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**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

ENERGY DIVISION

AGENDA ID #18329

RESOLUTION E-5061

May 28, 2020

**R E S O L U T I O N**

Resolution E-5061. San Diego Gas & Electric Company seeks Approval of Modified Standard Power Purchase Agreement with Renewable Qualifying Facility.

PROPOSED OUTCOME:

- This Resolution approves a Power Purchase Agreement (PPA) between San Diego Gas & Electric Company (SDG&E) and the Santa Fe Irrigation District (SFID).

SAFETY CONSIDERATIONS:

- The Agreement requires the Santa Fe Irrigation District to operate and maintain its facility within the terms of prudent electrical practices. SDG&E submitted a safety plan for the facility that was certified by a licensed California engineer.

ESTIMATED COST:

- Payment for PPA energy will be at SDG&E's posted short-run avoided cost as posted by SDG&E.

By Advice Letter 3447-E filed on October 28, 2019 and 3447-E-A, filed on January 15, 2020.

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**SUMMARY**

This Resolution approves a modified power purchase agreement (PPA) between San Diego Gas & Electric (SDG&E) and the Santa Fe Irrigation District (SFID).

SFID's small renewable Qualifying Facility (QF) had a 30-year legacy Standard Offer 4 QF contract<sup>1</sup> that expired on July 1, 2017 and seeks to sign a new PPA.

## **BACKGROUND**

### *Background on the CHP/QF Settlement*

On December 16, 2010, the CPUC adopted the Qualifying Facility and Combined Heat and Power Program Settlement Agreement (Settlement) with the issuance of Decision (D).10-12-035. The Settlement resolved longstanding issues regarding the contractual obligations and procurement options for facilities operating under legacy and qualifying facility contracts.

The Settlement includes several standard offer contracts for QFs.<sup>2</sup> Under the Settlement, the Investor-Owned Utilities are required to offer these contracts to QFs on a must-take basis.

Under Section 4.10.2 of the Settlement and pursuant to CPUC guidance, SDG&E would not normally require CPUC approval to execute this Standard Offer contract. However, due to modifications agreed upon by both parties, SDG&E must now seek CPUC approval for this modified contract.

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<sup>1</sup> As part of its long history of implementing the federal Public Utility Regulatory Policies Act of 1978 (PURPA), the CPUC has approved a series of standard offer contracts available to facilities. The Standard Offer 4 QF contract is one such contract and is no longer available for execution.

<sup>2</sup> PURPA established a new administrative class of generating facilities called 'Qualifying Facilities,' or 'QFs,' which receive special regulatory treatment. QFs fall into two categories: small power production facilities whose primary energy source is renewable, biomass, waste or geothermal; and cogeneration facilities that sequentially produce electricity and another form of useful thermal energy in a way that is more efficient than the separate production of both forms of energy. The SFID facility is a small power production facility fueled by renewable hydropower.

*Background on the SFID Facility*

The SFID facility is an existing hydroelectric QF with a maximum 600 kW output turbine fueled by water flowing through a conduit supplied by the San Diego County Water Authority. The facility is co-owned by San Dieguito Water District.

The facility sold as-available power to SDG&E under a 30-year legacy Standard Offer 4 QF contract that expired on July 1, 2017. SFID subsequently upgraded the facility and executed an interconnection agreement with SDG&E. SFID approached SDG&E with a request to enter into a new PPA.

*Background on Requested Contract Amendments*

SDG&E is seeking approval of five changes to the agreement with SFID. As the agreement is based on a pro forma agreement approved by the CPUC in D.10-12-035, SDG&E must receive CPUC approval of the modifications in accordance with the CHP Settlement Term Sheet adopted in the same Decision. SDG&E submitted a contract with the following modifications for approval:

1. Addition of a provision that defines CPUC approval and makes the effective date contingent on that approval.
2. Addition of a limited waiver of SFID's sovereign immunity<sup>3</sup> with respect to specific performance and claims for damages.
3. Removal of the Scheduling Coordinator Fee from the agreement.
4. Agreement that the Seller will not be held in default under the PPA if it abandons the facility or does not operate the facility for 30 or more consecutive days due to lack of adequate water supply for the generator.
5. Agreement that if the PPA is terminated because SFID abandons the facility due to a breakdown, SFID will not owe a termination payment to SDG&E.

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<sup>3</sup> Sovereign immunity is the legal doctrine by which a government or its subsidiaries are immune from certain civil suits.

**NOTICE**

Notice of AL 3447-E and 3447-E-A was made by publication in the CPUC's Daily Calendar. San Diego Gas & Electric Company states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

**PROTESTS**

Advice Letter 3447-E and 3447-E-A were not protested.

**DISCUSSION**

On October 28, 2019, SDG&E filed Advice Letter 3447-E requesting CPUC approval of a modified QF PPA. On January 15, 2020, SDG&E filed Advice Letter 3447-E-A, a partial supplement, making minor updates to Advice Letter 3447-E.

In this Advice Letter, SDG&E requested the CPUC:

1. Approve a PPA between SDG&E and SFID for the sale to SDG&E of up to 600 kilowatts (kW) of as-available energy and capacity over seven years from an inline hydroelectric facility that is co-owned by SFID and the San Dieguito Water District that is managed and operated by SFID.

**Energy Division evaluated the Proposed PPA based on the following criteria**

- Consistency with D.10-12-035, which approved the QF/CHP Program Settlement
- Reasonableness of Proposed Amendments
- Need for Procurement
- Cost Reasonableness
- Public Safety
- Consistency with the Emissions Performance Standard
- Cost Allocation Mechanism Group Participation
- Disadvantaged Community Designation

**Consistency with D.10-12-035, which approved the QF/CHP Program Settlement**

In D.10-12-035, the CPUC approved the QF/CHP Settlement Agreement, which includes several standard offer contracts for Qualifying Facilities. The Settlement Term Sheet permits modified Settlement PPAs if approved via a Tier 3 advice letter. By submitting this advice letter, SDG&E used the appropriate procedural mechanism as specified in the Settlement.

**Reasonableness of Proposed Amendments**

As stated above, SDG&E proposes five modifications to the standard offer QF PPA.

First, because a pro forma PPA would not require CPUC approval for SDG&E to execute, it is normally “effective” at the execution date. However, due to the amendments, the CPUC must now approve these contracts, so SDG&E adds a provision that defines CPUC approval and makes the effective date contingent on that approval. This addresses the possibility that the CPUC could reject or amend the contracts. Energy Division staff conclude this is reasonable.

Second, the counterparties added a limited waiver of SFID’s sovereign immunity<sup>4</sup> with respect to specific performance and claims for damages. Because SFID is created under state law, there is some risk that in the event of a dispute over the PPA, SFID could claim sovereign immunity and avoid performing its PPA obligations or remitting damages to SDG&E. SFID agrees to waive that defense as it pertains to specific performance of the PPA and any claim for damages caused by a breach. Energy Division staff conclude this is reasonable as it lowers risk for ratepayers.

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<sup>4</sup> Sovereign immunity is the legal doctrine by which a government or its subsidiaries are immune from certain civil suits.

Third, the counterparties agreed to remove the Scheduling Coordinator Fee from the agreement. Due to the size of the facility, scheduling the resource should not be complicated or burdensome to SDG&E. SDG&E will forego the Scheduling Coordinator Fee and the facility will physically downsize its capacity to below 1 MW. Energy Division staff conclude that this is reasonable due to the size of the facility.

Fourth, the counterparties agreed that the Seller will not be held in default under the PPA if it abandons the facility or does not operate the facility for 30 or more consecutive days due to lack of adequate water supply for the generator. The facility's ability to operate depends on available water supply, which is variable and somewhat unpredictable. Due to its small size, Energy Division staff conclude a lack of generation from the facility does not pose a threat to SDG&E's ability to serve ratepayers or to grid reliability and finds the request reasonable.

Fifth, the counterparties agreed that if the PPA is terminated because SFID abandons the facility due to a breakdown, SFID will not owe a termination payment to SDG&E. Because the facility is old, there is a possibility that SFID may not be able to economically repair it if it breaks down. In that event, Energy Division staff conclude there would be little to no harm to SDG&E ratepayers for SFID to abandon the facility; due to its small size there would be little, if any, need for SDG&E to increase its energy purchases from SDG&E to compensate for the lost onsite generation. Energy Division staff conclude this is reasonable.

### **Need for Procurement**

Under the Settlement, SDG&E is required to offer this contract to QFs through December 31, 2020, and Qualifying Facilities may elect to execute this contract at their discretion. In this resolution, the CPUC does not assess whether SDG&E has a need to procure, because SDG&E is obliged to execute these contracts.

### **Cost Reasonableness**

In D.10-12-035, the CPUC approved the QF/CHP Settlement Agreement, which includes several standard offer contracts for Qualifying Facilities. All these pro forma standard offer contracts include pricing structures approved by the CPUC. For this contract, the price is the output of a CPUC-approved formula for short-run avoided cost (SRAC), which is one of the ways the CPUC has historically determined avoided cost for energy purchases from QFs. As the modifications to the PPA do not modify the energy or capacity prices previously approved by the CPUC, we find the costs reasonable. SDG&E posts this price on their website at [www2.sdge.com/srac/](http://www2.sdge.com/srac/).

### **Public Safety**

SDG&E provides a report from an independent, California licensed engineer certifying that the Facility has a feasible safety plan. As a public agency, SFID is required to maintain a comprehensive safety program that covers the facility. Two documents form the basis of the safety plan. The first is the SFID Injury and Illness Prevention Program, which is SFID's overall safety program and creates an organized approach to employee accident prevention. The second is the SFID Environmental Health and Safety Manual, which provides more detailed information on various environmental health and safety practices applicable to the facility. The safety plan and the engineer's certification are reasonable.

### **Consistency with Emissions Performance Standard**

In D.07-01-039, the CPUC adopted a greenhouse gas Emissions Performance Standard, which is applicable to an electricity contract for baseload generation, as defined, having a delivery term of five years or more. According to D.07-01-039, the Emissions Performance Standard applies to generation facilities expected to have a capacity factor in excess of sixty percent. The SFID facility is a renewable generator with an expected capacity factor of only 46.3%. The facility is therefore not subject to the Emissions Performance Standard.

### **Cost Allocation Mechanism Group Participation**

D.02-08-071 requires the establishment of a Procurement Review Group (PRG) to assess proposed contracts and D.07-12-052 requires the investor-owned utilities to include members representing community choice aggregator and direct access customers to its PRG should it seek to recover costs from bundled and unbundled customers using the Cost Allocation Mechanism (CAM). SDG&E briefed its CAM PRG on the PPA on November 16, 2018 and February 15, 2019. SDG&E states that the CAM PRG did not provide any negative feedback on the proposed PPA.

### **Disadvantaged Community Designation**

Senate Bill 350 (de León, Chapter 547, Stats. 2015) requires consideration of disadvantaged communities in many energy program and policy areas, so we find it appropriate to identify whether this facility is located within a disadvantaged community.

The SFID facility lies within Census Tract 6073017110, which is not a CalEnviroScreen Version 3.0 designated disadvantaged community.

### **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. Please note that comments are due 20 days from the mailing date of this resolution. Section 311(g)(2) provides that this 30-day review period and 20-day comment period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day review and 20-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 CPUC's agenda no earlier than 30 days from today.

### **FINDINGS**

1. CPUC Decision 10-12-035 directed San Diego Gas & Electric (SDG&E) to offer Standard Offer Contracts to Qualifying Facilities.



2. On October 28, 2019, SDG&E filed Advice Letter (AL) 3447-E seeking approval of a modified power purchase agreement with the Santa Fe Irrigation District.
3. On January 15, 2020, SDG&E filed AL 3447-E-A, a partial supplement to AL 3447-E, making minor technical edits to the original AL.
4. By submitting AL 3447-E and partial supplemental AL 3447-E-A, SDG&E used the appropriate procedural mechanism to seek approval for the modified power purchase agreement.
5. The proposed amendments to the power purchase agreement are reasonable.
6. SDG&E is obliged to execute these contracts, and in this resolution the CPUC does not assess whether SDG&E has a need to procure.
7. The cost associated with the power purchase agreement is just and reasonable.
8. The facility's safety plan are reasonable for purposes of reviewing the PPA.
9. The Santa Fe Irrigation District facility is expected to operate at a capacity factor significantly below the 60 percent threshold throughout its delivery term, and therefore the Emissions Performance Standard does not apply.
10. SDG&E briefed its Cost Allocation Mechanism Procurement Review Group on the power purchase agreement on November 16, 2018 and February 15, 2019.
11. The facility is not located in a disadvantaged community designated by CalEnviroScreen 3.0.

**THEREFORE IT IS ORDERED THAT:**

1. The request of San Diego Gas & Electric to approve the power purchase agreement executed with the Santa Fe Irrigation District, as proposed in Advice Letter 3447-E and 3447-E-A, is approved.

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 May 28, 2020; the following Commissioners voting favorably thereon:

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ALICE STEBBINS  
Executive Director