PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-4331**
June 24, 2010

REDACTED

R E S O L U T I O N

Resolution E-4331. San Diego Gas & Electric (SDG&E) requests approval of a renewable power purchase agreement with Alta Mesa, LLC.

PROPOSED OUTCOME: This Resolution approves cost recovery for a SDG&E renewable energy power purchase agreement (PPA) with Alta Mesa, LLC. The PPA is approved without modification.

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

By Advice Letter 2136-E filed on December 31, 2009.

SUMMARY

SDG&E's proposed PPA with Alta Mesa, LLC complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved without modification.

SDG&E filed Advice Letter (AL) 2136-E on December 31, 2009 requesting Commission review and approval of a renewable energy PPA executed with Alta Mesa, LLC (Alta Mesa). The PPA is long-term, 20-year bilateral contract for generation from a new wind facility. The wind facility associated with the PPA is expected to begin operation in July 2011 and will be located in Palm Springs, California.

The following table summarizes the agreement:

Generating Facility	Technology Type	Term (Years)	Minimum Capacity (MW)	Minimum Energy (GWh)	Contract Delivery Start Date	Location
Alta Mesa Phase IV	Wind, new	20	40	123	7/1/2011	Palm Springs, CA

The proposed PPA is consistent with SDG&E's RPS Procurement Plan. RPS-eligible deliveries under the PPA are reasonably priced and fully recoverable in rates over the life of the contract, subject to SDG&E's administration of the contract.

NOTICE

Notice of AL 2136-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 2136-E was not protested.

DISCUSSION

Overview of RPS Program

The RPS Program administered by the Commission requires each utility to increase its total procurement of eligible renewable energy resources by at least 1% of retail sales per year so that 20% of the utility's retail sales are procured from eligible renewable energy resources no later than December 31, 2010.[1]

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at

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

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

SDG&E requests approval of a renewable energy contract with Alta Mesa

On December 31, 2009, SDG&E filed AL 2136-E requesting Commission approval of a renewable power procurement agreement with Alta Mesa, that was negotiated bilaterally.

The PPA provides that SDG&E will procure RPS-eligible energy generated at the Alta Mesa Phase IV facility which is located adjacent to the Alta Mesa Phase I-III facilities in Palm Springs, California. The 40 megawatt (MW) facility is expected to begin operating in July 2011. Procurement from Alta Mesa is expected to contribute a minimum of 123 gigawatt-hours (GWh) annually towards SDG&E's Annual Procurement Target (APT). The PPA also includes a Put and Call option for an additional 27.5MW to come online in 2019 which would increase expected generation to 207 GWh. Under the Put and Call option Alta Mesa may choose to expand the amount of generation which SDG&E may purchase pursuant to all other terms of the Agreement. The Put and Call Option is contingent on Alta Mesa repowering an existing wind facility. Additionally, the PPA has three one-year extensions.

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

1. Approval of the Proposed Agreement in its entirety, including the possible addition of 27.5MW additional capacity in 2019, approval of 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, for the full term of the contract, subject to Commission review of SDG&E's administration of the Proposed Agreement;
2. Issuance of a finding that 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; and

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.

Energy Division Review of the Proposed PPA

Energy Division evaluated the PPA for the following criteria:

- Consistency with SDG&E's 2008 RPS Procurement Plan (Plan)
- Consistency with the resource needs identified in SDG&E's Plan
- Consistency with SDG&E's least-cost, best-fit methodology
- Consistency with tradable renewable energy credits (TREC) rules
- Consistency with RPS standard terms and conditions (STC)
- Consistency with bilateral contracting guidelines
- Project viability
- Compliance with the minimum quantity condition
- Consistency with the Interim Emissions Performance Standard
- Procurement Review Group (PRG) participation
- Comparison to the results of SDG&E's 2008 solicitation
- Cost reasonableness

Consistency with SDG&E's 2008 RPS Procurement Plan

California's RPS statute requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.[2] The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan. SDG&E's 2008 RPS Procurement Plan (Plan) was approved by D.08-02-008 on February 14, 2008. Pursuant to statute, SDG&E's 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,

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

and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.[3]

SDG&E's 2008 Plan discussed plans to procure renewable energy generation through an annual solicitation, unsolicited bilaterals, and utility-owned generation. The bilateral contract is for renewable generation that may contribute towards SDG&E's demand for RPS compliance.

<u>The PPA is consistent with SDG&E's 2008 RPS Procurement Plan, approved by D.08-02-008.</u>

Consistency with the resource needs identified in SDG&E's Plan

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 Alta Mesa PPA fits SDG&E's identified renewable resource needs. The facility is currently in development and will be able to provide renewable energy deliveries in 2011.

<u>The PPA is consistent with the resource needs identified in SDG&E's 2008 Procurement Plan.</u>

Comparison to the Results of SDG&E's 2008 Solicitation

Although the PPA was negotiated bilaterally, SDG&E conducted a least-cost, best-fit (LCBF) bid evaluation of the PPA to compare it to its 2008 solicitation bids. SDG&E's bid evaluation includes a quantitative and qualitative analysis. SDG&E's quantitative analysis or market valuation includes evaluation of price, time of delivery factors, transmission costs, congestion costs, and resource adequacy. SDG&E's qualitative analysis focuses on comparing similar bids across numerous factors, such as, location, benefits to minority and low income

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

areas; resource diversity, etc. The LCBF evaluation is generally used to establish a shortlist of proposals from SDG&E's solicitation with whom SDG&E will engage in contract negotiations. In this case, a LCBF evaluation was conducted for the bilaterally negotiated PPA in order to evaluate its value relative to all of SDG&E's other RPS options.

SDG&E determined that the PPA is favorable relative to proposals received in response to SDG&E's 2008 solicitation because the PPA's market valuation compares favorably with bids from its 2008 solicitation.

<u>The PPA compares favorably to the results of SDG&E's 2008 RPS solicitation.</u>

Consistency with RPS Standard Terms and Conditions (STCs)

The proposed PPA is based on SDG&E's RPS pro forma and complies with D.08-04-009, as modified by D.08-08-028. As a result, the PPA contains the required non-modifiable STCs.

Thus, <u>the PPA includes the Commission adopted RPS "non modifiable standard terms and conditions."</u>

Consistency with Bilateral Contracting Guidelines

In D.09-06-050 the Commission determined that bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation. As discussed in this Resolution, the PPA was reviewed and found reasonable based on the same review and standards as those used for determining reasonableness of PPAs from solicitations.

<u>The PPA is consistent with the bilateral contracting guidelines established in D.06-10-019.</u>

Project Viability

SDG&E believes the Alta Mesa Phase IV project is viable and will be developed according to the terms and conditions in the PPA. SDG&E's project viability assessment included key criteria for renewable project development.

Confidential Appendix B includes the project's scorecard from the Project Viability Calculator.[4]

Project milestones

The PPA identifies agreed upon project milestones, including the construction start date and commercial operation date. The seller's obligations to meet these milestones are supported by performance assurance securities. SDG&E believes that the Alta Mesa project development plan allows for all milestones to be achieved.

Site control

Tenderland Power Partners (Tenderland) owns the majority of the land and the balance of the land has a long-term lease with the U.S. Department of Interior Bureau of Land Management (BLM).

Developer experience and creditworthiness

Tenderland, the developer and owner, is an experienced wind developer, having completed development and construction of numerous wind projects, including the DifWind Project and Alta Mesa Phases I-III.

Interconnection and transmission

The Alta Mesa project will interconnect to the Southern California Edison (SCE) Seawind substation at 115 kV pursuant to the completed Interconnection Facilities Agreement. Required network upgrades have been completed, along with minor upgrades at the Seawind substation. An existing Wholesale Distribution Service Agreement will be used to deliver the energy to the Devers Substation delivery point as specified in the PPA.

Technology

Alta Mesa is pursuing Gamesa 2.0 WM wind turbines. Gamesa have been installed and operating in Europe, Asia, and the United States since 2004.

[4] Project Viability Calculator :
http://www.cpuc.ca.gov/PUC/energy/Renewables/hot/Project+Viability.htm

SDG&E believes there is low project viability risk associated with the PPA because the facility is far along in the development process.

Compliance with the Minimum Quantity Condition

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 with a facility that commenced commercial operations prior to January 1, 2005 for compliance with the RPS program.[5] In the calendar year that a short-term contract with an existing facility is executed, the utility must also enter into long-term contracts with new facilities equivalent to at least 0.25% of the utility's previous year's retail sales.

The facility that is to deliver energy pursuant to the PPA is a new facility expected to begin commercial operation after January 1, 2005. Thus, the contract could contribute to SDG&E's minimum quantity condition for future filings.

Compliance with the Interim Greenhouse Gas Emissions Performance Standard (EPS)

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

D.07-01-039 adopted an interim EPS that establishes an emission rate quota for obligated facilities to levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine powerplant. The EPS applies to all energy contracts for baseload generation that are at least five years in duration.[6] Generating facilities using certain renewable resources are deemed compliant with the EPS, although contracts with intermittent resources are subject to the limitation that total purchases under the contract do not exceed the expected output from the facility over the term of the contract.

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[5] 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".

[6] "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).

The PPA is compliant with the EPS because it is for energy from an EPS-compliant renewable technology that does not require firming and shaping.

Procurement Review Group (PRG) Participation

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

SDG&E informed the PRG of the proposed transaction on December 18, 2007, April 17, 2008, May 15, 2008, August 20, 2008, November 20, 2008, April 16, 2009, and November 20, 2009.

Although Energy Division is a member of the PRG, it reserved judgment on the contract until the AL was filed. Energy Division reviewed the transaction independently of the PRG, and allowed for a full protest period before concluding its analysis.

With regard to this PPA, SDG&E has complied with the Commission's rules for involving the Procurement Review Group (PRG).

Cost Reasonableness

Based on the SDG&E's market valuation of the project, SDG&E determined that the PPA is favorable relative to proposals received in response to its 2008 RPS solicitation. The Commission's reasonableness review for RPS PPA prices also includes comparisons of proposed PPAs to other proposed RPS projects from recent RPS solicitations and recently approved PPAs. Using this analysis, and the confidential analysis provided by SDG&E in AL 2136-E, we determine that the PPA costs are reasonable. Confidential Appendix A includes a detailed discussion of the contractual pricing terms.

The total expected costs of the PPA are reasonable based on their relation to bids received in response to SDG&E's 2008 solicitation.

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

Cost Containment

Pursuant to statute, the Commission calculates a market price referent (MPR) to assess above-market costs of individual RPS contracts and the RPS program.[7] Contracts that meet certain criteria are eligible for above-MPR funds (AMFs).[8] The PPA is priced above the 2009 MPR for a 20-year contract beginning operation in 2011.[9] Since the PPA was negotiated bilaterally it is not eligible for AMFs. Additionally, SDG&E has exhausted its AMFs provided by statute.[10] Therefore, SDG&E will voluntarily incur the above-MPR costs of the PPA.

SDG&E is voluntarily entering into this RPS power purchase agreement as permitted by statute.

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

The Commission requires the use of an IE to ensure that solicitation processes are undertaken in a fair, consistent, unbiased, and objective manner so that projects selected for shortlisting and resulting in executed contracts are chosen based on reasonable and consistent logic. Specifically, the IE's role is to review SDG&E's bid evaluation, monitor negotiations, and review the resulting PPA. SDG&E retained PA Consulting (PA) as the IE for SDG&E's 2008 RPS solicitation. Also, as required, SDG&E submitted an IE Report prepared by PA with AL 2136-E.

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[7] *See* Pub. Utils. Code § 399.15(c)

[8] SB 1036 codified in § 399.15(d)(2) the following criteria: the contract was selected through a competitive solicitation, the contract covers a duration of no less than 10 years, the contracted project is a new facility that will commence commercial operations after January 1, 2005, the contract is not for renewable energy credits, and the above-market costs of a contract do not include any indirect expenses including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades.

[9] Resolution E-4298:
http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/111386.pdf

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

According to the IE Report submitted with AL 2136-E, PA performed its duties overseeing the 2008 solicitation. In its Independent Evaluator Report, PA states that it is of the opinion that SDG&E's methodology is reasonable and SDG&E conducted the RFO in a fair and equitable manner. Also, PA concludes that "based on its relationship to other offers in the 2008 RFO, the Alta Mesa IV contract is fairly priced relative to the market. In addition the underlying project is quite viable and the development is more than usually likely to succeed. PA concludes that the contract merits approval by the CPUC."

An excerpt from the IE Report's contract-specific evaluation of the Alta Mesa PPA is attached as confidential Appendix C to this resolution.

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

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Pub. Utils. 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 use commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.[11]

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

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

(*Public Utilities Code Section 399.11 et seq.*), Decision 03-06-071, or other applicable law."[12]

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission determine prior to final CEC certification of a project, that "any procurement" pursuant to a specific contract will be "procurement from an eligible renewable energy resource."

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS eligible resource to count towards an RPS compliance obligation. Nor shall such a finding absolve a seller from its obligation to obtain CEC certification or the utility of its obligation to pursue remedies for breach of contract. Such contract enforcement activities shall be reviewed pursuant to the Commission's authority to review the administration of such contracts.

CONFIDENTIAL INFORMATION

The Commission, in implementing Pub. Utils. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific 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.

<u>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.</u>

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

COMMENTS ON THIS RESOLUTION

Pub. Utils. Code § 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on April 20, 2010.

Comments were filed on May 10, 2010 by SDG&E. We carefully considered comments which focused on factual, legal, or technical errors and made appropriate changes and clarifications to the draft Resolution.

SDG&E comments that the Commission should approve the PPA without modification and revise certain findings and conclusions consistent with the proposed decision regarding A.10-03-009

SDG&E asserts that the PPA should be approved without modification because the modifications required in the draft Resolution were based on D.10-03-021 which the Commission stayed on May 6, 2010.[13] Thus, SDG&E argues that the PPA is consistent with the currently applicable RPS standard terms and approval of the PPA should not be conditioned upon modification of the PPA.

SDG&E also asserts that the draft Resolution should be modified to reflect a proposed decision issued by the Commission on May 3, 2010 in regards to Southern California Edison (SCE) Application 10-03-009. On June 3, 2010, the Commission approved D.10-06-004 regarding A.10-03-009.[14]

We have carefully considered SDG&E's comments and modified the draft Resolution accordingly.

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[13] http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/117847.pdf

[14] http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/119044.pdf

FINDINGS AND CONCLUSIONS

1. The PPA is consistent with SDG&E's 2008 RPS Procurement Plan, approved by D.08-02-008.
2. The PPA is consistent with the resource needs identified in SDG&E's 2008 Procurement Plan.
3. The PPA compares favorably to the results of SDG&E's 2008 RPS solicitation.
4. The PPA includes the Commission-adopted RPS standard terms and conditions including those deemed "non-modifiable".
5. The PPA is consistent with the bilateral contracting guidelines established in D.06-10-019.
6. There is low project viability risk associated with the Alta Mesa PPA because the facility is far along in the development process.
7. Pursuant to D.07-05-028, SDG&E may count the PPA towards future minimum quantity condition requirements.
8. The PPA is for intermittent generation from a renewable resource and compliant with the EPS.
9. Pursuant to D.02-08-071, SDG&E's Procurement Review Group (PRG) participated in the review of the PPA.
10. The total expected costs of the PPA are reasonable based on their relation to bids received in response to SDG&E's 2008 solicitation.
11. Payments made by SDG&E under the PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of SDG&E's administration of the PPA.
12. Procurement pursuant to the PPA is procurement from eligible renewable energy resources for purposes of determining SDG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.
13. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under this PPA to count towards an RPS compliance obligation. Nor shall that finding absolve SDG&E of its obligation to enforce compliance with this PPA.

14. SDG&E is voluntarily entering into this RPS power purchase agreement as permitted by statute.
15. Consistent with D.06-05-039, an independent evaluator (IE) oversaw SDG&E's RPS procurement process
16. 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.
17. AL 2136-E should be approved effective today without modification.

THEREFORE IT IS ORDERED THAT:

1. San Diego Gas & Electric Company's Advice Letter 2136-E, requesting Commission review and approval of a power purchase agreement with Alta Mesa, LLC., is approved without modification.

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 June 24, 2010; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON
PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

Confidential Appendix A

Contract Summary

[Redacted]

Confidential Appendix B

Project Viability Scorecard – Alta Mesa

[Redacted]

Confidential Appendix C

Excerpt from the Independent Evaluator Project-Specific Report[15]

[Redacted]

[15] Report of the Independent Evaluator on the Alta Mesa IV contract relative to the results of the 2008 Request for Offers from Eligible Renewable Resources (2008 Renewable RFO), December 29, 2009, Jonathan M. Jacobs - PA Consulting, submitted in SDG&E AL 2136-E, pps. 7-1 and 7-2.