

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #10687
RESOLUTION E-4425
October 20, 2011

REDACTED

R E S O L U T I O N

Resolution E-4425. San Diego Gas & Electric Company requests approval of a renewable energy power purchase agreement with Arlington Valley Solar Energy II, LLC.

PROPOSED OUTCOME: This resolution approves cost recovery for the long-term renewable energy power purchase agreement between San Diego Gas & Electric Company and Arlington Valley Solar Energy II, LLC. The power purchase agreement is approved with a condition.

ESTIMATED COST: Costs of the power purchase agreement are confidential at this time.

By Advice Letter 2273-E filed on July 26, 2011.

SUMMARY

San Diego Gas & Electric Company's renewable energy power purchase agreement with Arlington Valley Solar Energy II, LLC complies with the Renewables Portfolio Standard procurement guidelines and is approved with a condition.

San Diego Gas & Electric Company (SDG&E) filed Advice Letter 2273-E on July 26, 2011, requesting California Public Utilities Commission (Commission) review and approval of a 25 year renewable energy power purchase agreement between SDG&E and Arlington Valley Solar Energy II, LLC. The bilaterally negotiated power purchase agreement is for generation from a new 110 megawatt solar photovoltaic facility that is being developed in Arlington, Arizona. The generation from the facility will be dynamically transferred to the California

Independent System Operator via a pseudo-tie. The facility is expected to achieve commercial operation in 2013.

This resolution approves the Arlington Valley Solar Energy II, LLC power purchase agreement with a condition. The Arlington Valley Solar Energy II power purchase agreement is approved provided that the energy from the Arlington Valley Solar Energy II facility is dynamically transferred into the California Independent System Operator Balancing Area Authority, such that the Arlington Valley Solar Energy II power purchase agreement is considered “bundled” for RPS compliance purposes pursuant to D.10-03-021, as modified by D.11-01-025.

Deliveries under the Arlington Valley Solar Energy II, LLC power purchase agreement are reasonably priced and fully recoverable in rates over the life of the power purchase agreement, subject to Commission review of SDG&E’s administration of the power purchase agreement.

The following table provides a summary of the Arlington Valley Solar Energy II, LLC power purchase agreement:

Generating Facility	Technology Type	Capacity (MW)	Energy (GWh/yr)	Guaranteed Commercial Operation Date	Term (Years)	Location
Arlington Valley Solar Energy II	Solar PV	110 - 127	248 - 270	12/20/2013 ¹	25	Arlington, AZ

BACKGROUND

Overview of the Renewables Portfolio Standard (RPS) Program

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107 and SB 1036.² The RPS program is

¹ Initial deliveries are expected to begin Q1 2013

codified in Public Utilities Code Sections 399.11-399.20.³ 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, 2010.⁴ Furthermore, SB 2 (1X)⁵ mandates that the amount of electricity generated per year from eligible renewable resources be increased to an amount that equals an average of 20% of the total electricity sold to retail customers in California for the period 2011-2013; 25% of retail sales by December 31, 2016; and 33% of retail sales by December 31, 2020.⁶

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

NOTICE

Notice of Advice Letter 2273-E was made by publication in the Commission's Daily Calendar. SDG&E states that copies of the Advice Letter were mailed and distributed in accordance with Section IV of General Order 96-B.

PROTESTS

SDG&E's Advice Letter 2273-E was not protested.

² SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007).

³ All further references to sections refer to Public Utilities Code unless otherwise specified.

⁴ See § 399.15(b)(1).

⁵ Stats. 2011, Ch. 1 (Simitian)

⁶ SB 2 (1X) was signed by Governor Brown on April 12, 2011. The law becomes effective 90 days from the conclusion of the extraordinary session.

DISCUSSION

San Diego Gas & Electric Company requests approval of a renewable energy power purchase agreement with Arlington Valley Solar Energy II, LLC.

On July 26, 2011, San Diego Gas and Electric Company (SDG&E) filed Advice Letter (AL) 2273-E requesting California Public Utilities Commission (Commission) approval of a long-term power purchase agreement (PPA) with Arlington Valley Solar Energy II, LLC (AVSE II). The AVSE II PPA concerns generation from a new solar photovoltaic (PV) facility to be located in Arlington, Arizona. The AVSE II facility will connect directly to the Palo Verde-Hassaymapa substation which is the boundary between the Native Balancing Authority's (Salt River Project Agricultural Improvement and Power District) grid and the California Independent System Operator's grid. The generation from the facility will be dynamically transferred to California Independent System Operator via a pseudo-tie.

The facility is expected to incrementally come online beginning in the first quarter of 2013; thus, generation from the AVSE II facility could count towards SDG&E's RPS requirements in the first compliance period.⁷ The Commission's approval of the PPA will authorize SDG&E to accept future RPS-eligible generation that will contribute towards SDG&E's RPS requirements. The AVSE II project is expected to generate approximately 270 gigawatt-hours (GWh) of RPS-eligible deliveries annually.

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

1. The AVSE II PPA is consistent with SDG&E's CPUC-approved RPS Plan and procurement from the AVSE II PPA will contribute towards SDG&E's RPS procurement obligation.
2. SDG&E's entry into the AVSE II PPA and the terms of such agreement are reasonable; therefore, the AVSE II PPA is approved in its entirety and all

⁷ In addition to raising California's RPS requirement to 33% from 20%, SB 2 (1X) (Stats. 2011 (Simitian)) establishes three different compliance periods, 2011-2013, 2014-2016, and 2017-2020.

costs of the purchase associated with the AVSE II PPA, including for energy, green attributes, and resource adequacy are fully recoverable in rates over the life of the AVSE II PPA, subject to Commission review of SDG&E's administration of the AVSE II PPA.

3. Generation procured pursuant to the AVSE II PPA constitutes generation from an eligible renewable energy resource 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 Renewable Portfolio Standard program (Public Utilities Code §§ 399.11, et seq., and/or other applicable law), Decision 03-06-071, and other relevant Commission decisions.
4. Generation procured pursuant to the AVSE II PPA meets or will meet the product content requirements under Public Utilities Code Section 399.16(b)(1) and is or will be treated as a bundled transaction for purposes of compliance with the California Renewables Portfolio Standard (Public Utilities Code §§ 399.11, et seq.), Decision 03-06-071, Decision 11-01-025, and other applicable Law.
5. The AVSE II PPA will contribute to SDG&E's minimum quantity requirement established in D.07-05-028.
6. Expected AVSE II PPA deliveries are eligible for earmarking treatment under RPS flexible compliance mechanisms.

Energy Division Evaluated the AVSE II PPA on the following criteria:

- Consistency with bilateral contracting rules
- Consistency with SDG&E's 2011 RPS Procurement Plan
- Consistency with SDG&E's Least-Cost, Best-Fit requirements
- Consistency with RPS standard terms and conditions
- Consistency with Tradable Renewable Energy Credit rules
- Consistency with RPS Eligibility Delivery Rules

- Independent Evaluator review
- Cost reasonableness
- Cost containment
- Project viability assessment and development status
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard
- Procurement Review Group participation
- Contribution to minimum quantity requirement for long-term/new facility contracts

Consistency with Bilateral Contracting Rules

According to SDG&E, the parties pursued bilateral negotiations because the proposal was presented to SDG&E in January 2011 when the timing of the next RPS solicitation was unknown and waiting for the solicitation would have delayed the project's online date. SDG&E additionally states that waiting for the next solicitation would have caused a delay resulting in diminished generation deliveries in the first RPS compliance period, which SDG&E has identified as a compliance period where they need additional generation for compliance purposes. Furthermore, SDG&E states that the developer is pursuing a cash grant via the American Recovery and Reinvestment Act of 2009 (ARRA), 1603 Program which requires construction to begin by the end of 2011.⁸ Thus, if SDG&E had delayed consideration of the bilateral offer the project's ability to use the cash grant could have been eliminated.

In addition, SDG&E pursued the bilateral opportunity because it did not anticipate receiving alternative offers from the solicitation that could match the online date and high viability of the bilateral offer. However, SDG&E states that due to its need for near term deliveries if there are offers of similar viability and near term online dates submitted to its 2011 solicitation, it will likely shortlist those projects as well.

⁸ ARRA 1603 Program: Payments for Specified Energy Property in Lieu of Tax Credits: <http://www.treasury.gov/initiatives/recovery/Pages/1603.aspx>

In D.06-10-019, the Commission established rules pursuant to which the IOUs could enter into bilateral RPS contracts. SDG&E adhered to these bilateral contracting rules because the PPA is longer than one month in duration, the PPA was filed by advice letter, the above market costs will not be applied to SDG&E's RPS cost limitation and the contracts are reasonably priced, as discussed in more detail below.

In D.09-06-050, this Commission determined that bilateral agreements should be reviewed according to the same processes and standards as projects that come through a solicitation. Accordingly, as described below, the AVSE II PPA was compared to other RPS offers received in SDG&E's most recent RPS solicitation, bilateral offers, and recently executed agreements; the proposed agreement was reviewed by SDG&E's Procurement Review Group; and an independent evaluator oversaw the project evaluation and PPA negotiation.

The AVES II PPA is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.

Consistency with SDG&E's 2011 RPS Procurement Plan

Pursuant to statute, SDG&E's 2011 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.⁹

California's RPS statute also requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.¹⁰ The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan.¹¹

In SDG&E's 2011 RPS Plan, SDG&E expressed a commitment to contract in excess of its mandated annual procurement targets and goal of 33 percent

⁹ Pub. Utils. Code, Section §399.14(a)(3).

¹⁰ Pub. Utils. Code, Section §399.14.

¹¹ SDG&E's 2011 RPS Procurement Plan was approved by D.11-04-030 on April 14, 2011.

renewables by 2020.¹² SDG&E's 2011 RPS Plan called for SDG&E to issue a competitive solicitation for electric energy generated by eligible renewable resources that could begin delivering in 2011, 2012, 2013, 2014, and 2015 for terms of one month to 20 years in length with terms greater than 20 years also being acceptable. Proposals could be for peaking, baseload, dispatchable, or as-available deliveries. SDG&E additionally expressed preference for projects that could contribute towards SDG&E's Sunrise Powerlink commitment. 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. Last of all, SDG&E's Plan discussed utility plans to pursue renewable energy generation development partnerships and utility-owned resources.

While the PPA will not contribute towards SDG&E's Sunrise Powerlink commitment it is consistent with SDG&E's 2011 RPS Plan because the 25-year PPA is for as-available renewable generation that will begin deliveries in 2013, thus contributing to SDG&E's near-term RPS requirements.

The AVSE II PPA is consistent with SDG&E's 2011 RPS Procurement Plan, as approved by D.11-04-030.

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

In D.04-07-029, the Commission directs the utilities to use certain criteria in their LCBF selection of renewable resources.¹³ The decision offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations. As described in its 2011 RPS Procurement Plan, SDG&E's LCBF bid evaluation includes a quantitative analysis and qualitative criteria. 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.

¹² In D.08-12-058, which approved SDG&E's Sunrise Powerlink, SDG&E committed to procuring 33 percent of its electricity from renewables by 2020.

¹³ See §399.14(a)(2)(B)

While SDG&E negotiated the AVSE II PPA bilaterally, and therefore it did not compete directly with other RPS projects, in AL 2273-E, SDG&E explains that it evaluated the bilateral agreement using the same LCBF evaluation methodology it employs for evaluating bids from solicitations. Thus, SDG&E used its LCBF methodology to evaluate the AVSE II PPA. See the “Cost Reasonableness” section of this resolution for a discussion of how the project compares to SDG&E’s 2011 RPS solicitation, recent bilateral offers, and recently approved contracts. In addition, see Confidential Appendix B for SDG&E’s LCBF evaluation of the project.

The AVSE II PPA was evaluated consistent with the LCBF methodology identified in SDG&E’s RPS Procurement Plan

Consistency with RPS Standard Terms and Conditions

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. More recently in D.10-03-021, as modified by D.11-01-025, the Commission further refined these STCs.

The AVSE II PPA includes the Commission adopted RPS “non-modifiable” standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.

Consistency with tradable renewable energy credits (TREC) Rules

In D.10-03-021, as modified by D.11-01-025, the Commission established rules pursuant to which TRECs can be used for RPS compliance. In these decisions, the Commission determined that transactions should be considered bundled procurement for RPS compliance purposes for the following two delivery options: 1) RECs and energy that are procured from RPS-eligible generators for which the first point of interconnection with the WECC interconnected transmission system is in a California balancing authority area, or 2) transactions using dynamic transfer arrangements with a California balancing authority. According to the decisions, all other RPS procurement arrangements should be considered REC-only transactions at this time.

D.10-03-021, as modified by D.11-01-025, authorizes staff to develop methods, in consultation with the parties, the CAISO, and other balancing authority areas, for

reviewing and evaluating RPS procurement contracts in which a dynamic transfer is an element of the contract. Until such methods for review are adopted, Energy Division staff is authorized to use any and all current methods to evaluate of RPS procurement contracts to review and to classify them as REC-only or bundled contracts, as appropriate.¹⁴

SDG&E states that the AVSE II will connect directly to the Palo Verde-Hassaymapa substation which is the boundary between the Native Balancing Authority's (Salt River Project Agricultural Improvement and Power District ("SRP")) grid and the CAISO grid. The project will then be dynamically transferred to the CAISO via a pseudo-tie.¹⁵ At this time, however, AVSE II has not finalized the necessary agreements to be dynamically transferred via a pseudo-tie, including a Pseudo-Participating Generator Agreement with the CAISO.¹⁶ Without executed pseudo-tie agreements, the Commission cannot make a determination that this is a bundled contract.

Because of the uncertainty resulting from not having pseudo-tie agreement, the Commission requires that SDG&E make a compliance filing to demonstrate that AVSE II has obtained all the necessary agreements, including but not limited to a Pseudo-Participating Generator Agreement with the CAISO, to be dynamically transferred via a pseudo-tie that satisfies the requirements for a bundled transaction established in D10-03-021, as modified by D.11-01-025. SDG&E shall file a Tier 1 advice letter compliance filing with the Commission within 30 days following the receipt of all necessary pseudo-tie agreements, including a Pseudo Participating Generator Agreement between AVSE II and the CAISO. Until the

¹⁴ Ordering paragraph 15 of D.10-03-021, as modified by D.11-01-025.

¹⁵ A dynamic transfer via a pseudo tie arrangement transfers the generator electrically into the attaining (receiving) balancing authority area, which treats the facility like internal generation; i.e., the attaining balancing authority provides "control area services" such as scheduling, balancing, and outage coordination.

¹⁶ A Pseudo-Participating Generator Agreement is an agreement between the generator and the CAISO which allows the generator to schedule and deliver energy as it is generated to the CAISO as an in-area resource.

necessary pseudo-tie agreements are in place, no generation shall be delivered pursuant to the PPA.

Independent Evaluator Review

SDG&E retained independent evaluator (IE) Jonathan Jacobs of PA Consulting Group to oversee SDG&E's bilateral negotiations with AVSE II and to evaluate the overall merits for CPUC approval of the PPA. AL 2273-E included a public and confidential independent evaluator's report.

In the IE report, the IE states that he determined the negotiations between SDG&E and AVSE II were fair and that AVSE II was not given preferential treatment over sellers participating in SDG&E's RPS solicitations. Additionally, in the IE report the IE states that the contract terms appear reasonable and fairly balanced; the pricing is attractive; and that he agrees with SDG&E that the AVSE II PPA merits approval."¹⁷ (See Confidential Appendix C for an excerpt of the IE report.)

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

Cost Reasonableness

The Commission's reasonableness review for RPS PPA prices includes a comparison of the proposed PPA price to other RPS offers received in recent RPS solicitations, bilaterals offers, and recently approved contracts. Using this analysis and the confidential analysis provided by SDG&E in AL 2273-E, the Commission determines that the cost of the AVSE II PPA is reasonable. (See Confidential Appendix B for a detailed discussion of the contractual pricing terms.)

The AVSE II PPA compares favorably to the results of SDG&E's 2009 and 2011 RPS solicitation and other comparable contracts.

¹⁷ Report of the Independent Evaluator on the 110 to 127 MW Arlington Valley Solar contract relative to the results of the 2009 Request for Offers from Eligible Renewable Resources (2009 Renewable RFO) (July 7, 2011)

Payments made by SDG&E under the AVSE II 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

Pursuant to statute, the Commission calculates a market price referent (MPR) to assess whether a proposed PPA has above-market costs.¹⁸ 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.¹⁹ Contracts that meet certain criteria are eligible for above-MPR funds (AMFs).²⁰ Based on a 2013 commercial online date for the AVSE II PPA, the 25-year PPA is below the 2009 MPR. Thus, the AVSE II PPA does not have any above-market costs.

Project Viability Assessment and Development Status

SDG&E evaluated the viability of the AVSE II project using the Commission-approved project viability calculator, which uses standardized criteria to quantify a project's strengths and weaknesses in key areas of renewable project development. SDG&E also received information regarding the project's developer experience and development status. Based on SDG&E's evaluation and the information provided by the developer SDG&E asserts that the AVSE II project is viable and will be developed according to the terms and conditions in the PPA.

¹⁸ See Pub. Util. Code § 399.15(c).

¹⁹ See Pub. Utils. Code §399.15.

²⁰ Under Resolution E-4199, a PPA between a utility and a developer must meet the following requirements for the utility to achieve AMFs eligibility: (1) the PPA must have Commission approval and be selected through a competitive solicitation, (2) it must cover a duration of at least 10 years; (3) it must develop a new or repowered facility commencing operations on or after January 1, 2005; (4) it must not be a purchase of renewable energy credits; and (5) it must not include any indirect expenses as set forth in the statute.

The following is information regarding the project developer and the project's development status:

Developer experience

LS Power is the developer of the project. LS Power has experience developing financing, constructing, and operating conventional energy projects and transmission facilities. Recently, the 10 MW Dover Sun Park solar PV facility, which LS Power developed, began operation.

Resource quality and technology

Based on the average daily solar insolation of the proposed project area, SDG&E describes the project site as being located in a region with one of the best solar resources in the United States in terms of hours of sunshine and solar intensity. Additionally, to confirm the suitability of the site LS Power has had BEW Engineering analyze data to confirm the appropriateness of the site for solar development. The project expects to use commercially demonstrated photovoltaic modules in 1 MW blocks. Lastly, at least 25 MW of the PV panels used in the project must be from a panel supplier in California.²¹

Site control and permitting status

LS Power has secured full site control through easements, rights-of-way, options to lease or purchase, and other agreements and applications. AVSE II has received its major permits including: Certificate of Environmental Compatibility from the Arizona Corporation Commission, Comprehensive Plan Amendment from the Maricopa County Planning and Zoning Commission, and a Special Use Permit from the Maricopa County Planning and Zoning Commission. Additionally, AVSE II has received a CEC Pre-Certification for the facility's RPS eligibility. All remaining permits are expected to be obtained in a timely manner to achieve the conditions precedent in the PPA.

Interconnection and transmission

²¹ Section 2.3(e) of PPA between SDG&E and Arlington Valley Solar Energy II, LLC

All required interconnection studies are complete. An Interconnection Agreement is in negotiation and expected to be executed by December 1, 2011. The Facilities Study conducted by SRP indentified no required network upgrades for the dynamic transfer via pseudo-tie. Additionally, an agreement has been executed with SRP to engineer, procure, and install the Interconnection Facilities identified in the Facilities Study.

Financing Plan

The project is expected to be financed through a combination of debt and equity utilizing a non-recourse project financing structure. Additionally, the developer plans to pursue a cash grant under Section 1603 of ARRA (Payments for Specified Energy Property in Lieu of Tax Credits).

Compliance with the Interim Greenhouse Gas Emissions Performance Standard

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.²²

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.²³

The AVSE II PPA meets the conditions for EPS compliance because it is for intermittent generation with a capacity factor less than 60 percent, whose generation will be delivered into California.

²² “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).

²³ D.07-01-039, Attachment 7, p. 4

Procurement Review Group Participation

The Procurement Review Group (PRG) was initially established in D.02-08-071 as an advisory group to review and assess the details of the IOUs' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission.²⁴ SDG&E asserts that the AVSE II PPA was discussed at PRG meetings in April 2011 and May 2011.

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

Contribution to Minimum Quantity Requirement for Long-Term/New Facility Contracts

D.07-05-028 established a "minimum quantity" condition on the ability of utilities to count an eligible contract of less than 10 years duration for compliance with the RPS program.²⁵ In the calendar year that a short-term contract with an existing facility is executed, the utility must also enter into long-term contracts or contracts with new facilities equivalent to at least 0.25 percent of the utility's previous year's retail sales.

As a new facility, delivering pursuant to long-term contracts, the AVSE II PPA will contribute to SDG&E's minimum quantity requirement established in D.07-05-028.

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

²⁴ SDG&E's PRG includes representatives of the Union of Concerned Scientists, the Coalition of California Utility Employees, The Utility Reform Network, the California Public Utility Commission's Energy Division and Division of Ratepayer Advocates, and the California Department of Water Resources.

²⁵ For purposes of D.07-05-028, contracts of less than 10 years duration are considered "short-term" contracts and facilities that commenced commercial operations prior to January 1, 2005 are considered "existing."

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.²⁶

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.”²⁷

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, neither 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 utilities’ administration of contracts.

²⁶ See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

²⁷ See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

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 AVSE II PPA is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.
2. The AVSE II PPA is consistent with SDG&E's 2011 RPS Procurement Plan, as approved by D.11-04-030.
3. The AVSE II PPA was evaluated consistent with the least-cost best-fit methodology identified in SDG&E's 2011 RPS Procurement Plan.

4. The AVSE II PPA includes the Commission-adopted RPS “non-modifiable” standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as amended by D.11-01-025.
5. Without an executed Pseudo-Participating Generator Agreement, the Commission cannot make a determination that this is a bundled contract.
6. The CEC has determined that the AVSE II PPA meets the CEC’s delivery requirements for RPS eligibility assuming that all eligibility requirements for the RPS are met, including the energy delivered into California from a generator located outside California.
7. Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw SDG&E’s RPS procurement process.
8. The AVSE II PPA compares favorably to the results of SDG&E’s 2011 solicitation, bilateral offers, and recently approved contracts.
9. Payments made by SDG&E under the AVSE II PPA are fully recoverable in rates over the life of the AVSE II PPA, subject to Commission review of SDG&E’s administration of the AVSE II PPA.
10. The AVSE II PPA price is below the applicable 2009 market price referent.
11. The AVSE II PPA does not have any above-market costs.
12. SDG&E asserts that the AVSE II project is viable and will provide renewable energy according to the terms and conditions in the AVSE II PPA.
13. Pursuant to the PPA, at least 25 MW of the photovoltaic panels used in the project must be from a panel supplier in California.
14. The AVSE II PPA meets the conditions for EPS compliance because it is for intermittent generation with a capacity factor less than 60 percent, whose generation will be delivered into California.
15. Pursuant to D.02-08-071, SDG&E’s Procurement Review Group participated in the review of the AVSE II PPA.
16. The AVSE II PPA will contribute to SDG&E’s minimum quantity requirement established in D.07-05-028.
17. Procurement pursuant to the AVSE II 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.

18. 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.
19. 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.
20. AL 2273-E should be approved effective today with a condition.

THEREFORE IT IS ORDERED THAT:

1. San Diego Gas & Electric Company's Advice Letters 2273-E and 2273-E-A, requesting Commission review and approval of a power purchase agreement with Arlington Valley Solar Energy II, LLC, is approved with a condition.
2. San Diego Gas & Electric Company shall file a Tier 1 Advice Letter compliance filing with the Commission within 30 days following the receipt of all necessary pseudo-tie agreements, including a Pseudo Participating Generator Agreement between Arlington Valley Solar Energy II and the California Independent System Operator, to demonstrate that the requirements for classifying procurement under the Arlington Valley Solar Energy II, LLC power purchase agreement as a bundled transaction, pursuant to Decision 10-03-021, as modified by Decision 11-01-025, have been satisfied. Until the necessary pseudo-tie agreements are in place, no generation shall be delivered pursuant to the power purchase agreement between San Diego Gas & Electric Company and Arlington Valley Solar Energy II, LLC.

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 20, 2011; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Evaluation Summary of the AVSE II PPA

[Redacted]

Confidential Appendix B

Details of PPA Evaluation and Summary of the AVSE II
PPA Terms and Conditions

[Redacted]

Confidential Appendix C

Excerpt from Independent Evaluator's Report
regarding SDG&E's PPA with AVSE II²⁸

[Redacted]

²⁸ Confidential Appendix C to Advice Letter 2236-E, Report of the Independent Evaluator on the 110 to 127 MW Arlington Valley Solar contract relative to the results of the 2009 Request for Offers from Eligible Renewable Resources (2009 Renewable RFO) (July 7, 2011)