

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**RESOLUTION E-4192
October 2, 2008**

PUBLIC

R E S O L U T I O N

Resolution E-4192. San Diego Gas and Electric (SDG&E) Company requests approval of two bilateral renewable power purchase and sale agreements with NaturEner Glacier Wind Energy 1 and 2, LLCs. These agreements are approved without modification.

By Advice Letter 1997-E filed on June 4, 2008.

SUMMARY

SDG&E’s renewable contracts comply with the Renewable Portfolio Standard (RPS) procurement guidelines and are approved without modification

SDG&E filed advice letter (AL) 1997-E on June 4, 2008 requesting California Public Utilities Commission (Commission) review and approval of two bilateral renewable energy power purchase agreements (PPA) with NaturEner Glacier Energy Wind 1 LLC (Glacier 1) and NaturEner Glacier Energy Wind 2, LLC (Glacier 2).

Generating facility	Type	Term Years	MW Capacity	GWh Energy	Online Date	Location
Glacier Wind Energy 1	Wind	15	106.5	325	12/31/2008 or 3/31/2009	Toole & Glacier County, MT
Glacier Wind Energy 2	Wind	15	103.5	310	10/31/2009 or 12/31/2009	Toole & Glacier County, MT

SDG&E’s renewable PPAs are for new wind capacity located out of state and comply with the RPS procurement guidelines. SDG&E’s request for approval of the renewable resource procurement contracts is granted pursuant to D.07-02-011 which approved SDG&E’s 2007 RPS Procurement Plan and the bilateral contracting guidelines set forth in D.03-06-071 and D.06-10-019. The energy acquired from the PPAs will count towards SDG&E’s RPS requirements.

Deliveries from these contracts 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 Public Utilities Code Section 399.11, et seq. The statute requires that a retail seller² of electricity, such as SDG&E, purchase a certain percentage of electricity generated by eligible renewable energy resources (ERR). Originally, each retail seller was required to increase its total procurement of ERRs by at least 1 percent of annual retail sales per year so that 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. This was reiterated again in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004³, which encouraged the utilities to procure cost-effective renewable generation in excess of their RPS annual procurement targets⁴ (APTs), in order to make progress towards the goal expressed

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

² Includes electrical corporations, community choice aggregators and electric service providers

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.

in the EAP.⁵ On September 26, 2006, Governor Schwarzenegger signed Senate Bill 107, which officially accelerates the State's RPS targets to 20 percent by 2010.⁶

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

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

⁶ SB 107, Chapter 464, Statutes of 2006

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.

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 the focus of the RPS program is procurement 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. In D.06-10-019, the Commission interprets D.03-06-071, stating that bilaterals are not eligible for Supplemental Energy Payments (SEPs) and bilateral contracts must be deemed reasonable. Further, the decision requires bilateral contracts of any length must be submitted to the Commission for approval by advice letter.¹³

Since D.06-10-019 was adopted, SB 1036 halted the portion of the PGC fund collection that went to the SEP fund, returned the collected SEPs to the utilities, and moved above-MPR cost recovery to the Commission.¹⁴ While SB 1036 reformed the SEP process, the bilateral contracts are still ineligible for AMFs.¹⁵

As D.06-10-019 notes, the Commission will be developing evaluation criteria for bilateral RPS contracts.¹⁶ In the interim, however, utilities' bilateral contracts can be evaluated as long as they follow the three requirements mentioned above:

- the contract was submitted for approval by advice letter
- the contract does not receive AMFs

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

¹³ D.06-10-019 pp. 31

¹⁴ See Resolution E-4160

http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/81476.PDF

¹⁵ Pub. Util. Code §399.15(d)(2)(A).

¹⁶ Second Amended Scoping Memo and Ruling of Assigned Commissioner, <http://docs.cpuc.ca.gov/efile/RULC/79195.pdf>

- the contract must be deemed reasonable by the Commission.

Interim Greenhouse Gas Emissions Performance Standard (EPS) established emission rate limitations for long-term electricity procurement

A greenhouse gas emissions performance standard (EPS) was established by Senate Bill 1368¹⁷, which requires that the Commission consider emissions costs associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers.

On January 25, 2007, the Commission approved D.07-01-039 which adopted an interim EPS that establishes an emission rate quota for obligated facilities to levels no greater than the GHG emissions of a combined-cycle gas turbine (CCGT) powerplant.¹⁸ The EPS applies to all long-term energy contracts for baseload generation.¹⁹ Renewable energy contracts are deemed EPS compliant from the EPS except in cases where intermittent renewable energy is shaped and firmed with generation from non-renewable resources. If the renewable energy contract is shaped and firmed with a specified energy source that is considered baseload generation, then the energy source must individually meet the EPS. If, however, the intermittent energy is firmed and shaped with an unspecified energy source (e.g. system power), then D.07-01-039 specifically defines the following eligibility condition:²⁰

For specified contracts with intermittent renewable resources (defined as solar, wind and run-of-river hydroelectricity), the amount of substitute energy purchases from unspecified resources is limited such that total purchases under the contract (whether from the intermittent renewable resource or from substitute unspecified sources) do not exceed the total expected output of the specified renewable powerplant over the term of the contract.

SDG&E requests approval of new renewable energy contracts

¹⁷ Chapter 464, Statutes of 2006 (SB 1368)

¹⁸ D.07-01-039 adopted an emission rate of 1,100 pounds of carbon dioxide per megawatt-hour for the proxy CCGT (section 1.2, page 8)

http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/64072.PDF

¹⁹ "Baseload generation" is electricity generation at a power plant "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." § 8340 (a)

²⁰ D.07-01-039, Conclusion of Law 40. Note: These compliance rules specifically apply to IOUs, additional compliance rules may apply to other RPS-obligated load serving entities.

On June 4, 2008, SDG&E filed AL 1997-E requesting Commission approval of two renewable procurement contracts with NaturEner Glacier Wind Energy 1 and 2, LLC (Glacier 1 and Glacier 2). The PPAs result from bilateral negotiations. The Commission's approval of the PPAs 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.²¹

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 Agreements in their entirety, which includes the purchase and resale of renewable energy, and proposed import strategy (as required under the CEC eligible firming-and-shaping arrangements), including approval of full cost recovery in rates through the Energy Resource Recovery Account (ERRA) mechanism of all payments to be made by SDG&E in association with this contract, subject to Commission review of SDG&E's administration of the Proposed Agreements;
2. Issuance of a finding that any generation procured pursuant to the Proposed Agreements 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 reserves the right to designate the generation from these PPAs for earmarking in any given year;
3. Issuance of a finding that such RPS credit is granted retroactively for generation, if any, procured under the Proposed Agreements prior to Commission approval of the Proposed Agreements.

²¹ 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 Commission decisions in Rulemaking (R.) 04-04-026, R.06-02-012, and R.06-05-027.

4. Recovery of any costs that should accrue to SDG&E should any part of this structure be classified as a derivative subject to mark-to-market treatment under FASB Statement 133.

Additionally, SDG&E requests that the Commission acknowledges the importance of acting to mitigate any negative impact on SDG&E's balance sheet and/or credit profile caused by application of debt equivalence and/or FIN 46(R) requirements; and (ii) the Commission affirm that to the extent the PPAs negatively affects SDG&E's credit rating, the Commission will seek to mitigate such impacts through expeditious consideration of the relevant capital structure adjustment application filed by SDG&E pursuant to D.08-05-035.²²

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 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 Glacier 1 and Glacier 2 projects on several occasions. The first briefing occurred on December 17, 2007. SDG&E provided an additional briefing on May 15, 2008. These presentations included a general overview of the negotiated terms and conditions, rationale for selection, and assessment of the price of the PPAs.

PRG members discussed the policy and rules of RPS eligible qualification. PRG members also expressed concern regarding whether or not the PPAs further the goal

²² D.08-05-035 establishes a uniform multi-year cost of capital mechanism (CCM) for the three large IOUs.

of moving the market towards renewables. 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 1997-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 IV of General Order 96-B.

PROTESTS

Advice Letter 1997-E was protested.

SDG&E's Advice Letter AL 1997-E was protested by DRA on June 25, 2008. While the protest period for AL 1997-E closed on June 24, 2008 the Energy Division accepted the late protest and notified SDG&E on June 30, 2008.

DRA protests AL 1997-E on several accounts, identified below, and recommends SDG&E file an application for consideration of the PPAs.

- PPA transactions involve the trade of unbundled RECs that have not been established as part of the RPS implementation
- Violates Emissions Performance Standard (EPS)²³
- REC price analysis is arbitrary and not supported by the record or the market
- Reasonableness of the negotiation between SDG&E and NaturEner cannot be determined by comparing the PPAs to SDG&E's 2007 RFO since SDG&E did not make the same delivery arrangement it offered NaturEner to bidders in its 2007 RFO
- SDG&E seeks complex accounting options that have previously considered and outside purview of normal advice letter consideration

²³ D.07-01-039 implements Senate Bill 1368 (Stats. 2006, ch. 598)
(http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/64072.PDF)

SDG&E and NaturEner USA LLC (NaturEner) responded to DRA’s protests of on July 8, 2008. SDG&E argues that the proposed transaction is permissible, the proposed PPAs do not violate the EPS, the pricing is consistent with their 2008 RPS plan, and the PPAs provide public benefit. Additionally, SDG&E rebuts DRA’s contention that an application filing is required. NaturEner argues several points in its response: the transaction is acceptable; EPS is not relevant for PPAs nor are the non-renewable power sources subject to the EPS; advice letter is preferred and appropriate process for request; and the need for a timely Commission approval.

DISCUSSION

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

Generating facility	Type	Term Years	MW Capacity	GWh Energy	Online Date	Location
Glacier Wind Energy 1	Wind	15	106.5	325	12/31/2008 or 3/31/2009	Toole & Glacier County, MT
Glacier Wind Energy 2	Wind	15	103.5	310	10/31/2009 or 12/31/2009	Toole & Glacier County, MT

Energy Division examined the PPAs on multiple grounds:

- PPAs are consistent with SDG&E’s Commission adopted 2008 RPS Procurement Plan
- Compliance with RPS bilateral guidelines
- PPAs conform to Commission adopted Standard Terms and Conditions
- SDG&E made a sufficient showing the projects are viable
- SDG&E made a sufficient showing the projects’ contract prices are reasonable

PPAs are consistent with SDG&E’s Commission adopted 2008 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.²⁴ SDG&E’s 2007 RPS procurement plan (Plan) was approved by D.08-02-008 on

²⁴ Pub. Util. Code, Section §399.14

February 14, 2008.²⁵ Pursuant to statute, SDG&E's 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.²⁶

PPAs are consistent with identified resource needs

The stated goal of SDG&E's 2008 RPS Procurement Plan has been to develop and maintain a diversified renewable portfolio that best fits SDG&E's resource needs. Resource needs could be met 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 Pub. Util. Code § 399.16. Capacity and energy services from repowered, upgraded or new facilities are also encouraged. Products could include unit firm or as-available deliveries starting in 2009, 2010 or 2011. Thus, a wide range of diverse renewable projects can meet SDG&E's resource needs. If approved, the 106.5MW Glacier 1 facility is expected to begin deliveries in 2008 of 325 GWh per year and the 103.5MW Glacier 2 facility is expected to begin deliveries in 2009 of 310 GWh per year of wind generation.

PPAs are consistent with RPS procurement guidelines

The proposed PPAs are consistent with Commission decisions²⁷ regarding RPS bilateral contracts for the following reasons:

- 1) the prices in the PPAs do not exceed the MPR and therefore do not require above-market funds;
- 2) the PPAs were filed by advice letter; and
- 3) the PPAs term lengths are longer than one month in duration.

²⁵ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/78817.pdf

²⁶ Pub. Util. Code, Section §399.14(a)(3)

²⁷ "[The CPUC]...will allow prudent bilateral contracts only when such contracts do not require any PGC 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)... No bilateral contracts are currently eligible for SEPs." (D.06-10-019, pp.31-32). The PPA is at least one month in duration (D.06-10-019 p. 29). Our direction in D.06-10-019 that bilateral contracts be submitted by advice letter did not address the possibility that such contracts would exceed the MPR.

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 (STC) to be incorporated into RPS agreements, including bilateral contracts, in D.04-06-014, D.07-02-011 (as modified by D.07-05-057²⁸), D.07-11-025²⁹. STCs 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.04-06-014.³⁰ The Commission compiled the most updated STCs in D.08-04-009³¹.

The remaining non-modifiable STCs include “CPUC Approval”, “RECs and Green Attributes”, “Eligibility” and “Applicable law”.

“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.08-04-009.

²⁸ 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

²⁹ D.07-11-025, Attachment A

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

³⁰ 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.

³¹ http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/81269.PDF

PPAs are viable projects

The projects are far along in the development process so project viability risk has been greatly reduced. SDG&E believes the projects are viable for the following reasons:

Project Status

Glacier 1 is currently under construction. Glacier 2 engineering is nearly complete and the substation transformer has been ordered.

Permitting and Site Control

Site control and all permits necessary to achieve commercial operation have been obtained.

Production Tax Credit (PTC)

Both Glacier 1 and 2 require eligibility and extension of the federal PTC as provided in Section 45 of the Internal Revenue Code of 1986, as amended for projects to be economically viable.

Sponsor's creditworthiness and experience

NaturEner USA, LLC is a wholly owned subsidiary of Grupo NaturEner, S.A. a renewable energy company founded in 1988. Grupo NaturEner has developed, owned, and operated renewable energy facilities, including wind, solar, and mini-hydro.

Financing

NaturEner's parent company is providing balance sheet funding for the purchase of wind turbines and equipment needing a long lead time.

Technology and Fuel Quality

Wind is a proven technology and the project will be using Acciona AW77/1500 WTG³² turbines which are currently installed worldwide. The projects will also be using industry standard engineering and construction elements. After two years of

³² Northwest Power and Conservation Council: Generating Project Development Activity:
<http://www.nwcouncil.org/energy/powersupply/NEWPNWPRJ%20072208.xls>

meteorological testing, the wind resource was found sufficient to develop economically viable facilities.

Transmission

The PPAs are not dependent on any network upgrades. NaturEner will separately arrange the delivery of the energy generated. The projects are planned to interconnect with Glacier Electric and Northwestern.³³

Contract Price is Reasonable

The contract prices are reasonable. The levelized all-in contract prices are below the 2007 MPR.³⁴ Also, the projects' all-in contract prices compare favorably to other wind bids in the 2007 RPS solicitation. This price reasonableness evaluation does not set a precedent for Commission review of this contract structure or similar structures. Confidential Appendix E includes a discussion of the contracts' 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, Glacier 1 and 2 will contribute to the diversification of SDG&E's renewable technology portfolio and significantly increase SDG&E's RPS procurement in 2008 and beyond.

Commission has adopted minimum quotas for long-term RPS contracting

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.07-05-028³⁵ 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

³³ Ibid.

³⁴ Resolution E-4118, Adopting the 2007 MPR, October 4, 2007,
http://docs.cpuc.ca.gov/PUBLISHED/Final_resolution/73594.htm

³⁵ http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/67490.PDF

after January 1, 2005. As new, long-term contracts, deliveries from these projects will contribute to SDG&E's minimum quota requirement.

The Division of Ratepayers Advocates protest is rejected

DRA's protest of AL 1997-E argues the Commission should reject the PPAs for several reasons. The issues raised are each addressed separately here.

DRA argues that the PPA transactions involve the trade of unbundled renewable energy credits (REC) that have not been established as part of RPS implementation

DRA's protest states that the PPA transactions involve the trade of an unbundled REC, and since the Commission has not established the scope and limits by which RECs may be used to comply with the RPS the PPAs should not be approved. DRA further asserts that while the CEC may establish RPS guidelines, if the guidelines contravene the statutory requirements for implementing the statute, the Commission must reject the guidelines for eligibility.

SDG&E's AL 1997-E and SDG&E's and NaturEner's responses to DRA's protest state that the proposed PPAs meet the delivery requirements as laid out in the current CEC RPS Eligibility Guidebook. AL 1997-E states that the PPA structure follows the CEC RPS Eligibility Guidebook example of an eligible contract structure that would satisfy the RPS delivery requirements. The specific example referenced in the advice letter is:

The retail seller could provide firming and shaping services. The retail seller could buy energy and RECs from an RPS-eligible facility, sell the energy back to the facility, and "match" the RECs with energy delivery into California from a second PPA and/or with imports under a pre-existing PPA.^{36,37}

SDG&E's response also states that the PPAs' structure is virtually identical to a PPA structure that the Commission stated was acceptable for RPS compliance in Resolution E-4170. SDG&E and NaturEner, therefore, state that accepting DRA's protest would be contradictory to the Commission's finding in Resolution E-4170.

The CEC has said that the PPAs meet the CEC's delivery requirements, as noted in Attachment A: Pre-Certification of Out-of-State Delivery; thus supporting SDG&E's and NaturEner's argument that the PPAs are RPS eligible. Contrary to DRA's argument, the CEC is responsible for determining eligibility.

³⁶ CEC RPS Eligibility Guidebook, p. 24

³⁷ Advice Letter 1997-E, p. 5

As a result, we deny without prejudice DRA's protest that SDG&E's advice letter should be rejected because it represents an unbundled REC transaction. A thorough examination of the issues related to the use of unbundled and tradable RECs for RPS compliance is taking place in R.06-02-012 and we do not wish to prejudge the outcome of that proceeding.

DRA argues that the PPAs violate the EPS

DRA's protest states that it expects the energy from these PPAs will be firmed and shaped with power purchased from coal or co-generation plants. SDG&E's response states that the advice letter does not specify the source of conventional generation that it will use to match the Green Attributes and that any references to any contracts contained in the advice letter are merely for illustrative purposes. SDG&E's response states further that it has not made a final determination on whether the Green Attributes will be bundled with generation from coal or co-gen facilities, but that it "may match the Green Attributes with unspecified power or with generation from *pre-existing* long-term contract (i.e. executed prior to adoption of D.07-01-039)," and that under either approach, SDG&E would remain in full compliance with the EPS. NaturEner's response asserts that the PPAs are the sole "new long-term power contracts" for which SDG&E seeks approval, and since the PPAs are for RPS-eligible resources they each satisfy the EPS criteria. NaturEner's response further notes that the existing import contracts or spot market purchases used to satisfy the delivery requirements raise "no possible EPS issues".

In SDG&E's AL 1997-E, it asserts that the imported energy will be matched in volumes consistent with the Green Attributes purchased under the PPAs and the bundled renewable product will be delivered into California. Also, in Appendix I of the advice letter, SDG&E asserts that they may use spot power imports or they have a number of existing long term power imports that it may use instead. While DRA argues for an evidentiary hearing to clarify how the PPAs will be firmed, SDG&E asserts that how the contract will be matched with firm power has not been determined. Thus, a hearing would not resolve the issue since there is no fact to dispute. However, regardless of whether the Green Attributes are matched with energy delivered under existing contracts, new contracts or spot power purchases, the critical point is that this energy must comply with the EPS. D.07-01-039 establishes very specific criteria for determining whether a given power purchase contract is subject to the EPS requirements and in approving these contracts we do not exempt any of the contracts used for purposes of matching the Green Attributes with energy delivered in state from the applicable EPS requirements. Therefore, we

reject DRA's protest as we believe that to the extent the EPS is applicable to the contracts used to match the Green Attributes it will be so applied.

As long-term contracts, the PPAs for the purchase the energy and green attributes generated by the Glacier wind facilities themselves must also comply with EPS. D.07-01-039 states, "For the purposes of demonstrating compliance with the interim EPS, we determine that the emissions rate for renewables should be calculated based on the operations and emissions profile of the renewable resource...". These facilities are non-emitting and are therefore EPS compliant.

DRA argues that the components of the REC prices are arbitrary and not supported by the record or the market

DRA argues that further examination of the REC price should be done to examine the components that utilities can charge ratepayers as part of a REC price and what drivers are influencing that price. DRA also asserts that Commission approval of these transactions would precede the Commission's formal decision on rules governing tradable RECs for compliance.

NaturEner's responds that the prices for the PPAs are neither arbitrary nor "not supported," and that the analyses SDG&E describes in the advice letter show the PPAs prices compare favorably. SDG&E's advice letter and response similarly assert that there were various analyses completed to evaluate the reasonableness of the pricing set forth in the PPAs. Finally, SDG&E's response asserts that the transaction is not a REC transaction; thus, DRA's suggestion to examine REC pricing is improper.

As noted above, pursuant to the CEC RPS eligibility guidelines, the transactions between SDG&E and Glacier 1 and 2 meet the RPS delivery requirements, and therefore we find it reasonable to compare these contracts to other RPS eligible contracts. We do not believe it is appropriate at this time to establish a different standard by which to assess the price reasonableness of a given contract based on its structure if that structure results in a RPS eligible transaction, as established by the CEC. The value of different contract structures will be among the issues explored in R06-02-012 as the Commission deliberates on the use of unbundled and tradable RECs. Accordingly, we deny DRA's protest on this issue without prejudice.

DRA argues that the reasonableness of SDG&E's negotiation with NaturEner cannot be determined by comparing the PPAs to SDG&E's RFO

DRA argues that due to the PPAs' 2008 online date and alternative transaction structure which likely affected the price of the REC product, the comparison of the PPAs to offers SDG&E received in its RFO is unreasonable. DRA further asserts that the PPAs provide no benefits to SDG&E customers because it does not serve any of the goals of the RPS statute, Pub. Util. Code § 399.11(b).

SDG&E's response asserts that while this transaction type was not specifically solicited in its 2007 RFO, it was also not excluded. SDG&E's response further asserts that comparison against 2007 bid results was only one of three metrics used to demonstrate the reasonableness of the proposed contract pricing. SDG&E's also responds that the PPAs serve the goals of the RPS statute; through the development of renewable power, the public's health is being protected and environmental quality improved.

The Commission finds it reasonable to compare the bilateral PPAs to the most recent bid solicitation data available to determine price reasonableness. In this case, the 2007 RFO data is the most recent and therefore reasonable. Furthermore, as stated above, we do not believe it is appropriate at this time to establish a different standard by which to assess the reasonableness of a given contract based on its structure if that contract structure results in a RPS eligible transaction, as established by the CEC. The value of different contract structures will be among the issues explored in R06-02-012 as the Commission deliberates on the use of unbundled and tradable RECs. The Commission also finds that the PPAs represent RPS-eligible resources and meet the goals of Pub. Util. Code § 399.11(b). Therefore, DRA's protest is rejected.

DRA argues that SDG&E seeks complex accounting options that have previously considered and outside purview of normal advice letter consideration

DRA asserts that SDG&E's request for recovery of debt equivalence and FIN 46(R) should be considered in an application. SDG&E's response explains the advice letter was filed less than one week after the Commission decision establishing the mechanism for capital structure adjustments was adopted. Based on the adoption, SDG&E withdraws the request for recovery of debt equivalence or FIN 46(R) costs.³⁸ Based on the above, the Commission rejects DRA's protest.

DRA argues that the PPAs should be filed as an application

³⁸ SDG&E response to protest, p. 10

DRA asserts that SDG&E should file an application for approval of the PPAs due to their above stated protests. Further, DRA asserts that the application process is reasonable based on the PPAs complex issues and end of the year online date. The Commission has either rejected or resolved all issues DRA raises in their protest. Therefore, the request for approval of the PPAs does not need to be filed as an application and DRA's protest is rejected.

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 or reduced. Accordingly, this draft resolution was mailed to parties for comments.

Comments were due September 22, 2008. Center for Energy Efficiency and Renewable Technologies (CEERT), Horizon Wind Energy (Horizon) and IBERDROLA RENEWABLES (Iberdrola), DRA, and NaturEner USA LLC (NaturEner) filed comments in a timely fashion. Reply comments were timely filed on September 29, 2008 by SDG&E.

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

CEERT comments that language should be removed to eliminate uncertainty caused by the language

In its comments, CEERT requests removal of language in the draft Resolution since it will cause "uncertainty in the RPS Program".

We carefully considered CEERT's argument and modified the draft Resolution accordingly.

Horizon/Iberdrola comment that language should be removed to eliminate uncertainty caused by the language

Horizon/Iberdrola request the same removal of language that CEERT requests. This request has been resolved per the modifications made pursuant to CEERT's comment.

DRA comments that the Commission should not adopt draft Resolution E-4192

DRA argues that the draft Resolution errs in finding that the NaturEner PPAs meet the goals of the RPS Program. New renewable energy resources are being developed as a result of the PPAs, which is a goal of the RPS program. Therefore, DRA's argument that RPS program goals are not being met is inaccurate. Furthermore, while we do not dispute, in principle, the notion that different renewable contract structures may offer different benefits to California ratepayers or address to a greater or lesser degree the objectives of SB1078, we do not believe an Energy Division resolution is the appropriate vehicle for making that determination. This issue clearly rises to the level of policy and as such is best addressed in the relevant RPS proceedings.

As noted above, in R.06-02-012, one of the issues that will be considered as the Commission deliberates the use of unbundled and tradable RECs is the value of different contracting structures to California ratepayers. Additionally, on September 26, 2008 the Assigned Commissioner in R.08-08-009 issued an Amended Scoping Memo and Ruling identifying the various issues that need to be addressed for purposes of implementing and administering the RPS program. The Scoping Memo and Ruling includes language that addresses DRA's concern regarding the ratepayer benefits of RPS contracts, specifically identifying among the issues to be addressed, review of the RPS procurement plans submitted by the utilities and assessing how the renewable portfolios identified in those plans and the contract structures used achieve all the goals of 399.11 et al.³⁹

³⁹ Scoping Memo and Ruling of Assigned Commissioner, R.08-09-004, September 26, 2008, at 2.

DRA argues that the draft Resolution errs in finding the NaturEner PPAs' prices are reasonable as compared to other wind bids in the 2007 RPS solicitation. Price reasonableness of the NaturEner's PPAs was found using the appropriate standard of review for price reasonableness for RPS eligible PPAs. Therefore DRA's argument that the NaturEner PPAs prices were unreasonably compared to the 2007 RPS solicitation is inappropriate; thus, the contract price comparison is not unreasonable as DRA argues. Additionally, SDG&E's 2007 RPS solicitation included bids located both within and outside of California. Therefore DRA's argument that the NaturEner PPAs are compared only to California-based RPS contracts is inaccurate.

DRA argues that the draft Resolution errs in approving SDG&E's request for retroactive grant of RPS credit for generation procured under the proposed agreement prior to Commission approval of the Proposed Agreements. Commission approval of the PPAs includes all generation under the PPAs. Additionally, any incidental generation in advance of Commission approval will be from the same RPS eligible facility and at the same price as approved in the PPAs, thus it is reasonable for SDG&E to procure the generation and receive RPS credit for the generation. Therefore, DRA's argument that the Commission erred in approving SDG&E's request is inappropriate.

DRA argues that the draft Resolution errs in approving without modification specific contract terms that the Commission rejected in D.07-12-052. SDG&E originally requested findings regarding costs associated with FASB Statement 133 and FIN 46(R). SDG&E withdrew the request in its reply to DRA's protest on the advice letter⁴⁰ and subsequently filed a Substitute Sheet to correctly reflect the recent cost of service decision. The draft Resolution reflects the request withdrawal and Substitute Sheet filing. Therefore, DRA's argument that the Commission erred in approving such contract terms is inaccurate.

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.

⁴⁰ SDG&E Reply to DRA Protest, pp. 9-10

2. The Commission required each utility to establish a Procurement Review Group (PRG) to review the utilities' renewable procurement needs and strategy, proposed procurement process, and selected contracts.
3. SDG&E provided its PRG with reports on December 17, 2008, April 18, 2008, and May 15, 2008.
4. D.03-06-071 allows for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process.
5. D.06-10-019 requires bilateral contracts to be filed for approval by the Commission by advice letter.
6. D.07-02-011 directed the utilities to issue their 2007 renewable RFOs, consistent with their renewable procurement plans.
7. The Commission has reviewed the proposed Glacier 1 and 2 contracts and finds them to be consistent with SDG&E's approved 2008 renewable procurement plan.
8. The Commission has reviewed the proposed Glacier 1 and 2 contracts and finds them to be consistent with bilateral procurement rules.
9. D.08-04-009 sets forth four non-modifiable and nine modifiable standard terms and conditions to be incorporated into RPS power purchase agreements, including bilaterals.
10. SDG&E filed Advice Letter 1997-E on June 4, 2008, requesting Commission review and approval of two bilateral power purchase agreements with NaturEner Glacier Wind Energy 1 and 2, LLCs (Glacier 1 and Glacier 2).
11. SDG&E filed a substitute sheet on June 9, 2008 to delete language on page 6 of AL 1997-E.
12. SDG&E filed a substitute sheet on August 14, 2008 to correctly reflect the treatment of debt equivalence or FIN 46(R) costs in accordance with SDG&E's recent cost of service decision.
13. Division of Ratepayer Advocates filed a late protest to AL 1997-E on June 25, 2008, which Energy Division accepted.
14. SDG&E and NaturEner USA LLC each filed a response to DRA's protest on July 8, 2008.
15. The Commission rejects DRA's protest.
16. CEERT, Horizon and Iberdrola, NaturEner, and DRA filed timely comments by September 22, 2008.
17. SDG&E filed timely reply comments on September 29, 2008.

18. SDG&E should include information in their Quarterly Procurement Plan Compliance Report that demonstrates the contracts compliance with the Emissions Performance Standard (EPS).
19. A 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.
20. The contract prices for the Glacier 1 and Glacier 2 contracts are at or below the 2007 MPR released in Resolution E-4118.
21. The Glacier 1 and Glacier 2 contract prices are reasonable.
22. 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.
23. Procurement pursuant to these PPAs constitute procurement from eligible renewable energy resources 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.), D. 03-06-071, or other applicable law.
24. Procurement pursuant to these PPAs 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.
25. RPS credit is granted for generation, if any, procured under the Proposed Agreements prior to Commission approval of the Proposed Agreements.
26. AL 1997-E should be approved in its entirety.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter 1997-E is approved without modifications
2. The costs of the contracts 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 PPAs.

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 October 2, 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

Appendix A

Proposed Delivery Structure

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



July 15, 2008

The California Energy Commission, through its staff, has reviewed the proposed contracting structure between Naturener and San Diego Gas & Electric Company, as identified in Advice Letter #1997-E and shown in the attached schematic design titled, 'Appendix 1 – CEC Schematic Diagram with Narrative.'

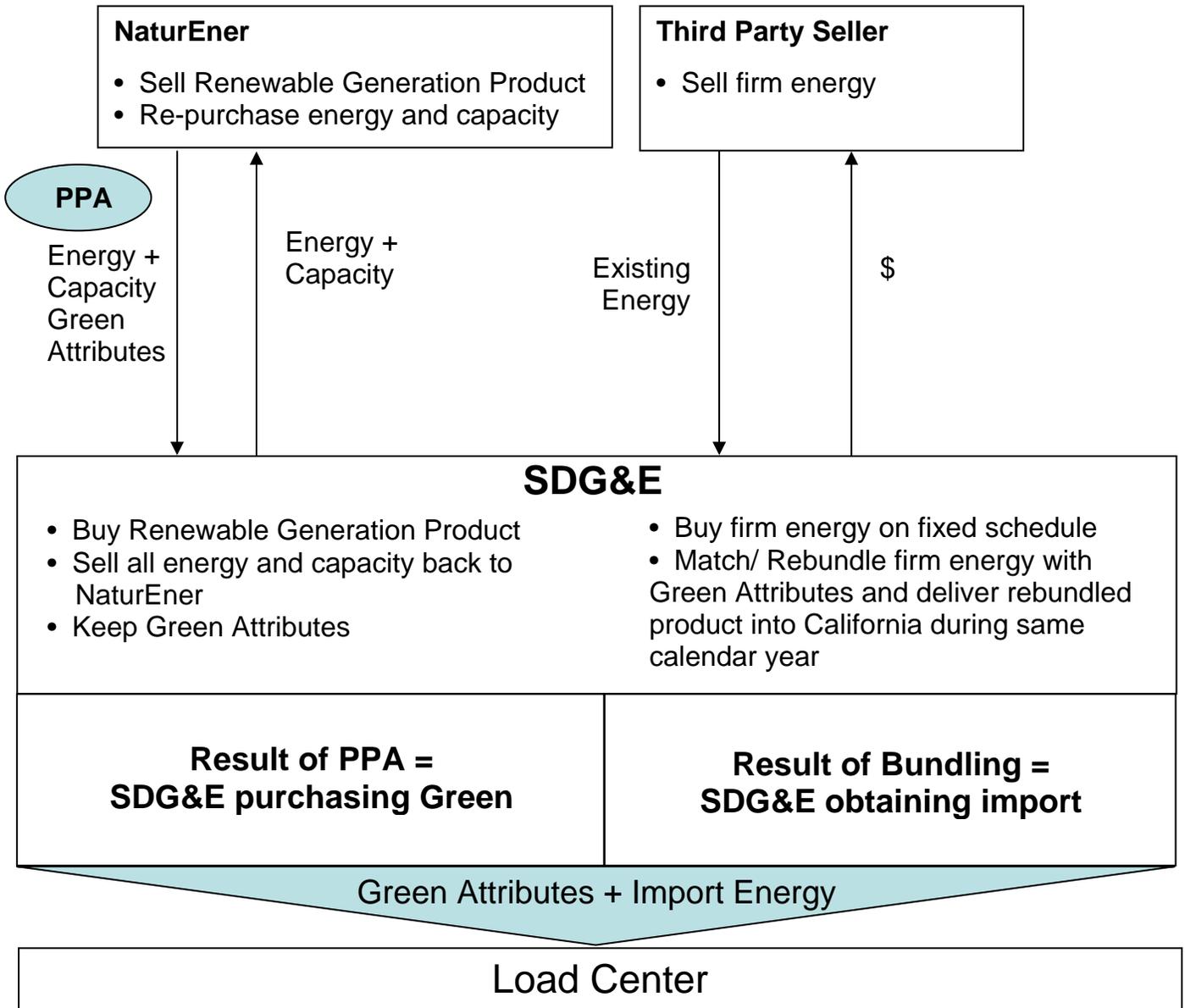
The Energy Commission staff has determined that this structure would meet the RPS delivery requirements according to the Renewables Portfolio Standard Eligibility Guidebook (CEC-300-2007-006-ED3-CMF, January 2008).

A handwritten signature in blue ink that reads "Mark Hutchison".

Mark Hutchison
Manager, Renewable Energy Office
California Energy Commission

Attachment

CEC SCHEMATIC DIAGRAM WITH NARRATIVE



Upon CPUC approval of the Proposed Agreements, SDG&E will purchase a bundled renewable power product from NaturEner. SDG&E will make a simultaneous sale back to NaturEner, at the projects busbar, of conventional power. This CEC eligible firming-and-shaping method leaves SDG&E with the green attributes associated with the project. SDG&E will reattach these green attributes to a conventional power import into California, meeting the in-state delivery requirement of the RPS program. SDG&E has a number of existing long term power imports that it may use for this purpose, or it may use spot power imports. A true-up of the rebundling and green attribute delivery will be accomplished annually. The imports of rebundled power will be tracked through the use of NERC tags.

Confidential Appendix B

Overview of 2004 – 2007 Solicitation Bids

[REDACTED]

Confidential Appendix C

Ranking of 2007 Bids

[REDACTED]

Confidential Appendix D

Contract Summary

[REDACTED]

Confidential Appendix E

Contract Price

[REDACTED]

Confidential Appendix F

Projects' Contribution to RPS Goals

[REDACTED]

