PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #10825
RESOLUTION E-4446
December 15, 2011

REDACTED

R E S O L U T I O N

Resolution E-4446. San Diego Gas & Electric Company requests approval of a renewable energy power purchase agreement, as amended, with CSolar IV West, LLC.

PROPOSED OUTCOME: This resolution approves cost recovery for the long-term renewable energy power purchase agreement, as amended, between San Diego Gas & Electric Company and CSolar IV West, LLC. The power purchase agreement, as amended, is approved without modifications.

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

By Advice Letter 2257-E filed on May 27, 2011, Advice Letter 2257-E-A filed on October 3, 2011, and 2257-E-B filed on October 4, 2011.

SUMMARY

San Diego Gas & Electric Company's renewable energy power purchase agreement with CSolar IV West, LLC complies with the Renewables Portfolio Standard procurement guidelines and is approved without modification

San Diego Gas & Electric Company (SDG&E) filed Advice Letter 2257-E on May 27, 2011 requesting California Public Utilities Commission (Commission) approval of a 25 year renewable energy power purchase agreement between SDG&E and CSolar IV West, LLC. On October 3, 2011 and October 4, 2011, SDG&E filed supplemental Advice Letters 2257-E-A and 2257-E-B, respectively, requesting approval of an amendment to the power purchase agreement reducing price of the power purchase agreement and submission of an Independent Evaluator report regarding the amendment.

The bilaterally negotiated power purchase agreement, as amended, is for generation from a new 96-150 megawatt solar photovoltaic facility, Imperial Solar Energy Center West, which is being developed near El Centro, Imperial County, California. The Imperial Solar Energy Center West facility is expected to achieve commercial operation in 2015.

This resolution approves the CSolar IV West, LLC power purchase agreement, as amended, without modification. SDG&E's execution of this power purchase agreement, as amended, is consistent with SDG&E's 2011 RPS Procurement Plan, including its resource need, which the Commission approved in Decision 11-04-030. Deliveries under the CSolar IV West, LLC power purchase agreement, as amended, 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 CSolar IV West, LLC power purchase agreement:

Generating Facility	Technology Type	Term (Years)	Maximum Capacity (MW)	Energy (GWh/year)	Online Date	Location
Imperial Solar Energy Center West	Solar concentrating PV, new	25	96 - 150	244 - 381	December 31, 2015	8 miles west of El Centro, CA (Imperial Valley)

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, SB 1036, and SB 2 (1X).[1] The RPS

[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); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

program is codified in Public Utilities Code Sections 399.11-399.20.[2] Under SB 2 (1X), the RPS program administered by the Commission requires each retail seller to increase its total procurement of eligible renewable energy resources so that the amount of electricity generated per year from eligible renewable resources be increased to an amount that equals an average of 20 percent of the total electricity sold to retail customers in California for the period 2011-2013; 25 percent of retail sales by December 31, 2016; and 33 percent of retail sales by December 31, 2020.[3]

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.

NOTICE

Notice of Advice Letter 2257-E, 2257-E-A and 2257-E-B was made by publication in the Commission's Daily Calendar. SDG&E states that copies of the Advice Letters were mailed and distributed in accordance with Section IV of General Order 96-B.

PROTESTS

SDG&E Advice Letter 2257-E was timely protested by the Division of Ratepayer Advocates (DRA) on June 16, 2011. SDG&E responded to the protest on June 23, 2011.

On October 11, 2011, DRA requested to reopen the protest period to comment on supplemental Advice Letter 2257-E-A. On October 12, 2011, Energy Division granted DRA's request to reopen the protest period. SDG&E Advice Letter 2257-

---

[2] All further references to sections refer to Public Utilities Code unless otherwise specified.

[3] SB 2 (1X) becomes effective on December 10, 2011; 90 days after the close of the Legislature's 2011 Extraordinary Session.

E-A was timely protested by DRA on October 21, 2011. SDG&E responded to the protest on October 28, 2011.

DISCUSSION

San Diego Gas & Electric Company requests approval of a renewable energy power purchase agreement, as amended, with CSolar IV West, LLC.

On May 27, 2011, San Diego Gas and Electric Company (SDG&E) filed Advice Letter (AL) 2257-E requesting California Public Utilities Commission (Commission) approval of a long-term power purchase agreement (PPA) with CSolar IV West, LLC (IV West). On October 3, 2011, SDG&E filed supplemental AL 2257-E-A requesting approval of an amendment that reduces the price of the IV West PPA and modifies several other terms.[4] On October 4, 2011, SDG&E filed supplemental AL 2257-E-B to provide a revised Independent Evaluator report that reviews the amendment filed in AL 2257-E-A.

The IV West PPA, as amended, concerns generation from a new concentrating photovoltaic (CPV) facility located approximately five miles west of El Centro, California.[5] The IV West facility will interconnect at the Imperial Valley substation. SDG&E expects that project will provide 140 MW of capacity and

[4] AL 2257-E-A lists the modifications to the IV West PPA as a result of the amendment:

1. Reduces the pricing for the energy delivered under the PPA;
2. Reduces the pricing if the project is constructed using standard PV with hourly tracking instead of with concentrating solar PV with dual-axis tracking;
3. Modifies the conditions upon which the project will be constructed using standard PV with hourly tracking, instead of with concentrating solar PV with dual-axis tracking;
4. Extends the project's Commercial Operation Date in the event that the project is constructed using standard PV with hourly tracking, instead of with concentrating solar PV with dual-axis tracking;
5. Modifies the contract language regarding Dispatch Down;
6. Adds a new definition and terms for Economic Dispatch Down; and
7. Modifies the dates for certain of the conditions precedent to be satisfied.

[5] The IV West PPA has terms and conditions that permit the project to be constructed using standard PV instead of CPV. See Confidential Appendix B for a summary of the PPA's terms and conditions.

generate annual RPS-eligible deliveries of approximately 356 gigawatt-hours (GWh). However, the IV West PPA allows the developer flexibility to construct a facility within the range of 96-150 MW. Additionally, the IV West PPA includes an option for SDG&E to purchase the IV West facility at the end of the PPA term or in the case of a default under the PPA by CSolar IV West.[6] The facility is expected to come online in 2015; thus, Commission approval of the PPA, as amended, will authorize SDG&E to accept future RPS-eligible generation that will contribute towards SDG&E's RPS requirements in the Compliance Period 2014-2016 and its 33 percent RPS mandate.[7]

The IV West project is being developed by Tenaska Solar Ventures, which is an affiliate of Tenaska, Inc.[8] The project will be developed using Soitec's Concentrix™ CPV modules with dual-axis tracking. In AL 2257-E, SDG&E notes that the IV West project will be one of the first utility-scale projects to use CPV.[9] The CPV modules will be manufactured at a new facility to be built in the San Diego area.[10] The IV West facility is expected to provide up to 300 construction

---

[6] SDG&E did not request Commission approval for the exercise of this purchase option in AL 2257-E, nor does this resolution pre-approve SDG&E to exercise the option. As SDG&E states in AL 2257-E it would seek Commission pre-approval before exercising the purchase option.

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

[8] Information about Tenaska Solar Ventures is available here: http://tenaskasolarventures.com/

[9] SDG&E also notes in its reply to SDG&E's October 21, 2011 protest that approval of the PPA will provide technology diversity to SDG&E's portfolio and enable the development and deployment of a new technology that produces more energy on peak than standard PV, providing value to ratepayers.

[10] Soitec press release issued March 10, 2011: http://www.soitec.com/en/news/press-releases/soitec-announces-major-us-cpv-solar-power-project-623/ (accessed October 28, 2011)

jobs, and the new Soitec manufacturing facility is expected to create 450 jobs to California.[11]

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

1. The amended IV West PPA is consistent with SDG&E's CPUC-approved RPS Plan and procurement from the IV West PPA will contribute towards SDG&E's RPS procurement obligation.
2. SDG&E's entry into the amended IV West PPA and the terms of such agreement are reasonable; therefore, the IV West PPA is approved in its entirety and all administrative and procurement costs associated with the IV West PPA, including for energy, green attributes, and resource adequacy, are fully recoverable in rates over the life of the IV West PPA, subject to Commission review of SDG&E's administration of the IV West PPA.
3. Generation procured pursuant to the amended IV West 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) and relevant Commission decisions.
4. The IV West PPA will contribute to SDG&E's minimum quantity requirement established in D.07-05-028.

Energy Division Evaluated the IV West 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

---

[11] Ibid. and Imperial Solar Energy Center West factsheet: http://www.tenaskasolarventures.com/pdf/Solar-Fact-sheet-West.pdf (accessed October 28, 2011)

- 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 generation from the IV West facility was proposed to SDG&E in May of 2010 when the timing of the next RPS solicitation was unknown. Additionally, 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.[12] 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 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 IV West PPA was

[12] Information about the Federal ARRA 1603 Program is available here: ARRA 1603 Program: Payments for Specified Energy Property in Lieu of Tax Credits: http://www.treasury.gov/initiatives/recovery/Pages/1603.aspx

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 IV West 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 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.[13] California's RPS statute also requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.[14] The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan.[15]

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 renewables by 2020.[16] 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 30 years in length. 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

---

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

14 Pub. Utils. Code, Section §399.14.

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

16 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.

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.

The PPA is a contract for renewable generation that fits SDG&E's identified renewable resource needs. The proposed PPA is for as-available generation pursuant to a 25 year contract from a renewable energy facility that is expected to provide renewable energy deliveries beginning in 2015 that will contribute towards SDG&E's RPS requirement.

<u>The IV West PPA is consistent with SDG&E's 2011 RPS Procurement Plan, as approved by D.11-04-030.</u>

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.[17] 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.

SDG&E negotiated the IV West PPA bilaterally and therefore it did not compete directly with other RPS projects. In AL 2257-E, SDG&E explains that it evaluated the bilateral agreement using the same LCBF evaluation methodology it employs for evaluating bids from solicitations and compared IV West's evaluation against its recent RFO offers. Thus, SDG&E used its LCBF methodology to evaluate the IV West 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

[17] *See* §399.14(a)(2)(B)

bilateral offers, and recently executed contracts. In addition, see Confidential Appendix A for SDG&E's LCBF evaluation of the project.

The IV West PPA was evaluated consistent with the LCBF methodology identified in SDG&E's 2011 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, the Commission further refined these STCs in D.10-03-021, as modified by D.11-01-025.

The IV West 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.

Independent Evaluator Review

SDG&E retained independent evaluator (IE) Jonathan Jacobs of PA Consulting Group to oversee SDG&E's bilateral negotiations with IV West and to evaluate the overall merits for CPUC approval of the PPA. AL 2257-E included a public and confidential independent evaluator's report. The IE also evaluated the amended PPA and revised his original report, which SDG&E included in supplemental AL 2257-E-B.

In the original and revised IE report, the IE states that he believes that Tenaska was not provided any advantage over bidders and that the IV West PPA reflects fair negotiations. See the "Cost Reasonableness" and "Project Viability Assessment and Development Status" sections below for additional discussion regarding the IE's analysis of the PPA and project and Confidential Appendix B for an excerpt of the revised IE report.

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

Cost Reasonableness

The Commission's reasonableness review for RPS PPA costs includes a comparison of the proposed PPA's value and price. A PPA's value is determined by the IOU's LCBF methodology and it is compared along with the PPA price to offers received in recent RPS solicitations, recent bilateral offers, and recently approved contracts. In the revised IE report, the IE states that SDG&E's received bids for projects of similar online dates with lower [better] ranking prices in its 2011 solicitation.[18] In addition to a price-only comparison, the IE also performed a market value comparison and found that on a market value (or LCBF) basis the projects compared reasonably to SDG&E's 2011 RPS shortlist.

Based on the Commission's analysis of the PPA's value and the confidential analysis provided by SDG&E in AL 2257-E and supplemental AL 2257-E-A, the Commission determines that the PPA's costs are reasonable. The amended PPA is reasonable because its market valuation is comparable to SDG&E's 2011 RPS solicitation, other comparable contracts, and the project has added value due to the potential for long-term technology diversity. (See Confidential Appendix A for a detailed discussion of the contractual pricing terms.)

<u>The IV West PPA compares favorably to the results of SDG&E's 2011 RPS solicitation and other comparable contracts.</u>

<u>Payments made by SDG&E under the IV West PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of SDG&E's administration of the PPA.</u>

Cost Containment

Pursuant to statute, the Commission calculates a market price referent (MPR) to assess whether a proposed PPA has above-market costs.[19] 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.[20] Contracts that meet certain criteria are

---

[18] Report of the Independent Evaluator on the 96 to 150 MW Imperial Valley West contract relative to the results of the 2009 Request for Offers from Eligible Renewable Resources (2009 Renewable RFO), Jonathan M. Jacobs, (October 4, 2011)

[19] *See* Pub. Util. Code § 399.15(c).

[20] *See* Pub. Util. Code §399.15.

eligible for above-MPR funds (AMFs).[21] Once an electrical corporation has exhausted its AMFs provided by statute, it is not required to procure RPS-eligible generation at above-MPR costs but may voluntarily choose to do so.[22]

Based on the 2015 commercial online date for the IV West PPA, the 25-year PPA exceeds the 2009 MPR. However, the IV West PPA does not meet the eligibility criteria for AMFs since it is not the result of a solicitation.

Since SDG&E has already exhausted its AMFs, it is voluntarily entering into the PPA at a price that exceeds the applicable market price referent as permitted by Public Utilities Code § 399.15(d).

Project Viability Assessment and Development Status

SDG&E asserts that the IV West project is viable and will be developed according to the terms and conditions in the PPA. SDG&E bases its assertion on its evaluation of the project's viability 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. Additionally, SDG&E provided the following information about the project's developer and the project's development status.

Developer experience

Tenaska Solar Ventures is the developer of the project. Tenaska Solar Ventures is an affiliate of Tenaska, Inc which operates 17 natural gas-fired projects representing more than 12,000 MW. Tenaska Solar Ventures personnel have broad experience in all areas of the energy sector. Tenaska additionally has some experience in the installation and management of rooftop solar facilities.

---

[21] Pursuant to Pub. Util. Code §399.15 (d) and 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.

[22] *See* Pub. Util. Code § 399.15(d).

Resource quality and technology

The facilities will use Soitec's Concentrix™ CPV technology. The modules consist of a "triple-junction" solar cell and uses lenses to focus the sunlight onto the solar cells to increase the overall system efficiency.[23] Commercial installations are located in Spain, South Africa, and the State of New Mexico. As stated above the modules are to be manufactured by Soitec in a new facility to be located in the San Diego area. The facility is project to have an annual capacity of 200 MW.

Based on the average daily solar insolation of the proposed project area, 7.232 kWh/m^2/day, SDG&E describes the project site as being located in a region with an excellent long-term solar energy resource.

Site control and permitting status

The proposed facility is to be located on private lands for which Tenaska Solar Ventures has secured full site control through site leases. Tenaska Solar Ventures is pursuing a Right-of-Way grant from the U.S. Bureau of Land Management (BLM) for the project's 230 kV gen-tie that will run from the facility to the Imperial Valley substation. The BLM has issued a Record of Decision granting the requested Right of Way. All necessary permits are expected to be obtained in a timely manner to achieve the conditions precedent in the PPA.

Interconnection and transmission

IV West will interconnect at the Imperial Valley Substation. The Phase I and Phase II CAISO Transmission Studies for the project are complete.

Financing Plan

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

[23] See Soitec's website for more information: http://www.soitec.com/en/products-and-services/solar-cpv/

Compliance with the Interim Greenhouse Gas Emissions Performance Standard

California Pub. Utils. Code §§ 8340 and 8341 require that the Commission consider emissions associated with new long-term (five years or greater) baseload power contracts procured on behalf of California ratepayers. [24]

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.[25]

<u>The IV West PPA meets the conditions for EPS compliance because it is for intermittent generation with a capacity factor less than 60 percent.</u>

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.[26] SDG&E asserts that the IV West PPA was discussed at PRG meetings in August 2010 and December 2010.

<u>Pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the IV West PPA.</u>

---

[24] "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).

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

[26] 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.

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.[27] 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.
<u>As a new facility, delivering pursuant to long-term contracts, the IV West PPA will contribute to SDG&E's minimum quantity requirement established in D.07-05-028.</u>

DRA's protest regarding the appropriate process SDG&E should follow for requesting Commission approval of purchase option is accepted, in part.

DRA recommends that as part of any approval of AL 2257-E, a requirement be included that SDG&E file an application prior to exercising the purchase option[28] in the IV West PPA. SDG&E agrees with DRA in its reply that an application filing is the most likely process that it would follow in seeking approval for any future exercise of the purchase option. SDG&E argues, however, that a resolution does not need to prescribe the exact process at this time.

The Commission agrees with DRA that current rules require SDG&E to use the application process for requesting approval to purchase a renewable generation facility. However, the current process may change or new processes may be developed in the future. Therefore, <u>DRA's protest is accepted, in part, such that if SDG&E chooses to exercise the option, SDG&E shall request and obtain Commission approval to exercise the purchase option by application or by the appropriate process that is in place at the time</u>. The Commission additionally

[27] 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."

[28] The IV West PPA includes an option for SDG&E to purchase the IV West facility at the end of the PPA term or in the case of a default under the PPA by CSolar IV West. The purchase price will be based on the fair market value of the project and be determined when, if ever, SDG&E chooses to exercise the option.

notes that if SDG&E does choose to exercise the purchase option and DRA is of the opinion that SDG&E did not follow the appropriate Commission rules for requesting approval, DRA may protest or comment on SDG&E's filing at that time.

DRA's protest regarding the IV West PPA's amended price is denied.

DRA's recommends that AL 2257-E be rejected because the price of the amended PPA is not competitive with today's market and that SDG&E has no need for additional resources in Compliance Period 2014-2016, as set forth in SB 2 (1X). DRA further argues that if SDG&E did have need for Compliance Period 2014-2016 that SDG&E could fill its energy needs with more cost-competitive contracts that provide equivalent benefits. DRA alternatively recommends that if the Commission does approve AL 2257-E that Commission approval be contingent on the project using standard PV instead of CPV due to it being more competitive in value and price and at a more acceptable price for ratepayers.

In SDG&E's reply to DRA's protest, SDG&E argues that the PPA is competitively priced in comparison to the solar projects that SDG&E shortlisted in its most recent RFO. SDG&E asserts that generation pursuant to the IV West PPA will not necessarily result in oversupply of generation in its Compliance Period 2014-2016. SDG&E explains that the deliveries from the IV West project were assumed in the RPS need projection that DRA cites in its protest.

The Commission agrees with SDG&E that the IV West PPA is reasonable on a value basis in comparison to SDG&E's 2011 shortlist, bilateral offers, and recently executed contracts. Additionally, we agree with SDG&E that it has a potential RPS need that generation from the proposed PPA could satisfy. Thus, <u>DRA's protest for rejection of AL 2257-E based on an uncompetitive price is denied</u>. See Confidential Appendix A for further analysis on SDG&E's RPS need and value in comparison.

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.[29]

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."[30]

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.

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

---

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

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

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 IV West power purchase agreement is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.
2. The IV West power purchase agreement is consistent with SDG&E's 2011 RPS Procurement Plan, as approved by D.11-04-030.
3. The IV West power purchase agreement was evaluated consistent with the least-cost best-fit methodology identified in SDG&E's RPS Procurement Plan.
4. The IV West power purchase agreement 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. Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw SDG&E's RPS procurement process.
6. The IV West power purchase agreement compares favorably to the results of SDG&E's solicitation, bilateral offers, and recently executed contracts.

7. Payments made by SDG&E under the IV West power purchase agreement are fully recoverable in rates over the life of the IV West power purchase agreement, subject to Commission review of SDG&E's administration of the IV West power purchase agreement.
8. The IV West power purchase agreement price exceeds the applicable 2009 market price referent.
9. The IV West power purchase agreement does not meet the eligibility criteria for AMFs since it is not the result of a competitive solicitation.
10. SDG&E is voluntarily entering into the IV West power purchase agreement at a price that exceeds the applicable market price referent as permitted by Public Utilities Code § 399.15(d).
11. SDG&E asserts that the IV West project is viable and will provide renewable energy according to the terms and conditions in the IV West power purchase agreement.
12. The IV West power purchase agreement meets the conditions for EPS compliance because it is for intermittent generation with a capacity factor less than 60 percent.
13. Pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the IV West power purchase agreement.
14. The IV West power purchase agreement will contribute to SDG&E's minimum quantity requirement established in D.07-05-028.
15. DRA's protest is accepted, in part, such that if SDG&E chooses to exercise the option, SDG&E shall request and obtain Commission approval to exercise the purchase option by application or by the appropriate process that is in place at the time.
16. DRA's protest for rejection of AL 2257-E based on an uncompetitive price is denied.
17. Procurement pursuant to the IV West power purchase agreement 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 power purchase

agreement to count towards an RPS compliance obligation. Nor shall that finding absolve SDG&E of its obligation to enforce compliance with this power purchase agreement.

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 2257-E, 2257-E-A, and 2257-E-B should be approved effective today without modification.

THEREFORE IT IS ORDERED THAT:

1. San Diego Gas & Electric Company's Advice Letters 2257-E, 2257-E-A, and 2257-E-B requesting Commission review and approval of a power purchase agreement, as amended, with CSolar IV West, 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 December 15, 2011; the following Commissioners voting favorably thereon:

____
PAUL CLANON
Executive Director

Confidential Appendix A

Evaluation Summary of the IV West PPA

[Redacted]

Confidential Appendix B

Excerpt from Independent Evaluator's Report regarding SDG&E's PPA with IV West[31]

[Redacted]

[31] Excerpt from Confidential Appendix B to Advice Letter 2257-E-B, Report of the Independent Evaluator on the 96-150 MW CSolar IV West contract relative to the results of the 2009 Request for Offers from Eligible Renewable Resources (2009 Renewable RFO) October 4, 2011