PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #9801
RESOLUTION E-4372
October 28, 2010

REDACTED

R E S O L U T I O N

Resolution E-4372. San Diego Gas & Electric (SDG&E) requests approval of a renewable power purchase agreement with Coram Energy, LLC.

PROPOSED OUTCOME: This Resolution approves SDG&E's request for cost recovery of a renewable energy power purchase agreement (PPA) with Coram Energy, LLC. The PPA is approved without modification.

ESTIMATED COST: Costs of this contract are confidential at this time

By Advice Letter 2186-E filed on July 30, 2010.

SUMMARY

SDG&E's proposed PPA with Coram Energy LLC complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved.

SDG&E filed Advice Letter (AL) 2186-E on July 30, 2010 requesting Commission review and approval of a renewable energy PPA executed with Coram Energy, LLC (Coram). The PPA is the result of SDG&E's 2009 RPS solicitation. The long-term PPA is for 15 years. The CELLC wind facility which is owned and operated by Coram will be the generation source of the wind energy deliveries. The facility is located in the Tehachapi region of California and has been in operation since June 1, 2005. The facility is certified by the California Energy Commission (CEC) as a RPS-eligible facility.

The following table summarizes the agreement:

Generating facility name	Technology Type	Term Years	Minimum Capacity (MW)	Minimum Energy (GWh)	Online Date	Location
CELLC 7.5 MW Tehachapi Wind Project	Wind, existing	15	7.5	27	30 days after CPUC approval	Tehachapi, CA

The Commission approves the proposed PPA because it is consistent with SDG&E's 2009 RPS Procurement Plan, and the costs of the PPA are reasonable in comparison to the bids SDG&E received in its 2009 RPS solicitation. Deliveries from the PPA are reasonably priced and fully recoverable in rates over the life of the PPA, subject to SDG&E's administration of the PPA.

NOTICE

Notice of AL 2186-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

AL 2186-E was not protested.

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 1% of retail sales per year so that 20% of the utility's retail sales are procured from eligible renewable energy resources no later than December 31, 2010.[1]

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[1] *See* Public Utilities (Pub. Utils). Code § 399.15(b)(1).

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.

SDG&E requests approval of a renewable energy contract with Coram

On July 30, 2010, SDG&E filed AL 2186-E requesting Commission approval of a renewable power purchase agreement with Coram, which was the result of SDG&E's 2009 RPS solicitation. The PPA provides that SDG&E will procure RPS-eligible energy from Coram. The RPS-eligible wind energy will be generated at Coram's CELLC 7.5 MW Tehachapi Wind Project wind facility. The facility began operating in 2005 and is certified by the CEC as RPS-eligible facility.[2] Deliveries from the project are currently sold to Southern California Edison (SCE) on a month-to-month basis. Coram will terminate its contract with SCE to fulfill the required delivery terms in the PPA considered herein.

Procurement pursuant to the PPA is expected to contribute a minimum of 27 gigawatt-hours (GWh) annually towards SDG&E's Annual Procurement Target (APT).

SDG&E requests the Commission to issue a resolution that:

1. The proposed agreement is consistent with SDG&E's CPUC-approved RPS Plan and procurement from the Proposed Agreement will contribute towards SDG&E's RPS procurement obligation.
2. SDG&E's entry into the Proposed Agreement and the terms of such agreement are reasonable; therefore, the Proposed Agreement in its entirety and all costs of the Proposed Agreement including for energy, green attributes, resource adequacy, and load uplift are fully recoverable in rates over the life of the Proposed Agreement subject to Commission review of SDG&E's administration of the Proposed Agreement.
3. Generation procured pursuant to the Proposed Agreement constitutes generation from an eligible renewable energy resource for purposes of

[2] The CELLC wind facility originally began operating in 1984 and was repowered in 2005. The facility's CEC certification number is 60029A

determining SDG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewable Portfolio Standard program (Public Utilities Code §§ 399.11, et seq. and/or other applicable law) and relevant Commission decisions.

4. The Proposed Agreement will contribute to SDG&E's minimum quantity requirement established in D.07-05-028.

Energy Division Review Of The Proposed PPA

Energy Division evaluated the PPA for the following criteria:

- Consistency with SDG&E's 2009 RPS Procurement Plan (Plan)
- Consistency with least-cost best-fit methodology identified in SDG&E's RPS Procurement Plan
- Consistency with RPS standard terms and conditions (STC)
- Compliance with the minimum quantity condition
- Cost reasonableness
- Cost containment
- Compliance with the Interim Emissions Performance Standard
- Procurement Review Group (PRG) participation
- Comparison to the results of SDG&E's 2009 solicitation
- Independent Evaluator review
- Project viability

Consistency with SDG&E's 2009 RPS Procurement Plan

Pursuant to statute, SDG&E's RPS Procurement Plan (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.[3] California's RPS statute also requires that the Commission review the results of a

[3] Pub. Utils. Code, Section §399.14(a)(3).

renewable energy resource solicitation submitted for approval by a utility.[4] The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan.[5]

SDG&E's 2009 RPS Plan called for SDG&E to issue a competitive solicitation for electric energy generated by eligible renewable resources that could deliver in 2010, 2011, 2012, or 2013 for preferred terms of 10, 15, or 20 years in length with terms less than 10 years and terms greater than 20 years also being acceptable. Proposals could be for peaking, baseload, dispatchable, or as-available deliveries. SDG&E also stated in its Plan that bilateral offers would be considered if they were competitive when compared against recent RFO offers and provide benefits to SDG&E customers. Additionally, SDG&E's Plan discussed utility plans to pursue renewable energy generation from utility-owned resources.

This PPA is a contract for renewable generation that fits SDG&E's identified renewable resource needs. The proposed Coram PPA is for generation from an operating facility and is expected to be able to provide renewable energy deliveries beginning in 2010 to contribute towards SDG&E's 20 percent RPS requirement.

<u>The PPA is consistent with SDG&E's 2009 RPS Procurement Plan, as approved by D.09-06-018.</u>

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

The LCBF evaluation is used to establish a shortlist of proposals from SDG&E's solicitation with whom SDG&E will engage in contract negotiations. 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. SDG&E used its quantitative and qualitative

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[4] Pub. Utils. Code, Section §399.14.

[5] SDG&E's 2009 RPS Procurement Plan was approved by D.09-06-018 on June 8, 2009.

methodology to evaluate the Coram wind project and the independent evaluator reviewed the evaluation.

The PPA was evaluated consistent with the LCBF methodology identified in SDG&E's 2009 RPS Procurement Plan.

Consistency With RPS Standard Terms And Conditions (STCs)

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, four of which are considered "non-modifiable." The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028.

The PPA includes the Commission adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009 and amended by D.08-08-028.

Compliance With The Minimum Quantity Condition

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.[6] 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 PPA is considered a new, long-term contract because it is more than 10 years in length and the facility began operation after January 1, 2005. Therefore, the Coram PPA will contribute to SDG&E's minimum quantity requirement established in D.07-05-028.

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 Coram PPA is reasonably priced. Confidential Appendix A includes a detailed

[6] 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."

discussion of the contractual pricing terms, including SDG&E's estimates of the total contract costs under the PPA.

The total all-in costs of the 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 PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of SDG&E's administration of the PPA.

Cost containment

The 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.[7] Based on a 2010 commercial online date for the project, the 15-year PPA exceeds the 2009 MPR.[8] The PPA does meets the eligibility criteria for Above-MPR Funds[9] (AMFs) established in Pub. Util. Code §399.15(d)(2).[10] SDG&E has exhausted its AMFs provided by statute, though; thus, SDG&E is not required to procure above-MPR costs.[11] SDG&E is therefore voluntarily entering into the Coram power purchase agreement at a price that exceeds the applicable market price referent as permitted by Public Utilities Code § 399.15(d).

[7] *See* Pub. Utils. Code §399.15.

[8] *See* Resolution E-4298.

[9] 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.

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

[11] On May 28, 2009, the Director of the Energy Division notified SDG&E that it had exhausted its AMFs account.

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) baseload power contracts procured on behalf of California ratepayers. [12]

D.07-01-039 adopted an interim Emissions Performance Standard (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. Generating facilities using certain renewable resources are deemed compliant with the EPS,[13] 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.[14]

<u>The Coram PPA meets the conditions for EPS compliance established in D.07-01-039 because the Coram facility is one of the pre-approved renewable energy technologies listed in D.07-01-039.</u>

Procurement Review Group (PRG) Participation

The Procurement Review Group (PRG) process 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 Commission as an interim mechanism for procurement review.[15] SDG&E provided its PRG with information on the contract negotiations beginning on September 25, 2009, October 23, 2009, and November 23, 2009.

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[12] "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).

[13] D.07-01-039, Attachment 7, p. 4

[14] D.07-01-039, Attachment 7, p. 7

[15] SDG&E's PRG participants are: California Department of Water Resources, California Public Utilities Commission – Division of Ratepayer Advocates, The Utility Reform Network, Union of Concerned Scientists, and Coalition of California Utility Employees

Pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the PPA.

Independent Evaluator (IE) Oversaw SDG&E's RPS Procurement Process

The Commission requires the use of an IE to ensure that solicitation processes are undertaken in a consistent and objective manner so that projects selected for shortlisting and resulting in executed contracts are chosen based on reasonable and consistent logic. Specifically, the IE's role is to review SDG&E's bid evaluation, monitor negotiations, and review the resulting PPA. SDG&E retained PA Consulting (PA) as the IE for SDG&E's 2009 RPS solicitation. Also, as required, SDG&E submitted an IE Report prepared by PA with AL 2186-E.

According to the IE Report, PA performed its duties overseeing the 2009 solicitation. In its IE Report, PA states that it is of the opinion that SDG&E's bid evaluation methodology is reasonable and SDG&E conducted the solicitation in a fair and equitable manner. Also, PA concludes that the Coram contract merits Commission approval based on its price being reasonable in relation to SDG&E's 2009 RFO offers, SDG&E's LCBF evaluation tool, and it is energy from an existing resource.

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

Project Viability

SDG&E believes the Coram project is viable and will be able to fulfill the terms and conditions in the PPA since it is currently operating.

SDG&E asserts that the Coram project is viable and will provide renewable energy according to the terms and conditions in the PPA.

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.[16]

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."[17]

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. 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

[16] *See, e.g.* D. 08-04-009 at Appendix A, STC 6, Eligibility.

[17] *See, e.g.* D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

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 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. 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 PPA was evaluated consistent with the least-cost best-fit methodology identified in SDG&E's 2009 RPS Procurement Plan.
2. The PPA includes the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009 and amended by D.08-08-028.
3. The PPA will contribute to SDG&E's minimum quantity requirement established in D.07-05-028.
4. The total all-in costs of the 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 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. The PPA price exceeds the applicable 2009 market price referent.

7. SDG&E is voluntarily entering into the PPA at a price that exceeds the applicable market price referent as permitted under the Public Utilities Code §399.15.
8. The Coram PPA meets the condition for EPS compliance established in D.07-01-039 because the Coram facility will use one of the pre-approved renewable energy technologies listed in D.07-01-039.
9. Pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the PPA.
10. Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw SDG&E's RPS procurement process.
11. SDG&E asserts that the Coram project is viable and will provide renewable energy according to the terms and conditions in the PPA.
12. 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.
13. 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.
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 2186-E should be approved effective today without modification.

THEREFORE IT IS ORDERED THAT:

1. San Diego Gas & Electric Company's Advice Letter 2186-E, requesting Commission review and approval of a power purchase agreement with Coram Energy, LLC., is approved.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on October 28, 2010; the following Commissioners voting favorably thereon:

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PAUL CLANON
Executive Director

Confidential Appendix A

Contract Summary

[Redacted]