

DRAFT

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

ENERGY DIVISION

ID #9501  
RESOLUTION E-4338  
June 24, 2010

REDACTED

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

Resolution E-4338. Southern California Edison Company requests approval of Amendment 4 to a renewable energy power purchase agreement with Aero Energy, LLC (Aero).

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

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter (AL) 2451-E filed on March 17, 2010.

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**SUMMARY**

**Southern California Edison's Aero Energy power purchase agreement, as amended by Amendment 4, complies with the Renewable Portfolio Standard (RPS) procurement guidelines and is approved.**

Southern California Edison (SCE) filed advice letter (AL) 2451-E requesting Commission review and approval of an amendment to its previously approved power purchase and sale agreement (PPSA) executed with Aero Energy, LLC (Aero). The original PPSA resulted from SCE's 2003 RPS solicitation and was approved by the Commission on June 30, 2005 in Commission Resolution E-3934.

The amendment adjusts the contract price, primarily to account for the increased cost of wind turbines since the bid was first submitted. The amendment also extends the startup deadline and increases the capacity from 50 MW to 120 MW.

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>
Windstar	Wind	20	120	311.7 to 312.4	by December 31, 2011	Tehachapi, CA

The Windstar project is a 120 MW wind facility located in Tehachapi, California. The contract, modified by Amendment 4, is priced above the 2009 market price referent (MPR) but at or below the 2008 MPR for a 20-year contract and compares favorably to the bid prices from SCE's 2008 and 2009 RPS solicitations.

Deliveries from the amended PPSA 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 2451-E is approved without modification.

## **NOTICE**

Notice of AL 2451-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.

## **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>1</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 Amendment 4 to its existing PPSA with Aero**

SCE signed the original Windstar PPSA on March 8, 2005. The Commission approved the PPSA in Resolution E-3934 on June 30, 2005. This 20-year PPSA for a 50 MW wind facility was negotiated by SCE through its 2003 RPS solicitation.

SCE claims that without the modifications set forth in Amendment 4, the Windstar project will not be viable. Amendment 4 modifies the energy price, extends the startup deadline, and modifies some credit provisions.

SCE claims that the amended Aero contract is in compliance with 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-evaluate the competitiveness of the amended contract as compared to the projects that the IOU is currently negotiating and to its most recent shortlist.

SCE states that the amended contract price is above the applicable 2009 MPR<sup>2</sup> but notes that it is at or below the applicable 2008 MPR, which was in effect until the date Amendment 4 was executed. The contract compares favorably to the contract prices of its 2009 RPS solicitation short-list of renewable resources.

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

1. Approval of the amended Aero PPSA in its entirety;

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

<sup>2</sup> Resolution E-4199 requires the amended contract price to be compared against the most recently approved MPRs. In this case, the 2009 MPR was most recently adopted, as the Commission approved it the same day the PPSA was executed.

2. A finding that any electric energy sold or dedicated to SCE pursuant to the amended Aero PPSA 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>3</sup> or other applicable law concerning the procurement of electric energy from renewable energy resources;
3. A finding that all procurement under the amended Aero PPSA 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 Aero PPSA 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 Aero PPSA counts, in full and without condition, towards the requirement in the RPS Legislation that SCE procure 20% (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 amended Aero PPSA, and SCE’s entry into Amendment 4, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the amended Aero PPSA, subject only to further review with respect to the reasonableness of SCE’s administration of the amended Aero PPSA; and
7. Any other and further relief as the Commission finds just and reasonable.

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

Energy Division evaluated the PPSA for the following criteria:

- Consistency with the resource needs identified in SCE’s 2009 RPS Procurement Plan (Plan)

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<sup>3</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.”

- Consistency with the Resolution E-4199 requirements for above-MPR contract price amendments
- Project viability
- Consistency with RPS standard terms and conditions (STC)
- Consistency with the Interim Emissions Performance Standard (EPS)
- Procurement Review Group (PRG) participation

### **Consistency with the Resource Needs Identified in SCE's Plan**

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 solicitation protocol setting forth the need for renewable generation of various operational characteristics.<sup>4</sup> SCE's 2009 Plan states that SCE seeks to procure renewable resources to augment those under contract from prior solicitations and those executed pursuant to the 2006 and 2007 solicitations. Specifically, SCE intends to secure resources from its 2009 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

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<sup>4</sup> Pub. Utils. Code, Section §399.14(a)(3).

The proposed Windstar project fits SCE's identified renewable resource needs. The amended PPSA is a 20-year contract for new renewable generation in California, expected to commence deliveries by 2011.

The proposed project is consistent with the resource needs identified in SCE's 2009 Procurement Plan.

### **Consistency with the requirements for above-MPR contract price amendments**

The amended Aero PPSA energy price is above the 2009 market price referent (MPR). Pursuant to Resolution E-4199<sup>5</sup>, the Aero PPSA complies with the eligibility criteria for Above-MPR Funds (AMFs) set forth in California Public Utilities Code § 399.15(d)(2) as follows: (1) the PPSA covers a duration of no less than 10 years; (2) it is with a new facility commencing operations after January 1, 2005; (3) it is not a purchase of renewable energy credits; and (4) it does not include any indirect expenses as set forth in the statute.

Resolution E-4199 sets forth eligibility rules for RPS contracts that are above the MPR, including guidelines for evaluating above-MPR contracts that are resubmitted for approval of a price amendment to a Commission-approved contract. For such amended contracts that are eligible for above-MPR funds, the Commission requires:

- the investor-owned utility (IOU) to re-evaluate the competitiveness of the amended contract as compared to the projects that the IOU is currently negotiating and to its most recent shortlist, and the IOU must provide a sufficient showing in the advice letter that the amended contract is competitive based on current market data;
- the IOU to explain why the contract change is needed, and provide all relevant data to justify the change;
- the developer to provide the Commission and the IE with cash flow models, both the original reflecting the price in the original contract and the latest version, to assure that the proposed price increase reflects net changes in costs;

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<sup>5</sup> [http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_RESOLUTION/98603.pdf](http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/98603.pdf)

- the confidential project-specific IE report to, at a minimum, include its evaluation of the new price based on the project's market valuation as compared to the bids in the IOU's most recent solicitation, a review of the cash flow model, and an evaluation of the change in model inputs;
- that if the IOUs' AMFs are exhausted, the IOU must state whether it will voluntarily procure the above-MPR costs.

To re-evaluate the competitiveness of the amended contract as compared to SCE's other RPS opportunities, SCE calculated a renewable premium for the amended Aero contract and compared the project to SCE's 2009 RPS solicitation bids. The appendix also includes the LCBF analysis and rankings of other resources in SCE's 2009 RPS solicitation as compared to the amended Aero PPSA. SCE states in AL 2451-E that the renewable premium for the amended Aero contract "ranked high enough to demonstrate that the amended Aero PPSA provides significant value for SCE's customers relative to the proposals received during SCE's 2009 solicitation."<sup>6</sup> Confidential Appendix A, attached to this resolution, provides a more detailed comparison of the proposed project to SCE's 2009 shortlist of bids.

SCE provided sufficient information in the advice letter to explain why the contract price change is needed, and to satisfy the cash flow model and IE report requirements. Confidential Appendix A attached to this Resolution includes a detailed discussion comparing the contract cost between the original and amended Aero PPSAs. The IE's contract-specific evaluation of the Windstar project is attached as confidential Appendix B to this resolution. The IE finds that the project compares favorably to contracts executed pursuant to the 2008 solicitation with respect to their renewable premiums and project viability and that the project compares favorably to the results of SCE's 2009 solicitation. The IE also reviewed the cash flow model and financial assumptions submitted by Aero and found them to be reasonable.

Finally, SCE has exhausted its AMFs and proposes to voluntarily procure the amended above-MPR Aero PPSA pursuant to California Public Utilities Code § 399.15(d)(4).

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<sup>6</sup> AL 2451-E at 7.

The proposed contract complies with the Resolution E-4199 requirements for above-MPR price amendments. The total expected costs of the amended PPSA, as estimated by SCE, are reasonable based on their relation to bids received in response to SCE's 2009 solicitation. Payments made by SCE under the amended PPSA are fully recoverable in rates over the life of the PPSA, subject to Commission review of SCE's administration of the amended PPSA.

### **Project Viability**

For SCE's 2009 RFP, SCE evaluated and scored each bid's viability, based on a number of factors such as development issues, site control, technology maturity and seller experience (see confidential Appendix B in AL 2451-E). SCE scored the Windstar project using the same project viability calculator used for the 2009 bids. See confidential Appendix A of this Resolution for a comparative analysis that shows the Windstar project scores favorably compared to SCE's other offers.

Aero has secured many of the necessary permits at the time the AL was filed, and SCE asserts that Aero is on schedule to secure the remaining permits. One of the two required interconnection agreements has been executed, and the other is currently under negotiation. Aero is a wholly-owned subsidiary of Western Wind Energy Corp, which currently owns 34.5 MW of wind capacity. Western Wind management includes individuals involved in the ownership and operation of utility scale wind facilities in California since 1981. The primary risk this project faces is the developer's lack of project development (as opposed to operational) experience.

The Windstar project's viability is favorable compared to the bids shortlisted in SCE's 2009 solicitation.

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

The original Aero PPSA was signed in 2005, before the Commission's modifications to its standard terms and conditions. Amendment 4 updates the Aero PPSA to include, without change, all of the Commission's current non-modifiable terms and conditions, including: "Green Attributes," "Eligibility," and "Applicable Law." The non-modifiable "CPUC Approval" term has been changed to refer to "the PPA as amended by Amendment No. 4" rather than "this Agreement" and is otherwise identical to that term.



In addition, as permitted by D.07-11-025, SCE modified most if not all of the “modifiable” terms. These modifications, however, include the same principles and serve the same purpose as the standard terms, and are consistent with the law and government regulations. Thus, the modifications contained in Amendment 4 are permissible.

The amended Aero PPSA is consistent with D.08-04-009, as modified by D.08-08-028.

### **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 limit for obligated facilities to levels no greater than the greenhouse gas (GHG) emissions rate of a combined-cycle gas turbine power plant. The EPS applies to all energy contracts for baseload generation that are at least five years in duration.<sup>7</sup> Generating facilities using certain renewable resources are deemed compliant with the EPS,<sup>8</sup> although contracts with intermittent resources are subject to the limitation that total purchases under the contract do not exceed the expected output from the facility over the term of the contract.<sup>9</sup>

The Aero Amended PPSA complies with the EPS because wind energy is one of the pre-approved renewable energy technologies listed in D.07-01-039.

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<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> D.07-01-039, Attachment 7, p. 4.

<sup>9</sup> D.07-01-039, Attachment 7, p. 7.

### **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 Aero PPSA amendments on December 16, 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 amended PPSA, SCE has complied with the Commission's rules for involving the PRG.

### **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>10</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 eligible renewable energy resource for purposes of determining Buyer's

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<sup>10</sup> See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

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>11</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 finding absolve the seller of its obligation to obtain CEC certification or the utility of its obligation to pursue remedies for breach of 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.

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.

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<sup>11</sup> See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

### **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.

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, and will be placed on the Commission's agenda no earlier than 30 days from today.

### **FINDINGS AND CONCLUSIONS**

1. The original power purchase and sale agreement (PPSA) between Southern California Edison (SCE) and Aero Energy, LLC (Aero) resulted from SCE's 2003 RPS solicitation and was approved by the Commission on June 30, 2005 in Resolution E-3934.
2. The amended Aero PPSA is consistent with the resource needs identified in SCE's 2009 Procurement Plan.
3. The amended PPSA compares favorably to the results of SCE's 2009 solicitation.
4. The amended Aero PPSA complies with the Emissions Performance Standard because it meets the conditions established in D.07-01-039.
5. With regard to the PPSA amendments, SCE has complied with the Commission's rules for involving the Procurement Review Group.
6. The terms and conditions in the amended Aero PPSA is consistent with D.08-04-009, as modified by D.08-08-028.
7. The total expected costs of the amended PPSA, as estimated by SCE, are reasonable based on their relation to bids received in response to SCE's 2009 solicitation.
8. SCE has voluntarily agreed to incur the above-market price referent costs of the Windstar project that exceed SCE's cost limitation.

9. The independent evaluator reviewed the developer's cash flow model and determined that the requested contract price increase is justifiable given current market conditions.
10. AL 2451-E complies with the requirements in Resolution E-4199 for Commission-approved contracts that are above the market price referent and eligible for above market funds.
11. Payments made by SCE under the amended PPSA are fully recoverable in rates over the life of the amended PPSA, subject to Commission review of SCE's administration of the amended PPSA.
12. Procurement pursuant to the PPSA is procurement from eligible renewable energy resources 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 (RPS) (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.
13. The immediately preceding finding shall not be read to allow generation from a non-RPS-eligible-renewable energy resource under this PPSA to count towards an RPS compliance obligation. Nor shall that finding absolve SCE of its obligation to enforce compliance with this PPSA.
14. 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.
15. AL 2451-E should be approved effective today without modification.

**THEREFORE IT IS ORDERED THAT:**

1. Southern California Edison Company's Advice Letter 2451-E, requesting Commission review and approval of Amendment 4 to its power purchase and sale agreement with Aero Energy LLC., is approved.
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 June 24, 2010; the following Commissioners voting favorably thereon:

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PAUL CLANON  
Executive Director

**Confidential Appendix A**  
**Contract Evaluation**  
**[REDACTED]**

**Confidential Appendix B**  
**Summary of Independent Evaluator Report for the**  
**Windstar Projects**  
**[REDACTED]**