

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

**ENERGY DIVISION**

**RESOLUTION E-4259**  
**August 20, 2009**

**PUBLIC**

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

Resolution E-4259. San Diego Gas & Electric Company (SDG&E).

PROPOSED OUTCOME: This Resolution approves an amendment to SDG&E's renewable energy procurement contract with NaturEner Glacier Wind Energy 2, LLC, pursuant to California's Renewables Portfolio Standard (RPS) program. The amendment results in an increase to the contract price.

ESTIMATED COST: Increase to the previously approved power purchase agreement costs. Additional cost recovery authorized

By Advice Letter 2089-E filed on June 1, 2009.

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**SUMMARY**

**San Diego Gas & Electric Company's amended renewable contract complies with the Renewable Portfolio Standard (RPS) procurement guidelines and is approved without modification**

SDG&E filed Advice Letter (AL) 2089-E on June 1, 2009, requesting Commission review and approval of an amendment (Amendment) to an existing power purchase agreement (PPA) between SDG&E and NaturEner Glacier Wind Energy 2, LLC (Glacier 2). The Amendment increases the contract price. All other terms of PPA, as originally filed and approved by the Commission, are unchanged and continue in full force and effect. The request is granted without modification.

<b>Generating Facility</b>	<b>Resource Type</b>	<b>Term</b>	<b>Capacity (MW)</b>	<b>Annual (GWh)</b>	<b>Commercial Online Date</b>	<b>Project Location</b>
Glacier Wind Energy 2	Wind	15 years	103.5	310	12/31/2009	Toole & Glacier County, MT

The amended, levelized contract price is below the 2008 market price referent (MPR) for a 15-year contract with a 2009 commercial online date. Deliveries from this PPA are reasonably priced and fully recoverable in rates over the life of the contract, subject to Commission review of SDG&E's administration of the contract.

### **Confidential information about the contract should remain confidential**

This Resolution finds that certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583, General Order (G.O.) 66-C, and D.06-06-066 should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

### **BACKGROUND**

#### **The RPS Program requires each utility to increase the amount of renewable energy in its portfolio**

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107 and SB 1036. The RPS program is set forth in Pub. Util. Code § 399.11-399.20. An RPS is a market-based policy mechanism that requires a retail seller of electricity purchase a certain percentage of electricity generated by Eligible Renewable Energy Resources (ERR). Under the California RPS, each utility is required to increase its total procurement of ERRs by at least one percent of annual retail sales per year so that, subject to the Commission's rules on flexible compliance, twenty percent of its retail sales are supplied by ERRs by 2010.<sup>1</sup>

#### **SDG&E requests approval of a contract amendment**

On June 1, 2009, SDG&E filed AL 2089-E requesting Commission approval of an amendment to a Commission-approved renewable procurement contract. The Amendment changes only the contract pricing, which will allow the agreement between the parties to remain viable. The quantity of renewable energy to be delivered and the commercial operation date will not be affected by the proposed Amendment. Commission approval of the amendment will facilitate the development of incremental supplies of renewable resources and contribute

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<sup>1</sup> On November 17, 2008, Governor Schwarzenegger signed Executive Order S-14-08, which established a 33 percent PRS target by 2020.

towards the state's renewables procurement and greenhouse gas emission reduction goals required by California's RPS and climate change statutes.<sup>2</sup>

### **SDG&E requests final "CPUC Approval" of contract amendments**

SDG&E requests that Commission approve a resolution which:

1. Approves the proposed Amendment in its entirety.

### **SDG&E's Procurement Review Group participated in the review of the contract amendment**

In D.02-08-071, the Commission required each utility to establish a "Procurement Review Group" (PRG) whose members, subject to an appropriate non-disclosure agreement, would have the right to consult with the utilities and review the details of:

1. Overall transitional procurement strategy;
2. Proposed procurement processes including, but not limited to, RFO; and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review

SDG&E's PRG consists of representatives from: California Department of Water Resources, California Public Utilities Commission – Energy Division, California Public Utilities Commission – Division of Ratepayer Advocates, The Utility Reform Network, and Union of Concerned Scientists.

SDG&E provided information regarding the proposed contract amendment to its PRG on April 16, 2009. Although the Energy Division is a member of the PRG, it reserved its conclusions for review and recommendation of the contract amendment to the advice letter process.

### **NOTICE**

Notice of AL 2089-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.

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<sup>2</sup> California Public Utilities Code sections 399.11-399.20 and California Health and Safety Code 38500-38501, respectively.

## **PROTESTS**

On June 22, 2009, Division of Ratepayer Advocates (DRA) filed a timely confidential response with the Commission.

## **DISCUSSION**

### **Description of the amended contract**

The following table summarizes the substantive features of the amended contract.

<b>Generating Facility</b>	<b>Resource Type</b>	<b>Term</b>	<b>Capacity (MW)</b>	<b>Annual (GWh)</b>	<b>Commercial Online Date</b>	<b>Project Location</b>
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On May 5, 2009, the Amendment was executed by the parties to increase the project's previously approved contract price. In AL 2089-E, SDG&E states that an increased contract price will allow Glacier 2 to continue development of the project as planned. The original PPA<sup>3</sup> is otherwise unchanged. See Confidential Appendix A for a detailed description of the Amendment.

SDG&E and NaturEner completed open-book negotiations for the Amendment. To substantiate their need for a price increase, NaturEner provided pro formas, information regarding changes in costs, and their assumptions that they based their financial plans on. Specifically, SDG&E and the Commission were provided project pro formas under various scenarios: the original financing plan; revised financing plan with updated assumptions without a price increase; and revised financing plan with updated assumptions with a price increase.

SDG&E performed a detailed review of Glacier 2's pricing, costs, and developer returns to ensure that SDG&E ratepayers will be paying a reasonable rate. Based on their review, SDG&E states that they are "confident that the cost estimates that form the basis for the proposed Amendment are current, accurate and allow

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<sup>3</sup> The original PPA was filed by AL 1997-E on June 4, 2008, and was approved by Resolution E-4192 on October 2, 2008

for a reasonable financial return such that successful project financing and timely construction, as originally scheduled, can be expected".<sup>4</sup>

### **The project and PPA remain viable**

The project continues to develop towards full commercial operation. Glacier 2 has all permits in place that are necessary to develop and operate the facility, and full site control has been obtained. All transmission studies have been completed and the required network upgrades including construction of a gen-tie, have been completed or are in progress. Additionally, turbines have been ordered and project construction has started. Last of all, Glacier 2 is being developed by the same development team that developed the Glacier Wind Energy 1 facility which began operating in December 2008.

### **DRA's response is resolved**

DRA filed a confidential response to AL 2089-E. In response to DRA's response, SDG&E filed Substitute Sheets for AL 2089-E to provide clarification to AL 2089-E. Thus, the issue is resolved.

### **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.

On August 3, 2009, The Utility Reform Network (TURN) and the Coalition of California Utility Employees (CCUE) filed joint comments on draft Resolution E-4259. In their comments TURN/CCUE recommend that the Commission withhold approval of this contract pending the outcome of the current legislative session. TURN/CCUE assert that proposed SB 14 (Simitian) and Assembly Bill (AB) 64 (Krekorian) may make the proposed structure ineligible for the RPS program. TURN/CUE argue that the Resolution should not be approved until

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<sup>4</sup> SDG&E Advice Letter 2089-E, p. 2, filed June 1, 2009

the outcome of the pending legislation is known.

TURN/CCUE further argue that SDG&E has a large number of contracts that would be affected by the pending legislation and/or the proposed Tradeable Renewable Energy Credits (TREC) Decision in R.06-02-012 such that SDG&E would exceed the proposed TREC limits of either the proposed legislation or Decision.

TURN/CCUE also express further concern regarding the Glacier 2 contract and similar SDG&E contracts arguing that they do not benefit California's environment or economy. They assert that such contracts have little, if any benefits to California customers with the primary beneficiaries being NaturEner, the state of Montana, and SDG&E.

On August 10, 2009, SDG&E and NaturEner submitted reply comments. Both SDG&E and NaturEner argue that the contract price amendment is reasonable and recommend that TURN/CCUE's comments should be rejected.

With regard to TURN/CCUE's comments concerning SB 14 and AB 64, the Commission recognizes that certain steps would be necessary, such as changes to the CEC RPS delivery guidelines in its RPS Eligibility Guidebook, if the bills were to modify current law. However, as a general matter, the Commission does not base its decision making on pending legislation, which is often amended numerous times before being adopted and may never become law. The Commission must base its decision making on current, existing law. It is speculative to assume that SB14, AB 64, or any new RPS bill, will be enacted into law or, even if it is, that it will be enacted in its current form. In short, the Commission will not withhold approval of this reasonable contract based on speculation that SB14 or AB 64 may become law in its current form. Similarly, the Commission will not withhold approval of this contract because it may be inconsistent with a proposed Commission decision.

TURN/CCUE's concern regarding the economic and environmental benefit of the Glacier 2 PPA does not provide grounds for the Commission to deny cost recovery of the contract. The Glacier 2 contract meets the requirements of the program as defined in statute, Commission decisions, and by the CEC's eligibility rules. It is not the Commission's policy to layer on an additional de facto eligibility requirement based on the location of the facility, as TURN/CCUE would essentially have us do. To do so in a resolution will create unacceptable regulatory uncertainty. Moreover, such policy level questions are not

appropriate to address by resolution and are best examined in the RPS proceeding.

## **FINDINGS**

1. SDG&E filed AL 2089-E on June 1, 2009 requesting Commission review and approval of an amendment to its renewable energy contract with NaturEner Glacier Wind Energy 2, LLC.
2. The original contract between SDG&E and NaturEner Glacier Wind Energy 2 LLC was approved on October 2, 2008 by Resolution E-4192.
3. The RPS Program requires each utility, including San Diego Gas & Electric (SDG&E), to increase the amount of renewable energy in its portfolio to 20 percent by 2010, increasing by a minimum of one percent per year.
4. Division of Ratepayer Advocates (DRA) filed a response to AL 2091-E on June 22, 2009.
5. SDG&E filed Substitute Sheets on June 25, 2009 to provide clarification to AL 2091-E in response to DRA's response.
6. DRA's response is addressed and resolved.
7. On August 3, 2009 The Utility Reform Network (TURN) and Coalition of California Utility Employees (CCUE) commented on the Draft Resolution. On August 10, 2009 SDG&E and NaturEner USA, LLC filed reply comments.
8. Procurement pursuant to the amended contract is procurement 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 Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.) ("RPS"), or other applicable law.
9. The payments made under the amended contract including all renewable procurement and administrative costs identified in Section 399.14(g) shall be recovered in rates.
10. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should not be disclosed. Accordingly, the confidential appendices, marked "[REDACTED]" in the redacted copy, should not be made public upon Commission approval of this Resolution.
11. The amended contract is reasonable and should be approved without modification.

12. AL 2089-E should be approved effective today.

**THEREFORE IT IS ORDERED THAT:**

1. San Diego Gas and Electric Company's Advice Letter 2089-E, requesting Commission review and approval of an amendment to its renewable energy contract with Glacier Wind Energy 2, LLC, is approved.
2. The payments made under the amended contract between San Diego Gas & Electric Company and Seller are reasonable and in the public interest; accordingly, the payments to be made by San Diego Gas & Electric Company are fully recoverable in rates over the life of the project, subject to Commission review of San Diego Gas & Electric Company's administration of the contract.
3. 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 August 20, 2009; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON  
PAUL CLANON  
Executive Director

MICHAEL R. PEEVEY  
PRESIDENT  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners



## **Confidential Appendix A**

### **Summary of Contract Amendment**

**[REDACTED]**

## **Confidential Appendix B**

### **Independent Evaluator's Contract-Specific Assessment<sup>5</sup>**

**[REDACTED]**

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<sup>5</sup> Excerpt from "San Diego Gas & Electric Company – Report of the Independent Evaluator on the Naturener Glacier 2 contract relative to the results of the 2008 Request for Offers from Eligible Renewable Resources (2008 Renewable RFO)" (PA Consulting Group, prepared by Jonathan M. Jacobs, May 28, 2009)