011 annual retail sales¹⁸.

PPA is consistent with RPS procurement guidelines

There is no pre-established reasonableness standard for bilateral contracts. D.06-10-019 provides an interim authority allowing the Commission to approve contracts based on a reasonableness standard determined at its own discretion. In addition, Commission decisions have adopted interim guidelines for approving RPS bilateral contracts. Specifically, the Commission has said bilateral contracts must be reasonable and prudent (D.03-06-071, p. 59; D.06-10-019, p. 31).¹⁹ The proposed PPA is consistent with Commission decisions regarding RPS bilateral contracts.

¹⁸ 2011 forecasted sales were based on SDG&E's 2008 RPS Plan

¹⁹ "[The CPUC]...will allow prudent bilateral contracts only when such contracts do not require any PGC [Public Goods Charge] funds" (D.03-06-071 p. 59, CoL 31, OP 29).

"For now, utilities' bilateral RPS contracts, of any length, must be submitted for approval by advice letter. Such contracts are not subject to the MPR, which applies to solicitations, but they must be reasonable (D.03-06-017, *mimeo.*, p. 59) the PPA is at least one month in duration (D.06-10-019 p. 29).

The Commission intends to adopt more explicit reasonableness review standards and criteria for RPS bilateral contracts in a decision in the near future. Until such decision is approved, the Commission will continue to consider the approval of RPS bilateral contracts on a case-by-case basis.

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, D.07-02-011 as modified by D.07-05-057,²⁰ and D.07-11-025²¹. Standard Terms and Conditions (STC) were identified in confidential Appendix B of D.04-06-014 as “may not be modified”. On November 16, 2007, the Commission adopted D.07-11-025, which reduced the number of non-modifiable terms from nine to four, and refined the language of some of these terms in response to an amended petition for modification of D.04-06-014.²² The Commission compiled the most updated STCs in D.08-04-009, and excluded the supplemental energy payments term, such that there are now thirteen STCs of which four are non-modifiable.

“May Not be Modified” Terms

The PPA does not deviate from the non-modifiable terms and conditions.

“May be Modified” Terms

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 Appendix A of D.04-06-014 and in D.07-11-025.

PPA is a viable project

SDG&E believes the project is viable because:

²⁰ D.07-05-057 Order Modifying Decision 07-02-011 Regarding Definition of Green Attributes
http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/68383.pdf

²¹ D.07-11-025, Attachment A
http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/75354.PDF

²² On February 1, 2007, PG&E and SCE jointly filed a petition for modification of D.04-06-014. On May 22, 2007, a PD was filed and served. Prior to the PD being voted on by the Commission, PG&E and SCE filed an amended petition for modification of D.04-06-014.

Project Milestones

The PPA identifies the agreed upon project milestones, including the commercial operation date.

Permitting and Site Control

The developer is pursuing the necessary permitting and site control activities to allow development of the project. In 2000, the manager of Esmeralda applied for noncompetitive U.S. Department of Interior, Bureau of Land Management (BLM) leases which will encompass 100% of the projects land requirements. On February 1, 2008 BLM issued the Final Environmental Impact Statement for the Truckhaven Geothermal Leasing Area, which recommended the area for leasing.²³

Financeability of resource

SDG&E believes that the project selected has a reasonable likelihood of being fully financed and completed as required by the PPA and will be available to deliver energy by the guaranteed commercial operation date. Esmeralda is currently seeking cash and tax equity from financial institutions and industry members.

Production Tax Credit (PTC)

The PPA price is dependent on the extension of the federal PTC as provided in Section 45 of the Internal Revenue Code of 1986, as amended.

Sponsor's creditworthiness and experience

The developer has over 30 years of experience in the geothermal industry.

Technology and Fuel Quality

Geothermal is a proven technology and the project will be using "off-the-shelf" technology. The Truckhaven Geothermal Resource area in Imperial County is in

²³ The proposed action in the Final Environmental Impact Statement was to offer all BLM managed lands within the Truckhaven area for lease, subject to certain stipulations and mitigation measures to be applied at the development stage (http://www.blm.gov/ca/pdfs/elcentro_pdfs/TruckhavenFEIS/00a_cover.pdf)

a region with known geothermal resource areas. Esmeralda and Geothermex have estimated resource quality based on a test well drilled on an immediately adjacent parcel. The amount of geothermal steam for the project, however, will be more clearly known once extensive drilling has been completed.

Transmission

The project will connect to Imperial Irrigation District (IID) which will wheel the output from the project to the IV substation. If Sunrise Powerlink is approved and built, it would be available to connect Esmeralda generation from the IV substation to SDG&E's load and thus SDG&E's preferred transmission option due to reduced congestion costs.²⁴ The project could also interconnect to the transmission system use existing transmission if the Sunrise transmission link were not built or not in service.²⁵

Contract price is reasonable

The Commission believes that the contract price is reasonable. The levelized contract price is below the 2007 MPR.²⁶ Also, the Project's contract price compares favorably to other geothermal bids in the 2007 RPS solicitation. Confidential Appendix D includes a detailed discussion of the contract's pricing terms.

Qualitative factors were considered during bid evaluation

SDG&E considered qualitative factors as required by D.04-07-029 and D.05-07-039, e.g. credit and finance, project status, technology viability and participant experience, and consistency with RPS goals. If approved, SDG&E will contribute to the diversification of SDG&E's renewable technology portfolio and significantly increase SDG&E's RPS procurement in 2011 and beyond.

²⁴ Independent Evaluator's Report for a Bilateral Long-Term Renewable Resource contract Offer from Esmeralda Truckhaven Geothermal LLC, p. 11

²⁵ Ibid.

²⁶ Resolution E-4118, Adopting the 2007 MPR, October 4, 2007,
http://docs.cpuc.ca.gov/PUBLISHED/Final_resolution/73594.htm

PPA will contribute to SDG&E's minimum quota requirement

Pub. Util. Code 399.14(b)(2) 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 or from new facilities commencing commercial operations on or after January 1, 2005." On May 3, 2007, the Commission approved D.07-05-028²⁷ which established a minimum percentage of the prior year's retail sales that must be contracted with contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005. As a new, long-term contract, deliveries from this Project will contribute to SDG&E's minimum quota requirement.

Center for Biological Diversity's protests are rejected, and the PPA is approved without modification.

CBD protested AL 1963-E on two accounts.²⁸ First, CBD requested that the contract should be modified to "remove any clause limiting delivery options to construction of the proposed the Sunrise Transmission Project". Second, CBD requested that approval of the contract be conditioned on CEQA review and approval of the Esmeralda project. The Commission rejects CBD's protest.

CBD requests that the contract should be modified to "remove any clause limiting delivery options to construction of the proposed the Sunrise Transmission Project".

CBD argues that predicating the project on Sunrise Powerlink is inappropriate for the following reasons:

- a) The request would be unjust, unreasonable, or discriminatory pursuant to General Order (GO) 96-B, Section 7.4.2(6)²⁹. The requirement would unduly limit the contract.

²⁷ http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/67490.PDF

²⁸ Sierra Club joined CBD in protesting AL 1963-E-A. This subsequent protest reiterated the arguments of the protest filed in regards to AL 1963-E.

²⁹ GO96-B, Section 7.4.2(6) states that advice letters may be protested if "The relief requested in the advice letter is unjust, unreasonable, or discriminatory, provided that

Footnote continued on next page

- b) Requested relief in an advice letter may not be pending before the Commission in a formal proceeding and the Sunrise Transmission project is currently subject to a formal proceeding in A.06-08-010.
- c) Contract terms that exclude consideration of all available transmission options place an unreasonable restraint on meeting the requirement under the RPS, and
- d) Requested relief in an advice letter may not be unjust, unreasonable, or discriminatory (General Order (GO) 96-B, Section 7.4.2(6)). Linking energy delivery to construction of the STP discriminates against other transmission options.

SDG&E argues in their response to the protest that predicating the PPA on the Sunrise Powerlink is in the best interest of the ratepayer.³⁰ They argue that the condition precedent is ensuring that ratepayers are not obligated to purchase generation if the generation is stranded (i.e. the generation is not able to reach where it is intended). Moreover, in response to CBD's concern that contract terms exclude consideration of all available transmission options and place an unreasonable restraint on meeting the requirement under the RPS, SDG&E argues that the Sunrise Powerlink will provide an additional transmission option to the project.

While the Commission acknowledges that the generation from the project can reach its intended delivery point (page 12), we find the condition precedent reasonable and reject CBD's request to remove the condition precedent.

Further, SDG&E's requested relief is not unjust, unreasonable, or discriminatory. First, the condition precedent contract term does not limit the contract. The contract is executed and accepted by both parties. Second, the condition precedent contract term does not discriminate or exclude against other delivery options. Generation from the Esmeralda facility may or may not use the new transmission referred to in the condition precedent. Third, the condition precedent does not require generation from the facility to use a specific

such a protest may not be made where it would require relitigating a prior order of the Commission." [reference added by Staff]

³⁰ SDGE February 27, 2008 response, p. 2

transmission route. If anything, the condition precedent, as SDG&E noted in its reply, ensures an additional transmission option. Thus, the condition precedent is not unjust, unreasonable, or discriminatory pursuant to GO 96-B 7.4.2(6).

Additionally, the Commission recognizes that SDG&E has a statutory mandate to reach 20 percent RPS procurement by 2010. If SDG&E has deficits in RPS procurement targets, its shareholders may be subject to penalties. It is therefore within SDG&E's discretion to weigh the costs and benefits of conditioning this PPA on a new transmission line, while considering the costs to its ratepayers, its progress towards meeting its RPS goals, and the potential penalties its shareholders may be subject to.

Therefore, we reject CBD's protest that the condition precedent be removed, and the Commission will not require the PPA to be modified. To the extent there is any condition precedent in the contract that they want to change, the parties can mutually agree to waive that restriction or delete the condition precedent from the contract language. However if such waiver or deletion were to occur and there is a material change in the contract, SDG&E would need to file an Advice Letter requesting Commission approval of the material change.

CBD requests approval of the PPA be conditioned on CEQA review and approval of the Esmeralda Truckhaven project

The second part of CBD's protest called for Commission approval to be conditioned upon CEQA review and approval of the project. Protestants' arguments regarding CEQA lack merit for several reasons. First, the scope of this resolution is confined only to approval of SDG&E's anticipated costs as reasonable and the Commission herein expresses no opinion about any issue other than SDG&E's anticipated costs. Second, approval of SDG&E's anticipated costs (not the development plans) is not an "approval" of a "project" within the meaning of CEQA. (Public Resources Code Section 21065; CEQA Guidelines, Cal. Code Regs., tit. 14, §§ 15352(a), 15378.) Lastly, approval of this contract is not an "essential step" which commits the Commission to any particular course of action. For these reasons, protestants' arguments lack merit.

Approval of this contract does not in any way limit the review of project alternatives should future environmental reviews of the development projects require such analysis. Further, by this resolution the Commission is granting no rights to develop property and is not binding itself or any other party to any

particular development plan. The Commission merely finds that, should the contemplated development plans come to fruition, SDG&E may account for such deliverables as a renewable energy resource, may recover certain costs in rates, and may enter into contracts with various parties.

It should also be noted that, on the federal level, the project is located on BLM land. The BLM will undertake the necessary environmental review pursuant to the National Environmental Policy Act.

While this resolution is approving the contract between the two entities, not the development of the facility itself, any project, as defined by CEQA, is subject to all applicable environmental laws. As such, the project will not go forward without meeting the relevant environmental laws and thus the ratepayer will not be subject to purchasing generation if the project is not built. Thus, the Commission does not condition the approval of the PPA on CEQA.

The Commission approves this PPA for the following reasons. First, the price in this PPA is reasonable when compared to the relevant MPR. Second, the project is reasonable when compared with bids received and evaluated under the 2007 RFO. Third, the project has been reasonably shown to be viable based on project development, site control, permitting, financing, resource studies, technology, and transmission needs leading to a reasonable likelihood of delivering as planned in 2011 and contributing to SDG&E's RPS quota. Approval of this Contract will increase in-state renewable energy generation and provide greater resource diversity.

Confidential information about the contract 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

"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."

Comments were filed in a timely fashion on July 21, 2008 by CBD and the Sierra Club. Reply comments were filed on July 28, 2008 by SDG&E.

We carefully considered comments which focused on factual, legal or technical errors and made appropriate changes to the draft resolution.

CBD and the Sierra Club comment that the PPA should not be conditioned on approval of a new transmission line

In their comments, CBD and the Sierra Club re-state the argument in their protest that the draft Resolution's acceptance of the PPA's condition precedent based on protecting ratepayers is inappropriate because the condition precedent does not directly address ratepayer protection.

We carefully considered CBD and the Sierra Club's argument and clarify and modify the draft Resolution appropriately.

They argue further that the condition precedent does not guarantee any specific ratepayer cost to the PPA or consider ratepayer costs outside the scope of the PPA.

By approving the PPA as a whole, with a given contract term, price, and expected generation the direct costs of the PPA are limited. Costs outside the PPA are outside of the scope of PPA review and approval. Therefore, CBD and the Sierra Club's argument to consider ratepayer costs outside the scope of the PPA is inappropriate.

CBD and the Sierra Club also argue that the draft Resolution pre-judges contested facts in A.06-08-010 since interests of ratepayers are a contested matter in that proceeding. As noted above, this Resolution is approving the PPA between SDG&E and Esmeralda. In approving this PPA the Commission is not

judging or concluding if the transmission project referenced in the condition precedent is or is not in the ratepayer interest, which is being addressed in A.06-08-010.

CBD and the Sierra Club comment that disputed facts were raised in protests which require mandatory rejection of the advice letter

CBD and the Sierra Club argue that disputed material facts were raised in their earlier protests to the advice letter which require a formal proceeding and mandatory rejection of the advice letter as ruled in Decision 02-02-049. As noted above, this Resolution is not addressing the need or cost impact of transmission, as such, and any disputed facts relating to the amount of transmission available or not available or possible cost of transmission are outside of the scope of this Resolution.³¹

We carefully considered the issue CBD and the Sierra Club raised in regards to the draft Resolution's internal inconsistency. The draft Resolution is modified accordingly.

CBD and the Sierra Club comment that the draft Resolution is not in compliance with rules governing the Commission

CBD and the Sierra Club argue that the draft Resolution incompletely addressed issues raised in its February 20, 2008 protest. In recognition of this comment, the draft Resolution has been modified.

CBD and the Sierra Club comment that the draft Resolution incorrectly suggests the PPA would contribute to SDG&E's 20 percent by 2010 RPS requirement

CBD and the Sierra Club argue that the draft Resolution mistakenly suggested deliveries from the Esmeralda project would help meet the 2010 RPS requirement since generation will not occur until 2011. The RPS requirement of 20 percent renewable procurement, however, does not end in 2010; it continues beyond

³¹ In CBD and the Sierra Club's Comments, issues 1, 3, 4 and 5 on pages 2 and 3 are in regards to either possible costs to ratepayers due to transmission or the amount or need of transmission.

2010. Thus, it is not incorrect to state that the renewable generation from the Esmeralda project will contribute towards California's 20 percent renewables procurement goal and the draft Resolution will not be modified.

FINDINGS

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. On February 1, 2008, SDG&E filed AL 1963-E requesting Commission approval of a renewable procurement contract with Esmeralda Truckhaven Geothermal LLC (Esmeralda). On March 21, 2008, SDG&E filed supplemental AL 1963-E-A.
3. A protest to AL 1963-E was filed by Center for Biological Diversity on February 20, 2008.
4. SDG&E filed Reply Comments to the protest on February 27, 2008.
5. A protest to AL 1963-E-A was filed by Center for Biological Diversity and the Sierra Club on March 27, 2008.
6. SDG&E filed Reply Comments to the protest on April 7, 2008.
7. SDG&E's request is not unjust, unreasonable, or discriminatory.
8. The PPA terms do not discriminate or exclude generation delivery options.
9. PPA approval does not require CEQA review and approval.
10. The Commission rejects CBD's protest.
11. The Commission rejects CBD and the Sierra Club's protest.
12. On July 21, 2008 joint comments on draft resolution E-4171 were submitted by CBD and the Sierra Club. On July 28, 2008, SDG&E submitted reply comments.
13. D.07-02-011 directed the utilities to issue their 2007 renewable RFOs, consistent with their renewable procurement plans.
14. The Commission has reviewed the proposed PPA and finds it to be consistent with SDG&E's approved 2007 renewable procurement plan.
15. The Commission requires each utility to establish a Procurement Review Group (PRG) to review the utilities' interim procurement needs and strategy, proposed procurement process, and selected contracts.

16. SDG&E provided its PRG with reports on this transaction on several occasions between March 16, 2007 and January 15, 2008.
17. D.03-06-071 allows a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process.
18. D.06-10-019 allows all RPS-obligated LSEs to enter into bilateral contracts of any length with RPS-eligible generators, as long as the contracts are at least one month in duration, to enable the CEC to verify RPS procurement claims.
19. D.08-04-009 sets forth standard terms and conditions to be incorporated into RPS Power Purchase Agreements, including bilaterals.
20. Levelized contract price below the 2007 MPR is 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.05-12-048.
21. Esmeralda's proposed all-in contract price is below the 2007 MPR adopted in Resolution E-4118.
22. Energy Division reviewed the PPA and finds it reasonable.
23. The costs 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 Commission review of SDG&E's administration of the contract.
24. 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.
25. Procurement pursuant to this PPA constitutes procurement from eligible renewable energy resources 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.), Decision 03-06-071, or other applicable law.
26. Procurement pursuant to this PPA 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, Commission Decision 03-06-071, or other applicable law.

27. AL 1963-E and 1963-E-A should be approved in their entirety.

THEREFORE IT IS ORDERED THAT:

1. Advice Letters AL 1963-E and 1963-E-A are approved
2. The costs of the contract between SDG&E and Esmeralda 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 Commission review of SDG&E's administration of the contract.
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 31, 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 2004 - 2007 Solicitation Bids

[REDACTED]

Confidential Appendix B

LCBF Ranking of 2007 Bids

[REDACTED]

Confidential Appendix C

Contract Summary

[REDACTED]

Confidential Appendix D

Contract Price Analysis

[REDACTED]

Confidential Appendix E

Project Viability Matrix

[REDACTED]

Confidential Appendix F

Project's Contribution to RPS Goals

[REDACTED]