

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

**ENERGY DIVISION**

**RESOLUTION E-4260  
September 24, 2009**

Redacted

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

Resolution E-4260. San Diego Gas & Electric Company

PROPOSED OUTCOME: This Resolution approves cost recovery for a San Diego Gas & Electric short-term renewable energy power purchase agreement with PacifiCorp. The agreement is approved without modifications.

ESTIMATED COST: Actual costs of this contract are confidential at this time.

By Advice Letter 2091-E filed on June 5, 2009.

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**SUMMARY**

**San Diego Gas & Electric Company's PacifiCorp contract complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved.**

San Diego Gas & Electric Company (SDG&E) filed Advice Letter 2091-E on June 5, 2009 requesting Commission review and approval of renewable energy power purchase agreement (PPA) executed with PacifiCorp. The PPA is a short-term, bilateral contract for a portion of the generation from four wind facilities operating in PacifiCorp's territory. The contract term covers an overall period from October 1, 2009 through December 31, 2010. Within term of the contract there are three separate quarterly delivery periods (Q4 2009, Q2 2010, and Q4 2010). The wind facilities included in the PPA all began operating after January 1, 2005 and are located in Idaho, Oregon, and Washington.

Generating facilities	Technology Type	Term (Years)	Minimum Capacity (MW)	Minimum Energy (GWh)	Contract Delivery Date	Location
Wolverine Creek, Marengo, Marengo Wind II, and Leaning Juniper	Wind, operating	Q4 2009; Q2 2010; Q4 2010	100	221	Begins October 1, 2009	Idaho, Oregon, and Washington

The advice letter was protested by the Division of Ratepayer Advocates; the Commission rejects the protest.

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.

Pursuant to D.06-06-066 and the decision's Appendix I "IOU Matrix", this Commission adopted a "window of confidentiality" for individual contracts for RPS energy or capacity. Specifically, this Commission determined that RPS contracts should be confidential for 3 years from the date the contract states that energy deliveries begin, except contracts between IOUs and their own affiliates, which should be public.

**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 Public Utilities (Pub. Util.) Code Sections 399.11-399.20. An RPS is a market-based policy mechanism that requires a retail seller of electricity to increase a

certain percentage of electricity in its portfolio that is 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 twenty percent of its retail sales are supplied by ERRs by 2010.<sup>1</sup>

In response to SB 1078 and SB 107, the Commission has issued a series of decisions that establish the regulatory and transactional parameters of the investor owned utility (IOU) renewables procurement program.<sup>2</sup>

- On June 19, 2003, the Commission issued its “Order Initiating Implementation of the Senate Bill 1078 Renewable Portfolio Standard Program,” D.03-06-071.
- In D.03-06-071, the Commission allowed utilities to enter bilateral contracts under certain conditions. In D.06-10-019 the Commission clarified the conditions required under D.03-06-071 and added the requirement that all bilaterals must be submitted to the Commission for approval by advice letter. More recently, in D.09-06-050, this Commission determined that bilateral RPS contracts should be evaluated using the same methods and criteria as are used to review contracts that result from a competitive solicitation.
- Instructions for utility evaluation of each offer to sell ERRs requested in an RPS solicitation were provided in D.04-07-029, as required by Pub. Util. Code Section 399.14(a)(2)(B). The bid evaluation methodology is known as ‘least-cost, best-fit’ (LCBF).
- The Commission adopted standard terms and conditions (STCs) for RPS power purchase agreements in D.04-06-014, as required by Pub. Util. Code Section 399.14(a)(2)(D). These STCs are compiled in D.08-04-009, as modified by D.08-08-028, and as a result there are now thirteen STCs of which four are non-modifiable.
- In D.06-05-039, the Commission required participation of an Independent Evaluator (IE) in the IOU’s competitive RPS procurement process. The IE’s

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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.

<sup>2</sup> RPS decisions are available on the Commission’s RPS website:

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

role is to ensure that the IOU's RPS solicitation is undertaken in a fair, consistent, and objective manner. The IE also provides additional oversight during contract negotiations.

- D.06-10-050, as modified by D.07-03-046, outlined the RPS reporting and compliance methodologies and rules. In this decision, the Commission established methodologies to calculate a load serving entities' (LSE) initial baseline procurement amount, annual procurement target (APT) and incremental procurement amount (IPT).
- The Commission adopted a market price referent (MPR) methodology in D.04-06-015 for determining the utility's share of the RPS seller's bid price (the contract payments at or below the MPR), as defined in Pub. Util. Code Section 399.14(a)(2)(A) and 399.15(c). The Commission refined the MPR methodology in D.05-12-042 and D.08-10-026. Resolutions adopted MPR values for the 2005, 2006, 2007, and 2008 RPS solicitations.<sup>3</sup>
- In D.07-01-039, the Commission established a greenhouse gas emissions performance standard (EPS) for new, long-term energy commitments. The EPS requires that the emissions resulting from the contract do not exceed the GHG emissions of a combined-cycle gas turbine power plant.
- In D.07-05-028, the Commission established a minimum quota for contracting with new facilities or executing long-term contracts for RPS-eligible generation. Specifically, for each calendar year, in order for an LSE to count deliveries from contracts of less than 10 years' duration with RPS-eligible facilities that commenced commercial operation prior to January 1, 2005 for RPS compliance, they must enter into contracts of at least 10 years' duration and/or short-term contracts with facilities that commenced commercial operation on or after January 1, 2005 for energy deliveries equivalent to at least 0.25% of that LSE's prior year's retail sales.

### **The Commission has established RPS bilateral procurement guidelines**

While the focus of the RPS program is procurement through competitive solicitations, D.03-06-071<sup>4</sup> allows for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process. Specifically, D.03-06-071 states that bilateral contracts will only be allowed if they do not

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<sup>3</sup> MPR resolutions are available here:

<http://www.cpuc.ca.gov/PUC/energy/Renewables/mpr>

<sup>4</sup> [http://www.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/27360.htm](http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/27360.htm)

require Public Goods Charge (PGC) funds. In D.06-10-019, the Commission interprets D.03-06-071, stating that bilaterals are not subject to the MPR, not eligible for Supplemental Energy Payments (SEPs)<sup>5</sup>, must be at least one month in duration, and must be deemed reasonable. Further, bilateral contracts of any length must be submitted to the Commission for approval by advice letter.<sup>6</sup>

More recently, in D.09-06-050, this Commission determined that bilateral RPS contracts should be evaluated using the same methods and criteria as are used to review contracts that result from a competitive solicitation. AL 2091-E, however, was submitted before D.09-06-050 was adopted, thus the Commission conducted its review of the contract based the previous bilateral decisions. Specifically, the contract was evaluated based on the following four requirements, as mentioned above:

- The contract was submitted for approval by advice letter
- The contract does not get applied to an IOU's cost limitation
- The contract is at least one month in duration
- The Commission deems the contract reasonable.

### **The Commission has established rules for short-term, existing RPS contracts**

The RPS legislation and program rules have always expressed a preference for long-term, as opposed to short-term, RPS contracts because it is widely understood that long-term contracts are an important tool in developing new RPS-eligible generation facilities.<sup>7</sup> The original RPS legislation, SB 1078, prohibited the solicitation of short-term contracts unless the CPUC approved of a contract of shorter duration. In D.03-06-071, the CPUC reaffirmed the requirement for the utilities to only offer contracts of 10, 15 and 20 years duration in their annual solicitations. Bidders, however, could offer shorter term contracts, which would be subject to CPUC-approval.

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<sup>5</sup> Since D.06-10-019 was adopted, SB 1036 eliminated the SEP fund for above-MPR RPS resources, and instead requires the Commission to approve above-MPR costs in rates up to a prescribed cost limitation. As with the SEPs program, only contracts that are negotiated through a competitive solicitation are eligible for above-market funds (AMFs).

<sup>6</sup> D.06-10-019 p. 31

<sup>7</sup> Long-term contracts are at least 10 years in duration

SB 107, codified in PU Code §399.14(b)(2), both made explicit our ability to allow short-term contracts to fulfill RPS obligations and put conditions on the use of such contracts.<sup>8</sup> Before the Commission may approve an RPS contract of less than ten years' duration, the Commission must establish "for each retail seller, minimum quantities of eligible renewable energy resources to be procured either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005." On May 3, 2007, the Commission approved D.07-05-028<sup>9</sup> establishing the minimum quantity requirement.

### **Energy from RPS facilities located out-of-state must be delivered to California**

Out-of-state renewable energy facilities that have their first points of interconnection to the transmission network outside of California must satisfy all of the following additional requirements:<sup>10</sup>

1. It is connected to the transmission network within the Western Electricity Coordinating Council (WECC) service territory.
2. It commences initial commercial operation after January 1, 2005.
3. Electricity produced by the facility is delivered to an in-state location.
4. It will not cause or contribute to any violation of a California environmental quality standard or requirement.
5. If the facility is outside of the United States, it is developed and operated in a manner that is as protective of the environment as a similar facility located in the state.
6. It participates in the Western Renewable Energy Generation Information System (WREGIS), the accounting system to verify compliance with the renewables portfolio standard by retail sellers

For each advice letter requesting Commission approval of a PPA with an out-of-state RPS facility, the California Energy Commission (CEC) provides written documentation to the Commission addressing whether a proposed RPS contract's delivery structure would be eligible pursuant to the guidelines in the

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<sup>8</sup> An additional condition is not addressed in this section: short-term contracts were ineligible for SEPs and now are ineligible for AMFs.

<sup>9</sup> [http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/67490.PDF](http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/67490.PDF)

<sup>10</sup> Public Resources (PR) Code 25741(b)(2)(B)

CEC's Guidebook. See Appendix A for confirmation that the PPA is compliant with the CEC's RPS Eligibility Guidebook.<sup>11</sup>

**RPS statute requires the Energy Commission to implement a tracking system to verify compliance with the RPS**

To verify compliance with the RPS, SB 1078 charged the CEC with designing and implementing an accounting system "to verify compliance with the renewable portfolio standard by retail sellers, to ensure that electricity generated by an eligible renewable energy resource is counted only once for the purpose of meeting the RPS of this state or any other state, and to verify retail product claims in this state or any other state."<sup>12</sup>

WREGIS, designed to fulfill the CEC's obligation to track and verify renewable energy generation, was launched in June 2007. WREGIS generates WREGIS Certificates, or renewable energy credits (RECs), which represent that one megawatt hour of renewable energy was generated. Consistent with the CEC's RPS Eligibility Guidebook, 2008 was the first calendar year that WREGIS data was reported to the Energy Commission to verify RPS procurement. All generating facilities, retail sellers, procurement entities, and third parties participating in California's RPS were required to register with WREGIS by January 1, 2008, with the exception of California's three large IOUs,<sup>13</sup> which must have registered with and begun to use WREGIS to verify RPS compliance by May 1, 2008.

**SDG&E requests approval of renewable energy contract**

On June 5, 2009, SDG&E filed AL 2091-E requesting Commission approval of a renewable power procurement agreement with PacifiCorp.

The Commission's approval of the PPA will authorize SDG&E to accept future deliveries of renewable resources that will contribute towards the renewable

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<sup>11</sup> *Renewables Portfolio Standard (RPS) Eligibility Guidebook*  
(<http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF>) (THIRD Edition), publication # CEC-300-2007-006-ED3-CMF, January 2008.

<sup>12</sup> Public Utilities Code Section 399.13 (b), as enacted by SB 1078

<sup>13</sup> California's three largest investor-owned utilities are: Pacific Gas and Electric, San Diego Gas & Electric, and southern California Edison.

energy procurement goals required by California's RPS statute.<sup>14</sup> Procurement from PacifiCorp is expected to contribute a minimum of 221 GWh annually towards SDG&E's APT in 2009 and 2010.

### **SDG&E requests "CPUC Approval" of PPA**

SDG&E requests a Commission Resolution containing the following findings:

1. Approval of the proposed agreement in its entirety, including approval of the full cost recovery in rates through the Energy Resource Recovery Account (ERRA) mechanism of all payments to be made by SDG&E in association with this contract subject to Commission review of SDG&E's administration of the Proposed Agreement.
2. Any generation procured pursuant to the proposed agreement 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 Renewables Portfolio Standard program (Public Utilities Code §§ 399.11, et seq. or other applicable law) and relevant Commission decisions.
3. Recovery of any costs that should accrue to SDG&E should any part of this structure be classified as a derivative subject to mark-to-market treatment under FASB Statement 133.
4. The PPA does not constitute a Tradable Renewable Energy Credit (TREC).
5. Any energy and green attribute deliveries made prior to final CPUC approval will count fully toward SDG&E's RPS goals.

SDG&E's Procurement Review Group participated in review of the contracts. 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

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<sup>14</sup> California Public Utilities Code Section 399.11 et seq., as interpreted by D.03-07-061, the "Order Initiating Implementation of the Senate Bill 1078 Renewables Portfolio Standard Program", and subsequent Commission decisions in Rulemaking (R.) 04-04-026.



3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review.

SDG&E's PRG was formed on or around September 10, 2002. Current participants include representatives from the Commission's Energy Division, the Division of Ratepayer Advocates (DRA), The Utility Reform Network, the Union of Concerned Scientists, and the California Department of Water Resources.

Discussions with SDG&E's PRG regarding a short-term PPA between SDG&E and PacifiCorp occurred on several occasions, with the earliest discussions taking place on July 9, 2007. Discussions occurred at several subsequent meetings with final discussions taking place May 21, 2009 when SDG&E briefed the PRG concerning the final discussions with PacifiCorp.

Although Energy Division is a member of the PRG, it reserved its conclusions for review and recommendation on the PPA to the advice letter process.

## **NOTICE**

Notice of AL 2091-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the advice letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

## **PROTESTS**

Advice Letter 2091-E was protested by DRA on June 25, 2009. DRA protests this advice letter on the grounds that the PPA is inconsistent with California's RPS program statute Pub. Util. Code Section 399.13(b)<sup>15</sup>. DRA asserts that PacifiCorp has made claims on its website regarding the facilities that are contracted to deliver generation to SDG&E under this PPA. DRA recommends that the Commission reject the advice letter until PacifiCorp has demonstrated that it has "ceased and desisted from the marketing, reporting, and representing of these wind facilities in its renewable portfolio for the entire duration of this contract." Additionally, DRA recommends that conditions be added to the contract to

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<sup>15</sup> Pub. Util. Code Section 399.13(b) states the CEC shall implement an accounting system to verify compliance with the RPS by retail sellers to ensure that an eligible renewable resource is only counted once, certify renewable energy credits produced by eligible renewable energy resources, and to verify retail sellers.

ensure that renewable energy under contract is not double counted for RPS compliance.

SDG&E and PacifiCorp responded to DRA's protest on or about July 2, 2009. SDG&E replies that DRA's claims lack merit and cites the terms of the PPA and recently added language on PacifiCorp's website to refute DRA's protest. PacifiCorp replies that on July 2, 2009 it added language to its website in several locations to ensure that it is clear that it does not engage in the double counting, double claiming, or double selling of renewable energy attributes.

## **DISCUSSION**

### **Description of the project**

The following table summarizes the substantive features of the PPA. See Confidential Appendix C for a detailed discussion of contract price, terms, and conditions:

<b>Generating facilities</b>	<b>Technology Type</b>	<b>Term</b>	<b>Minimum Capacity (MW)</b>	<b>Minimum Energy (GWh)</b>	<b>Contract Delivery Date</b>	<b>Location</b>
Wolverine Creek, Marengo, Marengo II, and Leaning Juniper	Wind, operating	Q4 2009; Q2 2010; and Q4 2010	100	221	Begins October 1, 2009	Idaho, Oregon, and Washington

The short-term bilateral PPA is for firm power and green attribute deliveries at Palo Verde. The contract is for a minimum total of 221 GWh. This is a portion of the total expected output from the above listed facilities; thus if a facility has a below normal wind year, it could be made up by the other facilities in the PPA. The PacifiCorp facilities are operating wind facilities located in the states of Idaho, Oregon, and Washington. The facilities are all interconnected and operating. The PacifiCorp contract price is reasonable.

**Energy Division examined the contract on multiple grounds:**

- PPA's consistency with SDG&E's Commission approved 2008 RPS Procurement Plan
- Compliance with RPS bilateral guidelines
- Conformance with Commission adopted standard terms and conditions
- Reasonableness of the levelized price
- Sufficient showing that the project is viable relative to other projects that were bid into the 2008 solicitation
- Consistency with Emissions Performance Standard
- Consistency with short-term, existing RPS contract requirements

**The PPA is consistent with SDG&E's Commission adopted 2008 RPS Plan**

California's RPS statute requires the Commission to review the results of a renewable energy resource solicitation submitted for approval by a utility.<sup>16</sup> The Commission will then accept or reject proposed PPAs based on their consistency with the utility's approved renewable procurement plan (Plan). SDG&E's 2008 Plan expresses SDG&E's commitment to meet the mandate of delivering 20% of its retail sales from renewable resources by 2010 using a diversified portfolio of technologies. The Commission conditionally approved SDG&E's 2008 RPS procurement plan in D.08-02-008. As ordered by D.08-02-008, on February 29, 2008 SDG&E filed and served its amended 2008 Plan. The proposed PPA is consistent with SDG&E's Commission-approved RPS Plan.

PPA fits with identified renewable resource needs

SDG&E's 2008 RPS Plan called for SDG&E to issue a competitive solicitation for electric energy generated by eligible renewable resources that could deliver in 2009, 2010, 2011, or 2012 for terms ranging from spot market up to 20 years. Proposals could be for peaking, baseload, dispatchable, or as-available deliveries. SDG&E also stated that bilateral offers would be considered if they were competitive when compared against recent RFO offers and provide benefits to SDG&E customers. The proposed PacifiCorp PPA fits SDG&E's identified renewable resource needs. As operating facilities, they will be able to provide

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<sup>16</sup> Pub. Util. Code, Section §399.14

renewable energy deliveries in 2009. Additionally, the PPA provides for firm energy deliveries.

PPA selection is consistent with least-cost best-fit (LCBF) requirements

The Commission's LCBF decisions direct the utilities to use certain criteria to evaluate and rank projects bid into a competitive solicitation. They offer guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence contract negotiations.

SDG&E's LCBF bid review process used for its 2008 solicitation is in compliance with the applicable Commission decisions. SDG&E's LCBF analysis evaluates both quantitative and qualitative aspects of each proposal to estimate its value to SDG&E's customers and relative value in comparison to other proposals. While the PPA was negotiated bilaterally, SDG&E compared the PPA to the offers it received in its 2008 RPS solicitation using the same LCBF methodology.

Quantitative Assessment

SDG&E quantitatively evaluates bids based on a market valuation approach. The calculation of an "all-in price" is based on capacity and energy prices, time of delivery cost adjustment, transmission cost adder, resource adequacy, congestion cost adders, and duration equalization adders.

The market valuation for the PacifiCorp contract is favorable in comparison to the bids in SDG&E's 2008 solicitation. See Confidential Appendix B for more detailed comparison of PacifiCorp to SDG&E's 2008 bids.

Qualitative factors were considered during project evaluation

SDG&E considered qualitative factors to differentiate between bids of similar cost. Possible qualitative factors considered in reviewing projects include, but are not limited to: location, benefits to minority and low income areas, resource diversity, promotion of stable electricity prices, public health, environmental benefits, and new employment opportunities.

**The PPA is in compliance with RPS bilateral guidelines**

The proposed PPA is consistent with Commission decisions regarding RPS bilateral contracts for the following reasons:

- 1) The PPA does not require above-MPR funds (AMFs)
- 2) The PPA was filed by advice letter; and
- 3) The PPA term length is longer than one month in duration

### **Consistency with adopted standard terms and conditions**

The proposed PPA conforms to the Commission's decisions requiring STCs for RPS contracts.

#### "May Not be Modified" Terms

The PPA does not deviate from the non-modifiable terms and conditions.

#### "May be Modified" Terms

During the course of negotiations, the parties identified a need to modify some of the modifiable standard terms in order to reach agreement. The changes were based upon mutual agreement reached during negotiations.

### **PPA price is reasonable and recoverable in rates**

The PacifiCorp contract price is reasonable based on its relation to SDG&E's 2008 solicitation bids.<sup>17</sup> Confidential Appendix B shows that the PacifiCorp contract price compares favorably both to all bids in SDG&E's 2008 solicitation as well as to its short-listed bids. The PPA has value to SDG&E's ratepayers relative to other 2008 bids because the facilities can deliver in the near-term, the price is reasonable, and the PPA complies with Commission decisions.

Additionally, PacifiCorp's levelized contract price is at or below the 10-year 2008 MPR for a facility beginning operation in 2009.<sup>18</sup> Comparing the PacifiCorp contract price to the 2008 MPR for a 10-year contract is imperfect because there is no 2008 MPR for a one-year contract. Nevertheless, the MPR can be an additional reference point in determining price reasonableness for this contract.

Confidential Appendix C includes a detailed discussion of the contractual pricing terms.

### **The project is viable relative to other projects that were bid into SDG&E's 2008 solicitation**

The PacifiCorp facilities that are part of this contract are fully developed wind facilities that are currently operating and using proven wind turbine technology.

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<sup>17</sup> While D.09-06-050 recently established a process for fast-tracking short-term contracts, AL-2091 was filed before the Commission approved the decision. Thus, the contract price was reviewed using the standard RPS process.

<sup>18</sup> Resolution E-4118: [http://docs.cpuc.ca.gov/published/Final\\_resolution/73594.htm](http://docs.cpuc.ca.gov/published/Final_resolution/73594.htm)

The facilities have full site control, are located in regions with demonstrated wind resources, and are owned and operated by an experienced company. These characteristics make the project highly viable relative to SDG&E's 2008 bids (See Confidential Appendix D for SDG&E's project viability evaluation of the PacifiCorp PPA.)

### **Contract is compliant with Emissions Performance Standard (EPS)**

The EPS requires any new, long-term generation contracts meet a minimum emissions performance requirement. The PacifiCorp contract is a new contract with a term of less than five years. Since the PacifiCorp contract is less than five years, it is not subject to the EPS.

### **Contract is compliant with D.07-05-028**

D.07-05-028 established a condition (called the "minimum quantity") on the ability of utilities to count an eligible contract of less than 10 years duration with a facility that commenced commercial operations prior to January 1, 2005 for compliance with the RPS program.<sup>19</sup> The decision says that in the calendar year that the short-term contract with an existing facility is executed, the utility must also enter into long-term contract(s) or contract(s) with new facilities equivalent to at least 0.25% of the utility's previous year's retail sales.

The facilities contracted to deliver generation to SDG&E have all commenced commercial operation after January 1, 2005. Thus, the contract is not subject to the minimum quota requirement.

### **Proposed delivery structure complies with CEC's guidelines**

The CEC is responsible for determining whether out-of-state RPS projects satisfy the delivery requirements for the RPS program. For each out-of-state project that the Commission reviews, the CEC provides the Commission with written documentation addressing whether the proposal satisfies the delivery requirements.

On July 15, 2009, the CEC provided the Commission with a letter declaring that the proposed PacifiCorp delivery structure satisfies the RPS delivery

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<sup>19</sup> 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".

requirements. This letter, which also includes a brief overview of PacifiCorp's delivery structure, can be found in Appendix A.

### **DRA's protest is denied**

DRA protests AL 2091-E on the grounds that the PPA is inconsistent with California's RPS program statute Pub. Util. Code Section 399.13(b).<sup>20</sup> DRA asserts that the PacifiCorp contract does not comply with RPS procurement guidelines because PacifiCorp has made claims regarding use of the facilities included in the proposed contract on its website. While DRA states that the CEC is responsible for ensuring that RPS resources are not double counted,<sup>21</sup> and WREGIS says that California RPS claims can not be made if a claim has been made in another jurisdiction, DRA argues that approval of the advice letter would mean that SDG&E ratepayers would be paying for renewable energy that PacifiCorp claims serves the needs of its customers. Specifically, DRA notes that "the wind facilities associated with this PPA are advertised as providing energy for PacifiCorp customers", so using the resources for compliance with California's RPS would be double counting. DRA consequently recommends that the Commission should reject AL 2091-E until PacifiCorp demonstrates that it has "ceased and desisted from the marketing, reporting, and representation" of the PacifiCorp wind farms in the utility's portfolio for the duration of the contract. Additionally, DRA recommends that conditions be added to the contract to ensure that renewable energy under contract is not double-counted for RPS compliance.

SDG&E responded to DRA's protest on July 2, 2009. In SDG&E's reply, SDG&E asserts that the PacifiCorp contract terms convey only a portion of the renewable generation and green attributes from their facilities to SDG&E; thus, any generation claimed, if any, on PacifiCorp's website is not evidence of double counting or false advertising. SDG&E's reply also notes language added to PacifiCorp's website to dispose of DRA's protest. The PacifiCorp website now states:<sup>22</sup>

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<sup>20</sup> Pub. Util. Code Section 399.13(b) states the CEC shall implement an accounting system to verify compliance with the RPS by retail sellers to ensure that an eligible renewable resource is only counted once, certify renewable energy credits produced by eligible renewable energy resources, and to verify retail sellers.

<sup>21</sup> Pub. Util. Code Section 399.13

<sup>22</sup> PacifiCorp webpage: <http://www.pacificorp.com/Navigation/Navigation3883.html>, accessed July 3, 2009

**PacifiCorp's use of renewable energy certificates**

All or some of the renewable energy attributes associated with generation owned or operated by PacifiCorp Energy may be used in future years to comply with state or federal renewable portfolio standards. PacifiCorp Energy has and will from time to time sell the green attributes from renewables facilities that are in excess of its current needs to other entities across the nation in wholesale market transactions. These green attributes may be sold separately from the underlying power or rebundled with system energy. To the extent PacifiCorp Energy sells renewable energy attributes, the underlying power is recorded as null power within an annual fuel mix report. Null power cannot be used for complying with state or federal renewable portfolio standards. Likewise, renewable energy attributes may not be sold once they have been used for complying with state or federal renewable portfolio standards.

PacifiCorp responded to DRA's protest on July 1, 2009. In their response, PacifiCorp asserts that they take precautions to ensure that its website, Federal Energy Regulatory Commission (FERC) filings, and corporate communications do not engage in any double counting of renewable energy attributes. Additionally, PacifiCorp also states that it has added language (quoted above) to their website on three different webpages to clarify that it does not engage in double counting, double claiming, or double selling.<sup>23</sup>

While it is ultimately the CEC's responsibility to ensure that RPS resources in California markets are not double counted, the Commission finds that the terms of the PPA and PacifiCorp's actions appropriately address DRA's concerns of double counting, as explained in DRA's protest, at this time. Thus, DRA's protest which recommends rejecting the advice letter and modifying the contract is denied.

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<sup>23</sup> In addition to the PacifiCorp website, PacifiCorp added the same statement to: Pacific Power webpage: <http://www.pacificpower.net/Article/Article90382.html>, accessed July 6, 2009 and Rocky Mountain Power webpage: <http://www.rockymountainpower.net/Article/Article90384.html>, accessed July 6, 2009



**Market sensitive information in the contracts should remain confidential**

Certain contract details were filed by SDG&E under confidential seal. Energy Division recommends that 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 be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

**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.

No comments were received.

**FINDINGS**

1. SDG&E filed Advice Letter (AL) 2091-E on June 5, 2009 requesting Commission review and approval of a renewable energy resource power purchase agreement (PPA) with PacifiCorp.
2. The Renewables Portfolio Standard Program requires each utility, including 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.
3. D.03-06-071 allows for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process.
4. The California Energy Commission is responsible for designing and implementing an accounting system to verify compliance with the renewable portfolio standard by retail sellers, to ensure that electricity generated by an eligible renewable energy resource is counted only once for the purpose of meeting the RPS of this state or any other state, and to verify retail product claims in this state or any other state.

5. The Commission requires each utility to establish a Procurement Review Group (PRG) to review the utilities' interim procurement needs and strategy, proposed procurement process, and selected contracts.
6. SDG&E briefed its PRG on the negotiation status of the proposed project. SDG&E also briefed the PRG concerning the successful conclusion of discussions with PacifiCorp.
7. DRA filed a protest to AL 2091-E on June 25, 2009, and PacifiCorp and SDG&E filed replies to DRA's protest on or about July 2, 2009.
8. The PPA is consistent with SDG&E's approved 2008 RPS Procurement Plan, which was approved by D.08-02-008.
9. The PPA is consistent with the bilateral procurement rules established in D.03-06-071 and D.06-10-019.
10. D.06-05-039 requires participation of an independent evaluator (IE) in RPS solicitations.
11. The IE employed for SDG&E's 2008 RPS solicitation concluded in its report that SDG&E's bid evaluation and selection process was conducted fairly.
12. D.04-06-014 and D.07-11-025 set forth standard terms and conditions to be incorporated into each RPS PPA. Those terms were compiled and published by D.08-04-009, as modified by D.08-08-028.
13. The contract price is reasonable relative to other projects that were bid into SDG&E's 2008 RPS solicitation.
14. The project is viable relative to other projects that were bid into SDG&E's 2008 RPS solicitation.
15. The PPA includes the Commission adopted RPS standard terms and conditions deemed "non-modifiable," which were not modified.
16. In response to DRA's protest, PacifiCorp has added language to its websites regarding PacifiCorp's use of renewable energy certificates.
17. DRA's protest is denied.
18. The PPA is reasonable and should be approved in its entirety.
19. Energy procurement pursuant to this PPA constitutes 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. or other applicable law), and relevant Commission decisions.

20. 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.
21. AL 2091-E should be approved without modification.

**THEREFORE IT IS ORDERED THAT:**

1. San Diego Gas & Electric Company's Advice Letter 2091-E, requesting Commission review and approval of its renewable energy contract with PacifiCorp, is approved without modification.
2. The costs of the contract between San Diego Gas & Electric and PacifiCorp are reasonable and in the public interest; accordingly, the payments to be made by San Diego Gas & Electric pursuant to the power purchase agreement are fully recoverable in rates over the life of the project, subject to Commission review of San Diego Gas & Electric's administration of the power purchase agreement.

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 September 24, 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

## **Appendix A**

### PacifiCorp PPA Delivery Structure

**CALIFORNIA ENERGY COMMISSION**

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512  
www.energy.ca.gov



July 15, 2008

The California Energy Commission, through its staff, has reviewed the proposed contracting structure between San Diego Gas & Electric Company and PacifiCorps, as identified in Advice Letter #2091-E and shown in the attached schematic design titled, 'Appendix – Schematic Diagram with Narrative.'

Assuming that the "RPS certified facilities" are certified as eligible for the RPS by the Energy Commission, the Energy Commission staff has determined that this structure would meet the RPS delivery requirements according to the *Renewables Portfolio Standard Eligibility Guidebook* (CEC-300-2007-006-ED3-CMF, January 2008).

A handwritten signature in black ink, appearing to read 'Tony Gonçalves'.

Tony Gonçalves  
Manager, Renewable Energy Office  
California Energy Commission

Attachment

## Diagram of delivery structure for PacifiCorp RPS transaction

### RPS Seller: **PacifiCorp**

- RPS certified facilities generate energy and green attributes
- Seller owns the generation from each facility (energy / green attributes)
- Seller firms and shapes the energy / delivers firm energy to Buyer at Palo Verde
- Seller conveys green attributes to Buyer

Energy

Green  
Attributes

\$

### RPS Buyer: **SDG&E**

- Buyer takes delivery of firm energy at Palo Verde & schedules energy into CAISO/California
- Buyer receives green attributes
- Buyer pays bundled contract price for energy and green attributes

## CEC SCHEMATIC DIAGRAM NARRATIVE

- Upon CPUC approval of the proposed Agreement, SDG&E will purchase a product consisting of firm energy and green attributes from PacifiCorp. The energy and green attributes are generated by RPS certified wind facilities. PacifiCorp owns / has the rights to the generation from the facilities (as facility owner or, in the case of one facility, through a PPA). PacifiCorp will utilize their system resources to firm and shape the power to conform with the specified delivery rates and periods specified in the PPA and subsequently delivers firm energy to SDG&E at Palo Verde and conveys the green attributes to SDG&E. SDG&E schedules the energy into the CAISO / California. This CEC eligible firming and shaping method provides SDG&E with the green attributes associated with out of state RPS certified facilities.

## **Confidential Appendix B**

### SDG&E's 2008 RPS Bid Evaluation

[REDACTED]



## **Confidential Appendix C**

### PacifiCorp Contract Summary

[REDACTED]

**Confidential Appendix D**  
Project Viability

[REDACTED]

**Confidential Appendix E**  
Contract's Contribution to RPS Goals

[REDACTED]