

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**ID #9583
RESOLUTION E-4348
July 29, 2010**

REDACTED

R E S O L U T I O N

Resolution E-4348. San Diego Gas & Electric Company (SDG&E) requests approval of the first amendment to a power purchase and sale agreement with Blue Lake Power, LLC.

PROPOSED OUTCOME: This Resolution approves an amendment to SDG&E's renewable energy power purchase and sale agreement (PPA) with Blue Lake Power, LLC for biomass power. The amendment is approved without modification.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter 2149-E filed on February 25, 2010.

SUMMARY

SDG&E's amended renewable PPA complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved without modification.

SDG&E filed Advice Letter (AL) 2149-E on February 25, 2010, requesting California Public Utilities Commission (Commission) review and approval of an amendment to an existing PPA with Blue Lake Power, LLC (Blue Lake) for renewable energy from a biomass facility (Amendment). The Amendment increases the contract price, increases the contract term length, and modifies the commercial operation deadline. All other major terms of the PPA originally filed on June 28, 2008 in AL 2000-E and approved by the Commission on November 21, 2008 in Resolution E-4208 are unchanged and continue in full force and effect.

The following table summarizes specific features of the facility and PPA, with the amended terms denoted by italicized text:

Generating Facility	Resource Type	Contract Term (Years)	Capacity (MW)	Expected Deliveries (GWh/yr)	Commercial Operation Date	Project Location
Blue Lake	Biomass	15	11	90	<i>April 30, 2010</i>	Blue Lake, CA

The proposed amended PPA is consistent with SDG&E's 2009 RPS Procurement Plan. Deliveries from the amended PPA are reasonably priced and fully recoverable in rates over the life of the contract, subject to Commission review of SDG&E's administration of the contract.

The Amendment is approved without modification.

BACKGROUND

Overview of RPS Program

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107 and SB 1036.¹ The RPS program is codified in Public Utilities Code Sections 399.11-399.20.² 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 20 percent of the utility's retail sales are procured from eligible renewable energy resources no later than December 31, 2010.³

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at

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).

² All further references to sections refer to the Public Utilities (Pub. Util.) Code unless otherwise specified.

³ See § 399.15(b)(1).

<http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and
<http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

NOTICE

Notice of AL 2149-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

SDG&E's Advice Letter AL 2149-E was not protested.

DISCUSSION

SDG&E requests Commission approval of a contract amendment

On September 21, 2009, SDG&E filed AL 2149-E requesting Commission approval of an amendment to a Commission-approved renewable energy power purchase agreement with Blue Lake for generation from its proposed biomass facility. Generation from the 11 MW Blue Lake biomass facility is expected to contribute an average of 90 gigawatt-hours (GWh) annually towards SDG&E's Annual Procurement Target (APT) beginning in April 2010. The facility originally operated from 1984 to 1999 as a Qualifying Facility under different owners. Since 1999 the facility has been idle, and its current majority interest owner, Renewable Energy Providers (REP), which controls Blue Lake, has refurbished the facility. The facility is located in Blue Lake, California.

The Amendment modifies the PPA to (i) revise the term length and certain milestone dates to reflect the current project development status; (ii) update the definition of "Green Attributes" to reflect current Commission-approved language; (iii) supplement the project security provision, and (iv) revise the pricing terms. The proposed Amendment has the contract term increasing to 15 years from 10 years and the commercial operation date changing from April 1, 2009 to April 30, 2010. The capacity of the facility and annual quantity of renewable energy to be delivered will not be affected by the proposed Amendment.

REP/Blue Lake requested the Amendment as necessary to complete the project. Due to the credit crisis that occurred in the fall of 2008, the project's principal investor's credit line was curtailed. As a result, in August of 2009, Blue Lake/REP requested the Amendment in order to continue the refurbishment of the plant and to secure replacement financing. Due to the time and new conditions required to secure new financing, the refurbishment of the project has been delayed and project costs have increased requiring the amendment of the original PPA. In negotiating the Amendment, SDG&E was able to review Blue Lake's financial model and documents related to the project's pricing, cost and developer return allowing Blue Lake/REP to show that the increase in price is a direct result of increased project costs.

SDG&E requests that the Commission issue a Resolution containing the following finding:

The Amendment in its entirety is reasonable and payments to be made by SDG&E pursuant to the PPA, as amended, are fully recoverable in rates, subject to the Commission's review of SDG&E's administration of the PPA.

Energy Division examined the Amendment on multiple grounds:⁴

- Consistency with least-cost best-fit methodology identified in SDG&E's RPS Procurement Plan
- Procurement Review Group participation
- Consistency with RPS standard terms and conditions
- Cost reasonableness evaluation
- Cost containment
- Project viability
- Independent Evaluator review
- Compliance with the minimum quantity condition

⁴ Resolution E-4208, which approved the original PPA, found the PPA to be consistent with the SDG&E's RPS Procurement Plan and the Commission's bilateral procurement rules.

- Consistency with the Interim Emissions Performance Standard

Consistency with SDG&E's least-cost best-fit (LCBF) methodology

The least-cost, best-fit (LCBF) evaluation is generally used to establish a shortlist of proposals from SDG&E's solicitation with whom SDG&E will engage in contract negotiations. In this case, a LCBF evaluation was conducted for the amended PPA in order to evaluate its value relative to all of SDG&E's other RPS options. SDG&E's bid evaluation includes a quantitative and qualitative analysis. SDG&E's quantitative analysis or market valuation includes evaluation of price, time of delivery factors, transmission costs, congestion costs, and resource adequacy. SDG&E's qualitative analysis focuses on comparing similar bids across numerous factors, such as location, benefits to minority and low income areas; resource diversity, etc.

The amended PPA was evaluated consistent with LCBF methodology identified in SDG&E's RPS Procurement Plan.

Procurement Review Group (PRG) participation

SDG&E's PRG participants include: the California Department of Water Resources, the Union of Concerned Scientists, the Division of Ratepayer Advocates, the Coalition of California Utility Employees, The Utility Reform Network, and the Commission's Energy Division. SDG&E informed the PRG of the proposed transactions on August 20, 2009 and September 25, 2009. The PRG did not provide any feedback as a basis for disapproval of the Amendment.

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 this Amendment, SDG&E has complied with the Commission's rules for involving the Procurement Review Group.

Consistency with RPS standard terms and conditions (STCs)

In Resolution E-4208, the original PPA was found to be consistent with D.08-04-009. Since the PPA was approved, the Commission approved D.08-08-028. The Amendment contains the required non-modifiable STC modified by D.08-08-028.

The amended PPA includes the Commission adopted RPS standard terms and conditions, including those deemed “non modifiable”.

Cost reasonableness evaluation

The Commission evaluates the reasonableness of each proposed RPS PPA price by comparing the proposed PPA price to a variety of factors including RPS solicitation results and other proposed RPS projects. Using this analysis, the amended Blue Lake PPA is reasonably priced. Confidential Appendix A includes a detailed discussion of the contractual pricing terms, including SDG&E’s estimates of the total contract costs under the amended PPA.

The total all-in costs of the amended PPA are reasonable based on their relation to bids received in response to SDG&E’s 2009 solicitation.

Payments made by SDG&E under the amended PPA are fully recoverable in rates over the life of the amended PPA, subject to Commission review of SDG&E’s contract administration of the amended PPA.

Cost containment

The market price referent (MPR) is used by the Commission to assess the above-market costs of RPS contracts. There is a statutory limit on above-MPR costs which serves as a cost containment mechanism for the RPS program.⁵ Based on a 2010 commercial online date for the project, the 15-year PPA exceeds the 2009 MPR.⁶ The PPA does not meet the eligibility criteria for Above-MPR Funds⁷ (AMFs) established in Pub. Util. Code §399.15(d)(2).⁸ While SDG&E has

⁵ See §399.15.

⁶ See Resolution E-4298.

⁷ The \$/MWh portion of the contract price that exceeds the MPR, multiplied by the expected generation throughout the contract term, represents the total AMFs for a given PPA.

⁸ The following eligibility criteria for AMFs: (1) contract was selected through a competitive solicitation, (2) contract covers a duration of no less than 10 year, (3) contracted project is a new facility that will commence commercial operations after January 1, 2005, (4) contract is not for renewable energy credits, and (5) the above-market costs of a contract do not include any indirect expenses including imbalance

Footnote continued on next page

exhausted its AMFs provided by statute, SDG&E will voluntarily incur the above-MPR costs of the PPA.⁹

Project viability assessment and development status

The Blue Lake facility has begun commercial operation. SDG&E asserts that the Blue Lake project is viable and will provide renewable energy according to the terms and conditions in the amended PPA.

Fuel supply

An independent estimation of the biomass resources found that the area can support 42 multiples of an 11 MW project. Fuel will be transported up to 100 miles with most at 35 miles or less. All fuel is currently being stored on the project site. (See Confidential Appendix A for more details regarding the project's fuel supply.)

Independent evaluator (IE) review of the amended PPA

The Commission requires the use of an IE to ensure that solicitation processes are undertaken in a fair, consistent, and objective manner so that projects put on shortlists and resulting in contracts are chosen based on reasonable and consistent choices. Specifically, the IE's role is to review bid evaluation, monitor negotiations, and review the resulting PPA. SDG&E retained PA Consulting Group as IE for SDG&E's 2009 RPS solicitation. Also, as required, SDG&E submitted an IE Report prepared by PA Consulting with AL 2149-E. An excerpt from the IE's contract-specific evaluation of the amended PPA is attached as confidential Appendix B to this Resolution.

In the IE Report, PA Consulting states that he agrees with SDG&E that the Blue Lake Power contract amendment merits approval and its price is reasonable compared with the offers SDG&E received in the 2009 RPS Solicitation.

energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades.

⁹ On May 28, 2009, the Director of the Energy Division notified SDG&E that it had exhausted its AMF account.

Consistent with D.06-05-039, an independent evaluator (IE) oversaw SDG&E's RPS procurement process.

Contribution to RPS Minimum Quantity Requirements for Short-term Contracts with Existing Facilities

D.07-05-028 established a "minimum quantity" condition on the ability of utilities to count an eligible short-term contract with an existing facility for compliance with the RPS program.¹⁰ In the calendar year that a short-term contract with an existing facility is executed, the utility must also enter into long-term contract(s) or contract(s) with new facilities equivalent to at least 0.25% of the utility's previous year's retail sales.

This amended PPA is considered a long term contract because it is more than 10 years in length. Therefore, the amended PPA will contribute to SDG&E's minimum quantity requirement established in D.07-05-028.

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 for obligated facilities at 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 baseload generation that are at least five years in duration.¹¹

¹⁰ For purposes of D.07-05-028, contracts of less than 10 years duration are considered "short-term," and facilities that commenced commercial operations on or after January 1, 2005 are considered "new."

¹¹ "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).

Generating facilities using certain renewable resources are deemed compliant with the EPS,¹² 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.¹³

The amended Blue Lake PPA is compliant with the EPS because it is for energy from an EPS-compliant renewable technology.

RPS Eligibility and CPUC Approval

Pursuant to Pub. Util. 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 uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.¹⁴

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 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.”¹⁵

¹² D.07-01-039, Attachment 7, p. 4

¹³ D.07-01-039, Attachment 7, p. 7

¹⁴ See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

¹⁵ See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

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 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. Util. 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.

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

FINDINGS AND CONCLUSIONS

1. The amended PPA was evaluated consistent with the least-cost best-fit methodology identified in SDG&E's RPS Procurement Plan.
2. With regards to this Amendment, SDG&E has complied with the Commissions rules for involving the Procurement Review Group (PRG).
3. The amended PPA includes the Commission-adopted RPS standard terms and conditions including those deemed "non-modifiable".
4. The total all-in costs of the amended PPA are reasonable based on their relation to bids received in response to SDG&E's 2009 solicitation.
5. Payments made by SDG&E under the amended PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of SDG&E's administration of the PPA.
6. While SDG&E has exhausted its AMFs provided by statute, SDG&E will voluntarily incur the above-MPR costs of the amended PPA.
7. SDG&E asserts that the Blue Lake project is viable and will provide renewable energy according to the terms and conditions in the amended PPA.
8. Consistent with D.06-05-039, an independent evaluator oversaw SDG&E's RPS procurement process.
9. Procurement pursuant to the PPA is procurement from eligible renewable energy resources for purposes of determining SDG&E'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 PPA to count towards an RPS compliance obligation. Nor shall that finding absolve SDG&E of its obligation to enforce compliance with this PPA.
11. The amended PPA will contribute to SDG&E's minimum quantity requirement established in D.07-05-028.

12. The amended Blue Lake PPA is compliant with the EPS because it is for energy from an EPS-compliant renewable technology.
13. 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.
14. AL 2149-E should be approved effective today without modification.

THEREFORE IT IS ORDERED THAT:

1. San Diego Gas & Electric Company's Advice Letter 2149-E, requesting Commission review and approval of an amendment to a power purchase agreement with Blue Lake Power, LLC, 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 July 29, 2010 the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Blue Lake Amendment and Contract Summary

[Redacted]

Confidential Appendix B

Excerpt from the Independent Evaluator Project Specific-Report¹⁶

[Redacted]

¹⁶ Pages 6-1 through 7-2 of “Confidential Appendix C – Report of the Independent Evaluator on the revised Blue Lake Power contract relative to the results of the 2009 Request for Offers from Eligible Renewable Resources (2009 Renewable RFO)”, PA Consulting Group, submitted with SDG&E AL 2149-E on February 25, 2010