

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**Agenda ID: 20556
RESOLUTION E-5206
May 19, 2022**

**REDACTED
RESOLUTION**

Resolution E-5206. San Diego Gas & Electric Company requests approval of Portfolio Sales Agreements with San Diego Clean Power and Clean Energy Alliance to resell renewable generation and the associated renewable energy credits.

PROPOSED OUTCOME:

- This Resolution approves Portfolio Sales Agreements from San Diego Gas & Electric Company to San Diego Clean Power and Clean Energy Alliance. The agreement resulted from bilateral negotiations, authorized by Decision 21-01-005 and is for the sale of long-term renewable energy and associated Renewable Energy Credits from various facilities. The agreements are approved without modification.

SAFETY CONSIDERATIONS:

- There are no safety considerations associated with this resolution.

ESTIMATED COST:

- Actual costs of the agreements are confidential until 18 months after this resolution is effective or 30 days after the date of initial energy delivery, whichever comes first.

By Advice Letter 3936-E, filed on January 19, 2022, and supplemental Advice Letter 3936-E-A, filed on February 23, 2022.

SUMMARY

San Diego Gas & Electric Company's (SDG&E) renewable energy Portfolio Sales Agreements (PSA) with San Diego Clean Power (SDCP) and Clean Energy Alliance (CEA) comply with the Renewables Portfolio Standard (RPS) procurement guidelines and are approved without modification.

SDG&E filed Advice Letter (AL) 3936-E on January 19, 2022, requesting the California Public Utilities Commission (CPUC) review and approval of two separate but similar PSAs

with SDCP and CEA. The PSAs are long-term contracts for renewable energy, along with the associated renewable energy credits (RECs), originating from various facilities in SDG&E’s Power Charge Indifferent Amount (PCIA)-eligible RPS portfolio.

This resolution approves the PSAs without modification. SDG&E’s execution of the PSAs is consistent with SDG&E’s 2020 RPS Procurement Plan, approved in D.21-01-005, which authorized SDG&E to conduct bilateral sales, subject to CPUC approval.

The PSAs represent a hybrid approach, transitioning from initial, fixed volumes to Voluntary Allocation and Market Offer (VAMO) allocations upon the Allocation Start Date, as defined in the contracts. The PSAs are reasonably priced and transaction revenues shall be credited to SDG&E’s Portfolio Allocation Balancing Account (PABA) per D.21-05-030.

Table 1 below provides a summary of the PSAs.

Table 1: Summary of the RPS Portfolio Sales Agreements

Buyer	Product	Contract Quantity (MWh)	Contract Term	Facility Location	Energy Delivery Point
San Diego Clean Power	RPS energy and associated RECs from various facilities	1,580,000 + VAMO (27,325,000*)	12 years	Various	Various
Clean Energy Alliance		250,000 + VAMO (4,241,000*)	10 years		

*Assuming SDCP and CEA receive 100% of estimated long-term VAMO allocation

BACKGROUND

Overview of the RPS Program

The California RPS program, administered by the CPUC and California Energy Commission, was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036, SB 2 (1X), SB 350 and SB 100.¹ The RPS program is codified in Public Utilities Code §§ 399.11-399.33.²

¹ SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session); SB 350 (de León, Chapter 547, Statutes of 2015; SB 100 (de León, Chapter 312, Statutes of 2018), effective on January 1, 2019.

² All further statutory references are to the Public Utilities Code unless otherwise specified.

The RPS program requires each retail electricity seller to procure eligible renewable energy resources equal to 33 percent of retail sales by December 31, 2020, and 60 percent by 2030,³ with a goal for 100 percent of the State's electricity supply to come from renewable and zero carbon resources by 2045.⁴

Additional background information about the CPUC's RPS program, including links to relevant laws and CPUC decisions, is available at:

<https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/rps> and <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/rps/rps-program-overview/rps-decisions-and-proceedings>.

Overview of PCIA and VAMO

The CPUC opened Rulemaking (R.) 17-06-026 on June 26, 2017, to review, revise and consider alternatives to the PCIA. Phase 2 of the Rulemaking included a working group process on investor-owned utility (IOU) RPS portfolio optimization. The final Decision on Phase 2 in the PCIA proceeding, D.21-05-030, was issued on May 24, 2021.

D.21-05-030 ordered the IOUs to offer voluntary allocations of PCIA-eligible RPS resources to PCIA-eligible load serving entities (LSEs), and then sell any unallocated resources through a market offer process. PCIA-eligible LSEs will have an option to receive an RPS allocation from the IOUs' PCIA-eligible RPS energy portfolios based upon each LSE's customers forecasted, vintaged, annual load share.

LSEs may elect to receive allocations in 10% increments, either as short-term or long-term contracts. Once accepted, allocations cannot be declined, though shares can be resold, subject to RPS compliance requirements. Any unallocated resources will be offered to the market.

The CPUC opened Rulemaking (R.) 18-07-003 on July 23, 2018, to continue the implementation, administration, and development of California Renewables Portfolio Standard Program. In this Rulemaking, the CPUC issued D.22-01-004 that approves retail sellers' 2021 RPS Procurement Plans and orders IOUs to file Tier 2 ALs proposing pro forma contracts to be used for voluntary allocation transactions. LSE portfolio allocations through the VAMO process are expected to be contracted for in 2022 utilizing the pro forma contracts, with the first allocations available for 2023 and 2024.

³ D.19-06-023 established a methodology to calculate procurement requirement quantities for the compliance periods covered in SB 100.

⁴ SB 100 (De León, Chapter 312, Statutes of 2018) effective on January 1, 2019.

PSA Background

On January 19, 2022, SDG&E filed AL 3936-E requesting approval of long-term RPS sales agreements to SDCP and CEA. In AL 3936-E, SDG&E asserts that the Portfolio Sales Agreements (PSAs) are in alignment with and would partially implement the VAMO mechanism, with revenues from this transaction credited to the PABA to offset above market costs.

According to AL 3936-E, SDG&E would sell RPS-eligible energy and associated RECs to SDCP and CEA pursuant to the PSAs, with the quantity initially set by a fixed delivery schedule but switching to use the CCA's elected VAMO allocations once VAMO deliveries begin.

The RPS-eligible generation and associated RECs will come from a pool of RPS-eligible facilities that are currently operating and providing deliveries to SDG&E pursuant to a CPUC-approved contract with 10 or more years remaining in its term. The facilities will be either located in California or otherwise have their first point of interconnection within a California balancing authority, or have a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or are scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source.

SDG&E requests that the CPUC issue a resolution that:

1. Approves the PSAs between SDG&E and SDCP, and SDG&E and CEA;
2. Allows buyers' allocated contract quantities in the PSA to be included as part of buyers' load share portions of SDG&E's PCIA-eligible RPS Energy Portfolio in the Voluntary Allocation process, including the minimum quantity structures in each of the Proposed Transactions, per D.21-05-030;
3. Accepts that the Proposed Transactions are structured to meet the definition of long-term contracts in accordance with Public Utilities Code Section 399.13(b); and
4. Allows payments received by SDG&E pursuant to the Proposed Transactions to be credited against costs recorded to the PABA on a pro-rata basis, in compliance with D.19-10-001.

NOTICE

Notice of AL 3936-E was made by publication in the CPUC's Daily Calendar. SDG&E states that a copy of the AL was mailed and distributed in accordance with General Rule 4 of General Order 96-B.

PROTESTS & REPLIES

SDG&E's AL 3936-E was timely protested by the Public Advocates Office (Cal Advocates) and jointly by the Alliance for Retail Energy Markets and Direct Access Customer Coalition (AReM-DACC). SDCP and CEA provided a joint response supporting the AL, on February 8, 2022. SDG&E responded to the protests of Cal Advocates and AReM-DACC, on February 15, 2022.

Cal Advocates protested the contract with CEA on the grounds that AL 3936-E states the term is for 10 years, beginning in 2022, while the AL also indicates that the contract ends in 2031, which from the indicated start date would be less than a full 10-year contract. Cal Advocates asserts that this raises doubts as to whether the agreement can be considered long-term for RPS compliance purposes.

In responding to Cal Advocates, SDG&E asserts that the CEA contract term language clearly establishes a 10-year term, and that the inconsistent language Cal Advocates cites is merely analysis, and not binding. In addition, on February 23, 2022, SDG&E filed a supplemental AL, 3936-E-A, with an updated Independent Evaluator report that removes the cited mention of 2031 as the end date, substituting a reference to the contract term summary.

Thus, the Commission finds that CEA's Delivery Period language of "continues until midnight on the last day of the month in which the tenth (10th) anniversary of the Start Date occurs" is sufficiently clear regarding a start and end date to establish the 10-year length, and therefore long-term status of the contract. As such, Cal Advocates protest is rejected.

AReM-DACC argue that tying sale volumes to VAMO in this contract prior to VAMO finalization is premature, asserting that the VAMO allocation process has not been fully established and the volume calculations don't follow the voluntary allocation methodology. They conclude from AL statements that the CCAs would take 100% of their VAMO allocation and that SDG&E has already made the calculations, which they consider improper, citing the investor-owned utilities' December 8 joint motion regarding unresolved issues with Power Content Category (PCC) 0 treatment. They assert that the PSAs would constitute an improper share assignment that could impact allocations for other LSEs, and request the CPUC defer the proposed VAMO allocations until the process is finalized, including the utilities' pending motion.

SDG&E's response to AReM-DACC asserted that the total quantities given in the AL are estimates and the variable portion incorporated does not represent pre-VAMO allocations; VAMO allocations will still be determined by the VAMO process. Once VAMO delivery commences, the initial fixed delivery amounts will transition into variable VAMO amounts. Thus, SDG&E's request is to resell a variable amount, and the PSAs do not predetermine

how much resources SDG&E will provide SDCP and CEA through the VAMO process. SDG&E also argues that the PCC 0 issue is irrelevant because the terms of the PSAs do not specify PCC designations. See the Discussion section for disposition of AReM-DACC's protest.

The joint CEA/SDCP response spoke to the general merits of the sale in implementing a VAMO-like structure more quickly to serve anticipated load increases and allow SDG&E to right-size its portfolio. The CCAs also state they would voluntarily elect to receive 100% of their VAMO allocation, which was not otherwise clearly stipulated in the AL.

DISCUSSION

Energy Division evaluated the PSAs based on the following criteria:

- Consistency with SDG&E's 2020 RPS Procurement Plan and RPS Portfolio Need;
- Consistency with VAMO;
- Consistency with CPUC's Bilateral Contracting Rules;
- Cost Reasonableness and Valuation;
- Project Viability Assessment and Development Status;
- Independent Evaluator Review;
- Procurement Review Group Participation;
- Safety Considerations; and
- Confidential Information.

Consistency with SDG&E's 2020 RPS Procurement Plan and RPS Portfolio Need

Pursuant to statute, SDG&E's RPS Procurement Plan (RPS Plan) includes an assessment of RPS supply and demand to determine the optimal mix of renewable generation resources; a description of existing RPS portfolio; a description of potential RPS compliance delays; a status update of projects within its RPS portfolio; an assessment of the project failure and delay risk within its RPS portfolio; and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.⁵ California's RPS statute also requires that the CPUC review the results of a renewable energy resource solicitation submitted for approval by a utility.⁶ The CPUC reviews the results to verify that the utility conducted its solicitation according to its CPUC-approved procurement plan.⁷

In SDG&E's 2020 RPS Plan, SDG&E explained that it utilizes a Need Determination Methodology to make renewable procurement decisions, which compares SDG&E's risk adjusted forecasted RPS position to its RPS program compliance requirements. SDG&E is

⁵ Pub. Util. Code § 399.13(a)(5).

⁶ Pub. Util. Code § 399.13(d).

⁷ SDG&E's 2020 RPS Procurement Plan was approved by D.20-01-005.

well positioned to exceed the current 44 percent RPS by 2024 target, as well as future compliance periods.

In its 2020 RPS Plan, SDG&E stated that, in order to optimize its RPS portfolio, it would pursue issuing competitive solicitations for the sale of RPS-eligible energy and RECs and engage in bilateral negotiations if the offers were competitive and provide benefits to SDG&E bundled customers. In approving SDG&E's 2020 Procurement Plan, D.21-01-005 approved the use of a pro-forma sales agreement, and authorized SDG&E to conduct short-term RPS sales solicitations and other measures to optimize its portfolio, including bilateral negotiations after conducting a sales solicitation. SDG&E was also authorized to engage in bilateral sales transactions that do not utilize the pro forma sales agreement submitted with its 2020 RPS Procurement Plan, subject to CPUC review and approval.⁸

SDG&E conducted a 2020 RPS request for offers, as discussed in Confidential Appendix A. SDG&E then issued a request for information, soliciting bids from CEA and SDCP, after which SDG&E commenced bilateral negotiations CEA and SDCP.

The PSAs for the sale of renewable generation and associated RECs is consistent with SDG&E's renewable resource needs, as outlined in its 2020 RPS Plan. Therefore, the PSAs are consistent with SDG&E's RPS portfolio needs identified in its 2020 RPS Procurement Plan, as approved by D.21-01-005.

Consistency with VAMO

D.21-05-030 ordered the IOUs to offer voluntary allocations of PCIA-eligible resources to PCIA-eligible LSEs, and then sell any unallocated resources through a market offer process.⁹ The RECs supplied under the PSAs would be from a pool of PCIA-eligible facilities, with volumes decided by allocations and elections, consistent with the approved VAMO methodology.

As noted above, AReM-DACC protested AL 3936-E, arguing that tying sale volumes to VAMO in this contract prior to VAMO finalization is premature and asserting the VAMO allocation process has not been fully established. While it is true that VAMO allocations have not been finalized, the CPUC agrees with SDG&E that the AL does not identify specific VAMO volumes, and that agreeing to take allocations after they have been determined through the VAMO allocation methodology is not prematurely allocating or pricing RECs.

Additionally, although the investor-owned utilities' December 8, 2021, Joint motion on PCC 0 classification is pending, it does not require resolution to review the request to approve

⁸ D.21-01-005, Section 3.1.3 SDG&E Draft 2020 RPS Procurement Plan.

⁹ D.21-05-030, Section 5.1 Voluntary Allocations, Section 5.2 Market Offer.

these PSAs. As such, any allocated quantities may be included as part of CCAs' load share portions of SDG&E's PCIA-eligible RPS Energy Portfolio in the VAMO process, per D.21-05-030. Therefore, the PSAs are consistent with VAMO and AReM-DACC's protest is rejected.

Consistency with Bilateral Contracting Rules

The CPUC has developed rules pursuant to which utilities may enter into bilateral RPS contracts. In D.03-06-071, the CPUC authorized entry into bilateral RPS contracts provided that such contracts did not require Public Goods Charge funds and that they were "prudent." In D.06-10-019, the CPUC established rules pursuant to which the IOUs could enter into bilateral RPS contracts.¹⁰ SDG&E adhered to these bilateral contracting rules because the PSAs are longer than one month in duration, were filed by advice letter, and are reasonably priced. (Price reasonableness is further discussed in the Cost Reasonableness and Valuation section, *infra.*).

In D.09-06-050, the CPUC also determined that bilateral agreements should be reviewed according to the same processes and standards as projects that come through a solicitation.¹¹ Accordingly, as described above, the PSAs were considered against RPS offers received in SDG&E's May 2020 RPS sales solicitation.

As such, the PSAs with SDCP and CEA are consistent with the bilateral contracting guidelines established in D.03-06-071, D.06-10-019, and D.09-06-050.

Cost Reasonableness and Valuation

In AL 3936-E, SDG&E asserts that the PSAs are intended to optimize SDG&E's RPS portfolio and provide benefits for ratepayers by reducing SDG&E's RPS long position.

In reviewing requests for contract approval, the CPUC compares contract prices to the most recent solicitation and recently executed contracts. SDG&E has not executed any contracts from RPS REC sales solicitations since 2018. Thus, we compared the PSAs to bids received in SDG&E's 2020 RPS REC Sales Solicitation. Based on this analysis and the confidential analysis provided by SDG&E in AL 3936-E, we determine that the PSA revenue is reasonable. Confidential Appendix A includes a discussion of the contractual pricing terms and the analysis of the reasonableness of the PSAs revenues.

The total expected revenues of the sales agreement are reasonable based on the sales agreements' prices relative to SDG&E's most recent solicitation and recently executed

¹⁰ D.06-10-019, Section III.C.2 Bilateral Contracts.

¹¹ D.09-06-050, Section 3.12 Bilateral Contracts.

contracts and payments may be credited against costs recorded to the PABA on a pro-rata basis, consistent with D.19-10-001.

Project Viability Assessment and Development Status

The generation to be delivered pursuant to the PSAs will originate from a pool of SDG&E's PCIA-eligible long-term contracts. These facilities have been certified by the California Energy Commission (CEC) as RPS-eligible and are currently generating renewable energy. The PSAs with SDCP and CEA do not change the development status of these existing projects.

It is reasonable to expect that the generating facilities under this contract will continue to be viable and will continue to operate under their existing contracts such that SDG&E can meet the terms of the PSAs.

Independent Evaluator Review

As required by D.06-05-039 and D.09-06-050,¹² SDG&E retained an independent evaluator (IE) to oversee SDG&E's bilateral negotiations with SDCP and CEA and to evaluate the overall merits of the executed contracts. AL 3936-E included a public and confidential IE report on the negotiation process.

The IE found that the PSAs were substantially similar, reflecting negotiating consistency; that there are no REC shortfall risks; that the pricing mechanism justifies execution outside of a solicitation and minimizes SDG&E's long-term risk; that evaluation and execution were consistent with SDG&E's approved framework; and that the PSAs represent a net benefit to SDG&E customers.

Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw SDG&E's bilateral negotiations with SDCP and CEA.

Procurement Review Group Participation

The Procurement Review Group (PRG) was initially established in D.02-08-071 as an advisory group to review and assess the details of the IOUs' overall procurement strategy, solicitations, specific proposed procurement contracts, and other procurement processes prior to submitting filings to the CPUC.¹³ SDG&E states that details regarding the bilateral

¹² D.06-05-039, Section IV.G.2. Independent Evaluator, D.09-06-050, Section 3.8 Review by Procurement Review Group and Independent Evaluator.

¹³ SDG&E's PRG includes representatives from the CPUC's Energy Division and Public Advocates Office, The Utility Reform Network, Coalition of California Utility Employees, Sierra Club, California Department of Water Resources, and Union of Concerned Scientists.

negotiations were discussed during PRG meetings held on December 9, 2020, January 15, 2021, February 19, 2021, March 19, 2021, May 21, 2021, and June 18, 2021. No feedback or follow up requests were received on the proposed transactions.

Pursuant to D.02-08-071, SDG&E's PRG participated in the review of SDG&E's PSAs with SDCP and CEA for RPS-eligible energy and RECs.

Safety Considerations

Public Utilities Code § 451 requires that every public utility maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities to ensure public safety, health, and comfort.

The PSAs with SDCP and CEA are for the sale of renewable generation and associated RECs from RPS-eligible facilities. The proposed sales agreement does not alter existing power purchase agreements or any facility operations. As this agreement does not require a change in facility operations, there are no incremental safety implications associated with approval of the contract beyond the status quo. Based on the information provided, the agreement does not appear to result in any adverse safety impacts on the facilities or operations of SDG&E.

Confidential Information

The CPUC, through the implementation of Public Utilities Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032 and D.21-11-029, that certain material submitted to the CPUC as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts which was revised in D.21-11-029. Such information, such as price, is confidential for 18 months after commission approval of the contract or 30 days after energy delivery start date, whichever comes first, except contracts between IOUs and their affiliates, which are public.

The confidential appendices marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

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. Any comments are due within 20 days of the date of its mailing and publication on the CPUC's website and in accordance with any instructions accompanying the notice. 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 Commission's agenda no earlier than 30 days from today.

FINDINGS

1. The Portfolio Sales Agreements are consistent with San Diego Gas & Electric's Renewables Portfolio Standard portfolio needs identified in its 2020 Renewables Portfolio Standard Procurement Plan, as approved by D.21-01-005.
2. The Portfolio Sales Agreements are of sufficient term length to be categorized as long-term and the Public Advocates Office's protest is rejected.
3. The Portfolio Sales Agreements are consistent with D.21-05-030 and the protest by the Alliance for Retail Energy Markets and Direct Access Customer Coalition is rejected.
4. The Portfolio Sales Agreements are consistent with the bilateral contracting guidelines established in D.03-06-071, D.06-10-019 and D.09-06-050.
5. The total expected revenues of the sales agreements are reasonable based on the sales agreements' prices relative to San Diego Gas & Electric's most recent solicitation and payments may be credited against costs recorded to the Portfolio Allocation Balancing Account on a pro-rata basis, consistent with D.19-10-001.
6. It is reasonable to expect that the generating facilities under this contract will continue to be viable and will continue to operate under their existing contracts such that San Diego Gas & Electric can meet the terms of the Portfolio Sales Agreements.
7. Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw San Diego Gas & Electric's bilateral negotiations with San Diego Clean Power and Clean Energy Alliance.
8. Pursuant to D.02-08-071, San Diego Gas & Electric's Procurement Review Group participated in the review of San Diego Gas & Electric's Portfolio Sales Agreements with San Diego Clean Power and Clean Energy Alliance for Renewables Portfolio Standard-eligible energy and associated Renewable Energy Credits.
9. The confidential appendices marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
10. Advice Letter 3936-E should be approved effective today without modification.

THEREFORE IT IS ORDERED THAT:

1. San Diego Gas & Electric Company's Advice Letter 3936-E, requesting approval of Portfolio Sales Agreements with San Diego Clean Power and Clean Energy Alliance, is approved without modification.

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 19, 2022; the following Commissioners voting favorably thereon:

Rachel Peterson
Executive Director

Confidential Appendix A

Evaluation Summary of the Portfolio Sales Agreements with San Diego Clean power and Clean Energy Alliance

[REDACTED]