

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4206
March 12, 2009

PUBLIC

RESOLUTION

Resolution E-4206. Southern California Edison Company requests approval of a renewable portfolio standard power purchase agreement with Imperial Valley Biopower, LLC (Biopower), which is a wholly owned subsidiary of Energy Integration Group, Inc. (EIG). The agreement is approved without modifications.

By Advice Letter 2266-E filed on August 15, 2008 and Advice Letter 2266-E-A filed on November 17, 2008.

Southern California Edison’s Biopower contract complies with the renewable portfolio standard (RPS) procurement guidelines and is approved

Southern California Edison (SCE) filed advice letter (AL) 2266-E on August 15, 2008 requesting Commission review and approval of a renewable energy power purchase agreement (PPA) executed with Imperial Valley Biopower, LLC (Biopower), for generation from a new biomass generating facility. SCE filed AL 2266-E-A on November 17, 2008 to supplement AL 2266-E, in order to include the Independent Evaluator’s (IE) Report for SCE’s 2007 Renewable Resource Solicitation.

Generating facility	Type	Term (Years)	Capacity (MW)	Energy (GWh)	Expected Online Date	Location
Imperial Valley Biopower	Biomass, new	20	20	140	May 2010	El Centro, CA

The Biopower project is proposed to be a new, 20 megawatt (MW) facility located near El Centro, CA. The project is priced above the 2007 market price referent (MPR) for a 20-year contract with an online date in 2010. The project is eligible for above-MPR funds. Deliveries from this PPA are reasonably priced and fully

recoverable in rates over the life of the contract, subject to Commission review of SCE'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 RPS Program was established by Senate Bill (SB) 1078,¹ effective January 1, 2003. It requires that a retail seller of electricity, such as SCE, purchase a certain percentage of electricity generated by Eligible Renewable Energy Resources (ERR). The RPS program is outlined in Public Utilities Code Section 399.11, et seq. Each utility is required to increase its total procurement of ERRs by at least 1% of annual retail sales per year so that 20% of its retail sales are supplied by ERRs by 2017.

The State's Energy Action Plan (EAP) called for acceleration of this RPS goal to reach 20 percent by 2010. This was reiterated again in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004², which encouraged the utilities to procure cost-effective renewable generation in excess of their RPS annual procurement targets³ (APTs), in order to make progress towards the goal expressed in the EAP.⁴ On September 26, 2006, Governor Schwarzenegger signed Senate Bill 107⁵, which officially accelerated the State's RPS targets to 20 percent by 2010. Furthermore, on November 17, 2008, Governor Schwarzenegger issued

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

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

³ APT - An LSE's APT for a given year is the amount of renewable generation an LSE must procure in order to meet the statutory requirement that it increase its total eligible renewable procurement by at least 1% of retail sales per year.

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

⁵ SB 107, Chapter 464, Statutes of 2006

Executive Order S-14-08, setting a goal for energy retailers to deliver 33 percent of electrical energy from renewable resources by 2020.⁶

In response to SB 1078, the Commission has issued a series of decisions that establish the regulatory and transactional parameters of the utility renewables procurement program.

- On June 19, 2003, the Commission issued its “Order Initiating Implementation of the Senate Bill 1078 Renewable Portfolio Standard Program,” D.03-06-071.⁷
- Instructions for utility evaluation (known as ‘least-cost, best-fit’) of each offer to sell products requested in a RPS solicitation were provided in D.04-07-029.⁸
- The Commission adopted standard terms and conditions (STCs) for RPS power purchase agreements in D.04-06-014, as required by Public Utilities Code Section 399.14(a)(2)(D). These STCs have been updated and modified in D.08-04-009⁹, and as a result, there are now thirteen STCs of which four are non-modifiable. Most recently, on August 21, 2008 the Commission adopted D.08-08-028, which clarified STC #2 the “Definition of RECs and Green Attributes.”¹⁰
- D.06-10-050, as modified by D.07-03-046, compiled the RPS reporting and compliance methodologies.¹¹ 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).¹²

⁶ <http://gov.ca.gov/executive-order/11072/>

⁷ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/27360.PDF

⁸ http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/38287.PDF

⁹ http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/81269.PDF

¹⁰ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/86954.pdf

¹¹ 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).

¹² 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.

- On June 9, 2004, the Commission adopted its market price referent (MPR) methodology¹³ for determining the utility's share of the RPS seller's bid price (the contract payments at or below the MPR), as defined in Public Utilities Code Sections 399.14(a)(2)(A) and 399.15(c). D.05-12-042 refined the MPR methodology for the 2005 Solicitation and more recently on October 20, 2008, the Commission adopted D.08-10-026 which refined the MPR methodology for the 2008 RPS Solicitation.¹⁴ Subsequent resolutions adopted MPR values for the 2005, 2006, 2007, and 2008 RPS Solicitations.¹⁵
- SB 1078 established a fund, to be administered by the California Energy Commission (CEC), to cover the above-MPR costs of RPS contracts. However, SB 1036 eliminated this fund and established a new mechanism for the Commission to approve rate recovery for the above-MPR costs of RPS contracts. The Commission is now working on implementing SB 1036.

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

Pursuant to SB 1078 and SB 107, the CEC was authorized to "allocate and award supplemental energy payments" to cover above-market costs¹⁶ of long-term RPS-eligible contracts executed through a competitive solicitation.¹⁷ The statute required that developers seeking above-market costs apply to the CEC for supplemental energy payments (SEPs).

The mechanism for awarding above-market costs to eligible renewable energy contracts negotiated through a competitive solicitation was modified by SB 1036,

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.

¹³ D.04-06-015; http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/37383.pdf

¹⁴ http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/52178.pdf and http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/92445.htm

¹⁵ 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-4118: http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/73594.pdf

¹⁶ "Above-market costs" refers to the portion of the contract price that is greater than the appropriate market price referent (MPR).

¹⁷ Pub. Util. Code 399.15(d)

which became effective on January 1, 2008.¹⁸ SB 1036 authorizes the Commission to provide above-MPR cost recovery through electric retail rates for contracts that are deemed reasonable. Above-MPR cost recovery has a 'cost limitation' equal to the amount of funds accrued in the CEC's New Renewable Resources Account, which had been established to collect SEP funds, plus the portion of funds that would have been collected through January 1, 2012. The Commission calls these funds the "above-MPR funds (AMFs)", and is currently implementing rules for calculating and administering the AMFs.¹⁹

SB 1036²⁰ provides that "The above-market costs of a contract selected by an electrical corporation may be counted toward the cost limitation if all of the following conditions are satisfied:

(A) The contract has been approved by the commission and was selected through a competitive solicitation pursuant to the requirements of subdivision(d) of Section 399.14.

(B) The contract covers a duration of no less than 10 years.

(C) The contracted project is a new or repowered facility commencing commercial operations on or after January 1, 2005.

(D) No purchases of renewable energy credits may be eligible for consideration as an above-market cost.

(E) The above-market costs of a contract do not include any indirect expenses including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades."

Once a utility's AMFs are insufficient to support the costs of above-MPR RPS contracts, SB 1036 directs the commission to allow the utility to "limit its procurement to the quantity of eligible renewable energy resources that can be procured at or below the MPR".²¹

¹⁸ Statutes of 2007, Chapter 685, Perata

¹⁹ The Commission implemented the rate-changing aspects of SB 1036 in Resolution E-4160. The Energy Division has held a workshop for implementing rules on administering the AMFs on May 29, 2009 and will finalize the rules soon.

²⁰ Pub. Util. Code § 399.15(d)(2)

²¹ 399.15(d)(3)

Governor Schwarzenegger's Executive Order encourages bioenergy development

Governor Schwarzenegger's Executive Order S-06-06 encourages bioenergy development in California, stating that "sustained biomass development offers strategic energy, economic, social and environmental benefits to California, creating jobs through increased private investment within the state." The Executive Order encourages the Commission to "initiate a new proceeding or build upon an existing proceeding to encourage sustainable use of biomass and other renewable resources."

The Commission has established requirements for participation of an Independent Evaluator in the RPS procurement process

In D.06-05-039, the Commission required each IOU to employ an independent evaluator (IE) for RPS solicitations. The IE's role is to ensure that the solicitation process is undertaken in a fair, consistent, and objective manner. The oversight of an IE during the IOUs' procurement process will increase the likelihood that the best resources are selected and acquired consistent with the solicitation guidelines. The IE also provides additional oversight during contract negotiations.

SCE requests approval of renewable energy contract

On August 15, 2008, SCE filed Advice Letter (AL) 2266-E requesting Commission approval of a renewable power procurement contract with Imperial Valley Biopower, LLC. SCE filed supplemental Advice Letter 2266-E-A on November 17, 2008 to supplement AL 2266-E and include the Independent Evaluator report for SCE's 2007 RPS solicitation.

The Biopower PPA results from SCE's 2007 solicitation for renewable bids, which was authorized by D.07-02-011. The Commission's approval of the PPA will authorize SCE to accept future deliveries of incremental supplies of renewable resources and contribute towards the renewable energy procurement goals required by California's RPS statute.²² Procurement from Biopower is expected to contribute 140 GWh annually towards SCE's APT in 2010 and beyond.

²² California Public Utilities Code section 399.11 et seq., as interpreted by D.03-07-061, the "Order Initiating Implementation of the Senate Bill 1078 Renewables Portfolio Standard Program", and subsequent CPUC decisions in Rulemaking (R.) 04-04-026.

SCE requests “Final CPUC Approval” of PPA

SCE requests a Commission resolution containing the following findings in order to satisfy the “CPUC Approval” terms in the Biopower Agreement:

1. Approval of the Biopower Contract in its entirety;
2. A finding that any electric energy sold or dedicated to SCE pursuant to the Biopower Contract constitutes procurement by SCE from an eligible renewable energy resource (“ERR”) for the purpose of determining SCE’s compliance with any obligation that it may have to procure from ERRs pursuant to the RPS Legislation or other applicable law concerning the procurement of electric energy from renewable energy resources;
3. A finding that all procurement of energy under the Biopower Contract counts, in full and without condition, towards any annual procurement target established by the RPS Legislation or the Commission which is applicable to SCE;
4. A finding that all procurement of energy under the Biopower Contract counts, in full and without condition, towards any incremental procurement target established by the RPS Legislation or the Commission which is applicable to SCE;
5. A finding that all procurement under the Biopower Contract counts, in full and without condition, towards the requirement in the RPS Legislation that SCE procure 20 percent (or such other percentage as may be established by law) of its retail sales from ERRs by 2010 (or such other date as may be established by law);
6. A finding that the Biopower Contract, and SCE’s entry into this PPA, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to this PPA, subject only to further review with respect to the reasonableness of SCE’s administration of the PPA;
7. A finding that the Biopower Contract meets the requirements of the RPS Legislation (as amended by Senate Bill 1036) for contracts to be counted towards SCE’s cost limitation; therefore, the above-MPR costs of the Biopower Contract shall be applied towards SCE’s cost limitation pursuant to Pub. Util. Code Section 399.15(d); and
8. Any other and further relief as the Commission finds just and reasonable.

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

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

1. Overall transitional procurement strategy;
2. Proposed procurement processes including, but not limited to, RFO; and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review

SCE's PRG was formed on or around September 10, 2002. Current participants include representatives from the Commission's Energy Division, the Division of Ratepayer Advocates, The Utility Reform Network, the Natural Resources Defense Council, the Consumers' Union, California Utility Employees, Aglet Consumer Alliance, and the California Department of Water Resources.

On June 27, 2007, SCE advised the PRG of its proposed short list of bids for its 2007 RPS solicitation. On September 27, 2007, SCE updated the PRG as to the status of negotiations with bidders into the solicitation. On March 13, 2008, SCE briefed the PRG concerning the successful conclusion of discussions with Biopower.

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

NOTICE

Notice of AL 2266-E and AL 2266-E-A were made by publication in the Commission's Daily Calendar. SCE states that copies of the Advice Letters were mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

Advice Letter 2266-E and Advice Letter 2266-E-A were not protested.

DISCUSSION

Description of the project

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

Generating facility	Type	Term (Years)	Capacity (MW)	Energy (GWh)	Expected Online Date	Location
Imperial Valley Biopower	Biomass, new	20	20	140	May 2010	El Centro, CA

The Biopower project will be a new biomass facility located in Imperial County, CA. The project will use fluidized bed boiler generator technology specifically designed to burn biomass fuels to convert feedlot cow manure to steam energy. Biopower's first point of interconnection will be in the Imperial Irrigation District (IID). This contract is above the 2007 MPR.

Energy Division examined the contract on multiple grounds:

- PPA's consistency with SCE's Commission adopted 2007 RPS Plan
- Consistency of bid evaluation process with Commission's least-cost best-fit (LCBF) decision
- Conformance with Commission adopted standard terms and conditions
- Sufficient showing that the project is viable relative to other projects that were bid into the solicitation
- Sufficient showing that the project's contract price is reasonable

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

California's RPS statute requires the Commission to review the results of a renewable energy resource solicitation submitted for approval by a utility.²³ The Commission will then accept or reject proposed PPAs based on their consistency

²³ Pub. Util. Code, Section §399.14

with the utility's approved renewable procurement plan (Plan). SCE's 2007 Plan includes an assessment of supply and demand for renewable energy and bid solicitation materials, including a pro-forma agreement and bid evaluation methodology documents. The Commission conditionally approved SCE's 2007 RPS procurement plan, including its bid solicitation materials, in D.07-02-011.

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

PPA fits with identified renewable resource needs

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

The proposed Biopower project fits SCE's identified renewable resource needs. Biopower is a new 20 MW renewable energy facility expected to commence deliveries by May 2010 and continue for 20 years. Additionally, the facility will have its first point of interconnection within California.

PPA selection is consistent with RPS Solicitation Protocol

SCE distributed an RFP package that included a procurement protocol, which set forth the RFP's term and conditions, requirements for proposals, selection procedures, approval procedures, and the RFP schedule. As part of the bid submission, SCE required bidders to submit comments on SCE's pro forma agreement, to execute non-disclosure agreements and to send a letter stating that the bidder agrees to be bound by the terms and conditions of the protocol. The

protocol also requested that proposals contain complete, accurate, and timely information about the project's supplier, generating facility, and commercial terms, and the pricing details of the proposal.

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

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

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

SCE's LCBF bid review process used for its 2007 solicitation is in compliance with the applicable Commission decisions. SCE's LCBF analysis evaluates both quantitative and qualitative aspects of each proposal to estimate its value to SCE's customers and relative value in comparison to other proposals.

Quantitative Assessment

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

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

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

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

The benefit-to-cost ratio for the Biopower project was favorable in comparison to the bids in SCE's 2007 solicitations. See Confidential Appendix A for more detailed comparison of bids.

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

Consistent with D.06-05-039, SCE retained an IE, Sedway Consulting, to report to SCE's procurement review group about the 2007 RPS solicitation and to ensure that the solicitation was conducted fairly and that the best resources were acquired. According to the IE Report submitted in AL 2266-E-A, Sedway Consulting performed its duties overseeing the 2007 solicitation and has provided assessment reports to the PRG and the Commission.

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

Consistency with adopted Standard Terms and Conditions

The Biopower contract is in compliance and consistent with D.07-11-025. The Biopower contract includes the required non-modifiable and modifiable

standard terms and conditions. The modifiable terms and conditions have been modified; modification, however, of these terms is permissible.

The project is progressing towards completing development and commercial operation

SCE believes that there is a high likelihood that the Biopower project will successfully be developed. The project has site control, is located in a region with adequate fuel sources, is being developed by an experienced team, is already in the IID queue, and the production tax credit (PTC) was recently extended. While transmission upgrades and costs are unknown, this concern is shared among the majority of RPS projects.

Project Milestones

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

Financeability of Resource

Biopower has negotiated terms for project financing, including construction and permanent financing. SCE expects documents to be executed in the near future. While recent events have affected financial markets, we can not yet determine how this will affect the financing for renewable energy projects, including Biopower.

Production Tax Credit (PTC)

Biopower is contingent upon the federal production tax credit (PTC), which was recently extended until the end of 2010. On October 3, 2008, President Bush signed the Emergency Economic Stabilization Act of 2008, House Resolution 1424 that, in part, extended the PTC for bioenergy projects.²⁴ As noted above, the impact of the events of the financial markets may affect financing of projects, and in turn the use of the PTC.

²⁴ <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:H.R.1424>: (Last visited October 6, 2008)

Sponsor's Creditworthiness and Experience

Biopower's parent corporation, EIG, is a renewable energy company that has completed projects outside of California.²⁵ Additionally, according to SCE, the EIG executive team consists of people who have experience previous to EIG in developing renewable energy facilities, including large scale biomass and PV projects.

Transmission Upgrades

Transmission studies are needed to determine the transmission upgrades and costs associated with the Biopower project. The Biopower project will be located in Imperial County and connect to the IID system; the generation will then be wheeled to CAISO for SCE to take delivery. SCE believes that the project can be scheduled within the existing path limits between IID and the CAISO.

Fuel/Technology

The Biopower project utilizes proven fluidized bed technology. Fuel for the project will come from local sources of cow manure. SCE states that the facility's location is close to an abundant supply of fuel. Biopower does not have any fuel resource contracts executed yet, but SCE states that contract terms have been agreed to with fuel suppliers and executed fuel agreements are expected in the near future.

Contract price is reasonable

Biopower's levelized contract price exceeds the 2007 MPR²⁶. The Commission finds that the contract price is reasonable based on the following considerations:

1. Contract price compares favorably to bid supply curves for all projects bid into SCE's 2007 solicitation
2. Contract price is reasonable when compared to generic biomass energy costs on levelized cost of energy (\$/MWh) basis

Confidential Appendix A shows that the Biopower project's price compares favorably both to all bids in SCE's 2007 solicitation as well as to short-listed bids. In addition, the price is reasonable in comparison to the projected levelized cost

²⁵ <http://www.energyintegrationgroup.com/>

²⁶ Resolution E-4118: http://docs.cpuc.ca.gov/published/Final_resolution/73594.htm

of energy from a biomass facility as identified in the Renewable Energy Transmission Initiative (RETI) Phase 1B Resource Report²⁷.

This price reasonableness evaluation does not set a precedent for Commission review of above-MPR RPS contracts. Confidential Appendix C includes a detailed discussion of the contractual pricing terms.

Contract is consistent with SB 1036 requirements and will count towards SCE's cost limitation

SB 1036 set forth five eligibility conditions, codified in Pub. Util. Code § 399.15(d)(2), for contracts to be counted toward the cost limitation. The Biopower contract satisfies the conditions:

- Biopower was selected through SCE's 2007 competitive solicitation; the contract is consistent with SCE's approved procurement plan,
- Biopower contract is at least 10 years in duration,
- Biopower will be a new facility,
- Biopower is not a contract for unbundled renewable energy credits, and
- SCE asserts that the Biopower contract does not include any indirect expenses including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades.

On April 10, 2008, the Commission approved Resolution E-4160²⁸ implementing the ratemaking aspects of SB 1036. On January 16, 2009, draft Resolution E-4199, which addresses the policy-related SB 1036 implementation issues, was mailed. As a result, the implementation of SB 1036 is not complete at this time and no further evaluation criteria have been adopted to apply to contacts such as Biopower that may count towards SCE's cost limitation. Thus, we approve the Biopower contract to count towards SCE's cost limitation solely based on the criteria stipulated in SB 1036. This does not set a precedent for the review of above-MPR RPS contracts.

²⁷ http://www.energy.ca.gov/reti/documents/2008-08-16_PHASE_1B_DRAFT_RESOURCE_REPORT.PDF

²⁸ http://docs.cpuc.ca.gov/word_pdf/COMMENT_RESOLUTION/80089.pdf

The PPA's above-MPR contract payments will count against SCE's AMFs cost limitation. To the extent that the contract payments may exceed SCE's AMFs cost limitation, SCE is voluntarily procuring the energy because they requested recovery of all payments made pursuant to the PPA.²⁹

Confidential information about the contracts should remain confidential

Certain contract details were filed by SCE under confidential seal. Energy Division recommends that certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

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.

No comments were filed.

FINDINGS

1. The RPS Program requires each utility, including SCE, to increase the amount of renewable energy in its portfolio to 20 percent by 2010, increasing by a minimum of one percent per year.
2. D.07-02-011 directed the utilities to issue their 2007 renewable RFOs, consistent with their renewable procurement plans.

²⁹ If the AMFs required for the PPA exceeds SCE's AMFs cost limitation, pursuant to Pub. Util. Code 399.15(d)(4), SCE may voluntarily procure above-MPR energy.

SCE AL 2266-E and 2266-E-A/CNL

3. The Commission required each utility to establish a Procurement Review Group (PRG) to review the utilities' procurement needs and strategy, proposed procurement process, and selected contracts.
4. Levelized contract prices below the MPR are considered *per se* reasonable as measured according to the net present value calculations explained in D.04-06-015, D.04-07-029, D.05-12-042, and D.08-10-026.
5. D.08-04-009, as modified by D.08-08-009, sets forth four non-modifiable and nine modifiable standard terms and conditions to be incorporated into RPS power purchase agreements.
6. SCE filed Advice Letter 2266-E on August 15, 2008 requesting Commission review and approval of a new renewable energy contract with Imperial Valley Biopower, LLC.
7. SCE filed supplemental Advice Letter 2266-E-A on November 17, 2008 to include the Independent Evaluator report for SCE's 2007 RPS solicitation.
8. SCE briefed its PRG on its proposed shortlist and status of negotiations for the 2007 RPS solicitation. SCE also briefed the PRG concerning the successful conclusion of discussions with Biopower.
9. The Commission has reviewed the proposed contract and finds it to be consistent with SCE's approved 2007 renewable procurement plan.
10. The contract price for the Biopower PPA is above the 2007 MPR released in Resolution E-4118.
11. The Biopower contract meets the requirements of Pub. Util. Code § 399.15(d)(2) for contracts to be counted toward SCE's cost limitation; this contract will be applied to SCE's cost limitation.
12. Pursuant to this Agreement, to the extent that the contract payments exceed SCE's AMFs cost limitation, SCE is voluntarily procuring the energy.
13. The Agreement is reasonable and should be approved in its entirety.
14. The costs of the contract between SCE and Seller are reasonable and in the public interest; accordingly, the payments to be made by SCE are fully recoverable in rates over the life of the project, subject to CPUC review of SCE's administration of the PPA.
15. 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.

16. Procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.
17. Procurement pursuant to this Agreement constitutes incremental procurement or procurement for baseline replenishment by Buyer from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard, CPUC Decision 03-06-071, or other applicable law.
18. The Biopower contract proposed in AL 2266-E and AL 2266-E-A should be approved without modifications.

THEREFORE IT IS ORDERED THAT:

1. The Biopower contract proposed in AL-2266-E and AL 2266-E-A is approved without modification.
2. The costs of the contract between SCE and Biopower are reasonable and in the public interest; accordingly, the payments to be made by SCE pursuant to the PPA are fully recoverable in rates over the life of the project, subject to CPUC review of SCE's administration of the PPA.
3. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on March 12, 2009; the following Commissioners voting favorably thereon:

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 SCE's 2007 Solicitation Bids

[REDACTED]

Confidential Appendix B
LCBF Bid Evaluations

[REDACTED]

Confidential Appendix C
Biopower Contract Summary

[REDACTED]

Confidential Appendix D:
Project Viability Matrix

[REDACTED]

Confidential Appendix E:
Independent Evaluator's
Contract-Specific Assessment³⁰

[REDACTED]

³⁰ Excerpt from "Independent Evaluation Report for Southern California Edison's 2007 Renewable Resource Solicitation – Third Advice Letter Report" (November 10, 2008) filed as part of AL 2266-E-A on November 17, 2008

Confidential Appendix F:
Project's Contribution to RPS Goals

[REDACTED]