

DRAFT

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

ENERGY DIVISION

ID#9275  
RESOLUTION E-4316  
April 8, 2010

REDACTED

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

Resolution E-4316. Southern California Edison (SCE) Company requests approval of Amendments 3 and 4 to a renewable power purchase agreement with Imperial Valley Resource Recovery Company, LLC (IVRR).

PROPOSED OUTCOME: This Resolution approves cost recovery for an amended renewable energy power purchase agreement (PPA) between SCE and IVRR.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter (AL) 2414-E filed on December 4, 2009.

---

**SUMMARY**

**Southern California Edison's Imperial Valley Resource Recovery power purchase agreement, as amended by Amendments 3 and 4, complies with the Renewable Portfolio Standard (RPS) procurement guidelines and is approved.**

Southern California Edison (SCE) filed advice letter (AL) 2414-E requesting Commission review and approval of amendments to its previously approved power purchase agreement (PPA) executed with Imperial Valley Resource Recovery Company, LLC (IVRR). The original PPA resulted from SCE's 2005 RPS solicitation and was approved by the Commission on April 12, 2007 in Commission Decision (D.) 07-04-039.

The amendments adjust the contract price to account for increasing wood-waste and diesel fuel prices and cap the contract energy price for the duration of the

contract for ratepayer protection. The amendments also extend the startup deadline and modify credit provisions.

The following table summarizes the amended agreement:

<b>Generating facility</b>	<b>Type</b>	<b>Term (Years)</b>	<b>Capacity (MW)</b>	<b>Energy (GWh)</b>	<b>Online Date</b>	<b>Location</b>
Imperial Valley Resource Recovery LLC	Biomass, Wood chips	10	16.4	123.5-132 <sup>1</sup>	June, 2009	Imperial Valley, CA.

The IVRR project is a 16.4 MW biomass wood chip burning generating facility located in Imperial Valley, California. The IVRR plant initially went on-line in June, 2009 and commenced firm operation in December, 2009. The amended contract, including Amendments 3 and 4, is priced at or below the 2008 market price referent (MPR) for a 10-year contract and compares favorably to the contract prices from SCE's 2008 RPS solicitation. Deliveries from the amended 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.

AL 2414-E is approved without modification.

## **NOTICE**

Notice of AL 2414-E was made by publication in the Commission's Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

## **PROTESTS**

No protests were received to this advice letter.

---

<sup>1</sup> Output depends on whether it is a "maintenance year".

## **DISCUSSION**

### **Overview of RPS Program**

The RPS Program administered by the Commission requires each utility to increase its total procurement of eligible renewable energy resources by at least one percent of retail sales per year so that twenty percent of the utility's retail sales are procured from eligible renewable energy resources no later than December 31, 2010.<sup>2</sup>

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

### **SCE requests approval of Amendments 3 and 4 to its existing PPA with IVRR.**

SCE signed the original IVRR PPA on November 15, 2006. The Commission approved the PPA in Decision D.07-04-039 on April 12, 2007 without any modifications. This 10-year PPA for a 16.4 MW biomass plant resource using wood waste as fuel was negotiated by SCE through its 2005 RPS solicitation.

SCE claims that in the recent past IVRR has suffered from unexpected fuel price fluctuations, and unless the contract is amended, IVRR will no longer be able to continue its operation. Currently, IVRR does not have a fixed price contract for the wood waste fuel over the 10-year life of the contract. In addition, the fuel prices of diesel fuel that is used to transport wood chips are also forecasted to increase.

Amendment 3 modifies the energy price, extends the startup deadline and modifies some credit provisions. Amendment 4 caps the contract price to protect the ratepayers.

SCE claims that the amended IVRR contract is in compliance with the Resolution E-4199, which states that if a developer requests an amendment that affects the price of an approved contract, the investor-owned utility (IOU) should re-

---

<sup>2</sup> See Public Utilities (Pub. Utils.) Code § 399.15(b)(1).

evaluate the competitiveness of the amended contract as compared to the projects that the IOU is currently negotiating and to its most recent shortlist. The amended contract price should also be compared against the most recently approved MPRs.<sup>3</sup>

SCE states that the amended contract price is at or below the applicable 2008 MPR and compares favorably to the contract prices of its 2008 RPS solicitation short-list of renewable resources.

**SCE requests the Commission to issue a resolution containing:**

1. Approval of the IVRR Contract in its entirety;
2. A finding that any electric energy sold or dedicated to SCE pursuant to the amended IVRR 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<sup>4</sup> or other applicable law concerning the procurement of electric energy from renewable energy resources;
3. A finding that all procurement under the amended IVRR 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 under the amended IVRR 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 amended IVRR Contract counts, in full and without condition, towards the requirement in the RPS Legislation that SCE procure 20% (or such other percentage as may be

---

<sup>3</sup> In this case, the 2008 MPR was the most relevant benchmark as it was most recently adopted MPR as of the filing date of the contract.

<sup>4</sup> As defined by SCE, "'RPS Legislation' refers to the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11 *et seq.*"

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 amended IVRR Contract, and SCE's entry into the IVRR amendments, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the amended IVRR Contract, subject only to further review with respect to the reasonableness of SCE's administration of the amended IVRR Contract; and
7. Any other and further relief as the Commission finds just and reasonable.

### **Energy Division Review Of the Proposed PPA**

Energy Division evaluated the PPA for the following criteria:

- Consistency with SCE's 2008 RPS Procurement Plan (Plan)
- Consistency with the resource needs identified in SCE's Plan
- Consistency with RPS standard terms and conditions (STC)
- Consistency with the Interim Emissions Performance Standard
- Procurement Review Group (PRG) participation
- Comparison to the results of SCE's 2008 solicitation
- Cost reasonableness

### **Consistency with SCE's 2008 RPS Procurement Plan**

California's RPS statute requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.<sup>5</sup> The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan. SCE's 2008 RPS Procurement Plan (Plan) was approved by D.08-02-008 on February 14, 2008. Pursuant to statute, SCE'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

---

<sup>5</sup> See Pub. Utils. Code, Section §399.14.

solicitation protocol setting forth the need for renewable generation of various operational characteristics.<sup>6</sup>

Specifically, SCE's Plan states that SCE intends to secure resources from its 2008 solicitation, as necessary, to ensure that it meets the 20% RPS goal as soon as possible, and with a reasonable margin of safety. SCE requested proposals based upon standard term lengths of 10, 15 or 20 years or a non-standard delivery term of no less than 1 month. SCE also requested proposals with a minimum capacity of 1.5 MW. SCE indicated a preference for projects:

- With near-term deliveries
- Located in California or outside of California if the seller complies with all requirements pertaining to "Out-of-State Facilities" as set forth in the California Energy Commission (CEC) Guidebook for RPS eligibility
- Delivered within the CAISO Control Area, but considered proposals for facilities interconnected to the Western Electricity Coordinating Council (WECC) transmission system

The IVRR contract as initially approved in D.07-04-039 was consistent with the 2005 RPS Plan. IVRR is an operational plant certified by the CEC as an RPS-eligible facility. It is contributing to SCE's near-term needs and will contribute to SCE's long-term renewable energy needs for up to 10 years.

The IVRR resource was procured consistent with SCE's 2005 Plan and continues to comply with the resource needs identified in SCE's 2008 Plan.

### **Consistency with RPS Standard Terms and Conditions (STCs)**

The IVRR contract was originally filed by application, rather than advice letter, principally because it did not contain the required non-modifiable standard terms and conditions. In D.07-04-039, the Commission approved the IVRR contract without requiring that it conform to the RPS STCs.

---

<sup>6</sup> See Pub. Utils. Code, Section §399.14(a)(3).

Because the Commission previously approved the PPA, having reviewed the non-conforming RPS standard terms and condition, and because the instant advice letter does not seek modification of these terms, we maintain the Commission's decision that these terms are reasonable.

The PPA contains the modified RPS standard terms and conditions approved in the D.07-04-039, which approved the original PPA between the parties.

### **Compliance with the Interim Greenhouse Gas Emissions Performance Standard (EPS)**

California Pub. Utils. Code §§ 8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers.

D.07-01-039 adopted an interim EPS that establishes an emission rate quota for obligated facilities to levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. The EPS applies to all energy contracts for base-load generation that are at least five years in duration.<sup>7</sup> Renewable energy contracts are deemed compliant with the EPS except in cases where intermittent renewable energy is firmed and shaped with generation from non-renewable resources.

Because the IVRR facility will be fueled by biomass that would otherwise be disposed of by open burning, forest accumulation, landfill, spreading or composting, the PPA meets the conditions for EPS compliance established in D.07-01-039.<sup>8</sup>

The IVRR Amended PPA complies with the EPS because it meets the conditions established in D.07-01-039.

---

<sup>7</sup> "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%." Pub. Utils. Code § 8340(a).

<sup>8</sup> See D.07-01-039, COL 35.

### **Procurement Review Group (PRG) Participation**

SCE's PRG consists of representatives from: the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), California Utility Employees, the Union of Concerned Scientists, the California Department of Water Resources, and the Commission's Energy and Legal Divisions.

SCE briefed the PRG concerning the IVRR PPA amendments on May 13, 2009.

Although Energy Division participates in the PRG, it reserved judgment on the contract until the AL was filed. Energy Division reviewed the transaction independently of the PRG, and allowed for a full protest period before concluding its analysis.

With regard to the PPA amendments, SCE has complied with the Commission's rules for involving the PRG.

### **Comparison to the Results of SCE's 2008 Solicitation**

The Commission's Least-Cost Best-Fit (LCBF) decision directs the utilities to use certain criteria in their bid ranking and provide guidance regarding the process by which the utility ranks bids in order to "shortlist" the bids eligible for contract negotiations.<sup>9</sup>

SCE states in AL 2414-E that the benefit-to-cost ratio for the amended IVRR contract "ranked high enough to demonstrate that the amended IVRR Contract provides significant value for SCE's customers relative to the proposals received during SCE's 2008 solicitation."<sup>10</sup>

Confidential Appendix A, attached to this resolution, provides a more detailed comparison of the proposed project to SCE's 2008 shortlist of bids.

The amended PPA compares favorably to the results of SCE's 2008 solicitation.

---

<sup>9</sup> See D.04-07-029

<sup>10</sup> AL 2414-E at 6.



### **Cost Reasonableness**

Appendix A attached to this resolution includes a detailed discussion comparing the cost between the original and amended IVRR contract. The appendix also includes the LCBF analysis and rankings of other resources in SCE's 2008 RPS solicitation as compared to the amended IVRR contract. The benefit-to-cost (B/C) ratio of the amended contract compares favorably to other proposals in the short list of the 2008 solicitation.

The total expected costs of the amended PPA, as estimated by SCE, are reasonable based on their relation to bids received in response to SCE's 2008 solicitation.

Provided the generation is from an eligible renewable energy resource, or Seller is otherwise compliant with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in the terms of the amended PPA as modified pursuant to the order of this Resolution, payments made by SCE under the amended PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of SCE's administration of the amended PPA.

### **RPS ELIGIBILITY AND CPUC APPROVAL**

Pursuant to Pub. Utils. Code § 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable "eligibility" language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an "Eligible Renewable Energy Resource," that the project's output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller use commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.<sup>11</sup>

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires "CPUC Approval" of a PPA to include an explicit finding that "any procurement pursuant to this Agreement is procurement from an

---

<sup>11</sup> See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

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.”<sup>12</sup>

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission determine, prior to final CEC certification of a project, that “any procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.”

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS eligible resource to count towards an RPS compliance obligation. Nor shall such a finding absolve any contracting party of its obligation to obtain CEC certification and/or to pursue remedies for breach of contract to ensure that only RPS-eligible generation is delivered and paid for under a Commission-approved contract. Such contract enforcement activities shall be reviewed pursuant to the Commission’s authority to review the administration of such contracts.

### **CONFIDENTIAL INFORMATION**

The Commission, in implementing Pub. Utils. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission 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. Such information, such as price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.

---

<sup>12</sup> See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

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 ON THIS RESOLUTION**

Pub. Utils. Code § 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.

## **FINDINGS**

1. The original power purchase agreement (PPA) between Southern California Edison (SCE) and Imperial Valley Resource Recovery Company, LLC (IVRR) resulted from SCE's 2005 RPS solicitation and was approved by the Commission in Decision 07-04-039.
2. The amended IVRR PPA is consistent with the resource needs identified in SCE's 2008 Procurement Plan.
3. The PPA contains the modified RPS standard terms and conditions approved in the D.07-04-039, which approved the original PPA between the parties.
4. The IVRR amended PPA complies with the EPS because it meets the conditions established in D.07-01-039.
5. With regard to the PPA amendments, SCE has complied with the Commission's rules for involving the PRG.
6. The amended PPA compares favorably to the results of SCE's 2008 solicitation.
7. The total expected costs of the amended PPA, as estimated by SCE, are reasonable based on their relation to bids received in response to SCE's 2008 solicitation.
8. Provided the generation is from an eligible renewable energy resource, or Seller is otherwise compliant with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in the terms of the amended PPA as modified pursuant to the order of this Resolution, payments made by SCE

under the amended PPA are fully recoverable in rates over the life of the amended PPA, subject to Commission review of SCE's administration of the amended PPA.

9. Procurement pursuant to the amended PPA is procurement from eligible renewable energy resource for purposes of determining SCE'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 and D.06-10-050, or other applicable law.
10. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under this amended PPA to count towards an RPS compliance obligation. Nor shall that finding absolve SCE of its obligation to enforce compliance with Standard Term and Condition 6, set forth in Appendix -A of D.08-04-009, and included in this amended PPA.
11. 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.
12. AL 2414-E should be approved effective today without modification.

**THEREFORE IT IS ORDERED THAT:**

1. Southern California Edison Company's Advice Letter 2414-E, requesting Commission review and approval of its Amendments 3 and 4 to its power purchase agreement with Imperial Valley Resource Recovery LLC., is approved without modification.
2. 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 April 8, 2010; the following Commissioners voting favorably thereon:

---

PAUL CLANON  
Executive Director

# **Confidential Appendix A**

## **CONTRACT EVALUATION**

**[REDACTED]**