

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

Order Instituting Rulemaking to Continue)	Rulemaking 11-05-005
Implementation and Administration of California)	(Filed May 5, 2011)
Renewables Portfolio Standard Program.)	

**NOTICE OF EX PARTE COMMUNICATION OF
SAN DIEGO GAS AND ELECTRIC (U 902 E)**

PUBLIC VERSION

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Dated: August 10, 2011

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

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.))))	Rulemaking 11-05-005 (Filed May 5, 2011)
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**NOTICE OF EX PARTE COMMUNICATION OF
SAN DIEGO GAS AND ELECTRIC (U 902 E)**

In accordance with Rule 8.3 of the Commission's Rules of Practice and Procedure, San Diego Gas and Electric (SDG&E) hereby gives notice of the following *Ex Parte* communication in the above proceeding.

On Monday, August 8, 2011, at 3:00 p.m. in the Commission's offices in San Francisco, Brian Prusnek, Director of Regulatory Affairs and Juancho Eekhout, Director of Origination and Portfolio Design, met with Scott Murtishaw, Advisor to Commissioner Peevey. Aimee Smith, counsel for SDG&E, participated in the meeting telephonically. The meeting lasted approximately 30 minutes.

On Monday, August 8, 2011, at 4:00 p.m. in the Commission's offices in San Francisco, Brian Prusnek, Director of Regulatory Affairs and Juancho Eekhout, Director of Origination and Portfolio Design, met with Sara Kamins and Michael Colvin, Advisors to Commissioner Ferron. Aimee Smith, counsel for SDG&E, participated in the meeting telephonically. The meeting lasted approximately 45 minutes.

In both instances, the communication was initiated by SDG&E to discuss Draft Resolution (DR) 4335-E. During the discussion, SDG&E provided an interpretation of how Senate Bill (SB) x1 2 might apply to the transaction at issue in DR 4335-E. The

Commission is addressing implementation of SB x1 2 in R.11-05-005. Communication in both meetings was both written and oral. A redacted version of the written communication is attached.

Dated this 10th day of August, 2011 at San Francisco, California.

Respectfully submitted,

By: /s/ Brian C Prusnek

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ATTACHMENT



Request for Modification of Draft Resolution E-4335

Summary

SDG&E requests that the Commission modify Draft Resolution (DR) E-4335 so that the transaction, which involves purchase by SDG&E of RECs associated with wind generation currently received under CDWR contracts, is classified as a “bundled” transaction rather than as “REC-only” under the framework adopted in D.10-03-021, *et seq.*

Background

- Since 2002, SDG&E has purchased wind power generated by two facilities certified by the CEC as RPS-eligible located in Southern California: Cabazon Wind Partners (Cabazon) and Whitewater Hill Wind Partners (Whitewater). This procurement is pursuant to two contracts administered by SDG&E on behalf of CDWR (allocated to SDG&E through D.02-09-053 and D.02-12-069).
- The original CDWR contracts provide for the RECs of these two facilities to remain with the seller. Accordingly, SDG&E does not receive RPS credit for the wind generation delivered under the CDWR contracts.
- SDG&E negotiated the purchase at a favorable price of the RECs associated with the wind generation received under the CDWR contracts. It requested through AL-2118-E-A the approval of two Green Attribute Purchase and Sale Agreements (GAPSAs) as bundled RPS-eligible transactions, noting that the GAPSAs are part of a larger transaction that results in *both* renewable energy and associated RECs being transferred to SDG&E.
- The Commission issued a DR on July 19, 2011, that would approve the GAPSAs as REC-only contracts.

Concerns

- Classification of the CDWR/GAPSA transaction as “REC-only” is inconsistent with the framework adopted in D.10-03-021.
- If the CDWR/GAPSA transaction is deemed to be REC-only, under the existing rules, the RECs derived from the transaction will be TRECs subject to the 25% cap. This would cause SDG&E to exceed the usage cap established in D.10-03-021 in 2012 and 2013; SDG&E would not be permitted to use all of the RECs conveyed under the CDWR/GAPSA transaction for RPS compliance.



- Implementation of SB x1 2 may eliminate the concerns related to counting RECs from REC-only deals in 2012 and 2013, but the outcome is not known at this time. If the CDWR/GAPSA transaction is classified as a “bundled” transaction, on the other hand, RPS-eligibility concerns are eliminated.
- While the DR approved rate recovery for payments made under the GAPSA, it does not address rate recovery in the event SDG&E is unable to apply the GAPSA RECs toward its RPS compliance obligations. If the GAPSA is classified as REC-only, SDG&E will be forced to consider terminating the GAPSA transactions if it does not have assurance of rate recovery even if RECs cannot be used for RPS compliance.
- The approval of this DR is time-sensitive. The GAPSA contracts have a Condition Precedent whereby CPUC approval must be obtained by August 18, 2011. Even though SDG&E will reasonably try to negotiate with the seller in the event this date is not met, SDG&E believes there is a risk of losing the opportunity if approval is postponed.

Basis for “Bundled” Transaction Classification

- In D.10-03-021, *et seq.* the Commission established a framework for distinguishing between “bundled” (*i.e.*, renewable energy plus RECs) transactions and “REC-only” (*i.e.*, non-grandfathered conventional energy plus RECs or RECs plus no energy) transactions.
- The Commission stated in D.10-03-021 that the distinction between bundled and REC-only RPS-eligible procurement should turn on **the availability of the energy in the transaction to serve California load**. It also stated its intent to **“to include as bundled RPS procurement all those transactions that can be demonstrated to serve California customer load.”**
- D.10-03-021 defines a bundled energy transaction as one in which the generating facility supplying the RECs is (1) interconnected to a California balancing authority; (2) had a dynamic transfer agreement with a California balancing authority; or (3) was transacting using firm transmission.
- When viewed as a whole, the CDWR/GAPSA transactions result in the conveyance to SDG&E of renewable energy and RECs – this meets the definition of bundled RPS-eligible generation.
- The energy conveyed under the CDWR/GAPSA transactions serves California load. In addition, the prerequisites for “bundled” classification are met where both Whitewater and Cabazon satisfy the requirement that the RPS-eligible generator’s first point of interconnection be with a California balancing authority.



- Finally, it is clear that the transactions as a whole fit more closely with the “bundled” classification (renewable energy plus RECs) than with the REC-only classification (conventional energy plus RECs or RECS with no energy) adopted in D.10-03-021.

RPS Compliance Impacts of REC-only Classification

- [REDACTED]
- The approval of the CDWR/GAPSA transaction as REC-only creates significant uncertainty regarding SDG&E’s RPS compliance strategy in light of the usage cap established under D.10-03-021 and the transition to SBX1 2.
- Specifically, under the existing TREC rules, while SDG&E would not exceed the 25% TREC usage cap adopted in D.10-03-021 in 2011, it would likely exceed the usage cap in 2012 and 2013. Accordingly, it would not be permitted to use all of the RECs conveyed under the CDWR/GAPSA transactions for RPS compliance.
- Under SB x1 2, it is not clear how compliance will be impacted. If the DR approves the CDWR/GAPSA transaction as REC-only, and the GAPSA contracts are not grandfathered or considered Category 1, SDG&E will be close or at its Category 3 limits. In this event, SDG&E would be unable to use in-State RECs as a cost optimization or development risk back-stop mechanism to achieve its 2011-2013 RPS requirements. In that context, SDG&E may be unwilling to take on further development risk.

Conclusion

- Approval of the CDWR/GAPSA transaction at the August 18 meeting as a “bundled” transaction will largely eliminate the concerns outlined above and will ensure cost-effective RPS compliance for SDG&E’s ratepayers.