ALTERNATE DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ID #10651

ENERGY DIVISION **RESOLUTION E-4335**

September 22, 2011

REDACTED

R E S O L U T I O N

Resolution E-4335. San Diego Gas & Electric (SDG&E) requests approval of two renewable energy credit purchase and sale agreements with Cabazon Wind Partners LLC and Whitewater Hill Wind Partners LLC.

PROPOSED OUTCOME: This Resolution approves cost recovery for SDG&E's renewable energy credit purchase and sale agreements with Cabazon Wind Partners LLC and Whitewater Hill Wind Partners LLC. The Commission makes the following determination in this resolution regarding these specific purchase and sale agreements classification for the purposes of their contribution towards SDG&E's RPS compliance obligations: to the extent that the renewable energy credits are reunited with the generation from which they derive, they will be treated as "bundled" procurement for RPS compliance purposes.

ESTIMATED COST: Costs of these purchase and sale agreements are confidential at this time.

By Advice Letter 2118-E filed on October 28, 2009, Advice Letter 2118-E-A filed on June 2, 2011, and Advice Letter AL 2118-E-B filed on June 10, 2011.

SUMMARY

SDG&E's proposed renewable energy credit purchase and sale agreements (PSAs) with Cabazon Wind Partners LLC and Whitewater Hill Wind Partners LLC comply with the Renewables Portfolio Standard (RPS) procurement guidelines and are approved.

SDG&E filed Advice Letter (AL) 2118-E on October 28, 2009, AL 2118-E-A on June 2, 2011, and AL 2118-E-B on June 10, 2011 requesting Commission review

and approval of two renewable energy credit (REC)-only PSAs executed with Cabazon Wind Partners LLC and Whitewater Hill Wind Partners LLC. The bilaterally negotiated short-term PSAs provide RECs from operating wind facilities for a period of three years. The wind facilities associated with the PSAs are located in Palm Springs, California in the San Gorgonio wind resource area. The energy associated with the REC-only PSAs is procured separately by SDG&E.

The following table summarizes the REC-only agreements:

Generating Facilities	Project Technology Type	Contract Term (Years)	Minimum Capacity (MW)	Minimum Energy (GWh)	Contract Delivery Start Date	Project Location
Cabazon I	Wind, existing	3	42.9	119	1/1/2009	Palm Springs
Whitewater Hill	Wind, existing	3	61.5	166	1/1/2009	Palm Springs

The proposed PSAs are consistent with SDG&E's 2011 RPS Procurement Plan. The RECs procured under the PSAs are reasonably priced and fully recoverable in rates over the life of the PSAs, subject to SDG&E's administration of the PSAs.

SDG&E also requests that the REC-only transactions be classified as "bundled generation" and be eligible for use towards its 2011 RPS compliance obligations. Pursuant to current rules (D.10-03-021, as modified by D.11-05-025), this transaction would be classified as REC-only because it does not include the procurement of energy. SDG&E is essentially asking for an exception from the current rules.

We note that rules are being developed in R.11-05-005 to implement the categorization rules for RPS transactions contained in recent legislation (SB 2 (1X)). These rules include: the portfolio content categories and the grandfathering of all transactions executed before June 2010 so that they "count in full" for RPS compliance.

Although the exceptional situation concerning these PSAs may have been resolved in R.11-05-005, the Commission understands that timing is imperative for the contracting parties because the mutual contract termination date has already lapsed. Thus, we will grant an exception to the current RPS rules so that a fair and common sense outcome may be reached in this exceptional circumstance.

This resolution grants an exception to the current rules so that these REC-only PSAs, in conjunction with the previously executed and approved PPAs for the associated energy serving California load, can be treated as "bundled" renewable procurement for RPS compliance purposes.

BACKGROUND

Overview of the Renewables Portfolio Standard (RPS) Program

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107 and SB 1036.[1] The RPS program is codified in Public Utilities Code Sections 399.11-399.20.[2] The RPS program administered by the Commission requires each utility to increase its total procurement of eligible renewable energy resources by at least one percent of retail sales per year so that 20 percent of the utility's retail sales are procured from eligible renewable energy resources no later than December 31, 2010.[3] Furthermore, SB 2 (1x)[4] mandates that the amount of electricity generated per year from eligible renewable resources be increased to an amount that equals an average of 20% of the total electricity sold to retail customers in California for the period 2011-2013; 25% of retail sales by December 31, 2016; and 33% of retail sales by December 31, 2020.[5]

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm and http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm.

NOTICE

[1] SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007).

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

[3] *See* § 399.15(b)(1).

[4] Stats. 2011, Ch. 1 (Simitian)

[5] SB 2 (1x) was signed by Governor Brown on April 12, 2011. The law becomes effective 90 days from the conclusion of the extraordinary session.

Notice of AL 2118-E, AL 2118-E-A, AL 2118-E-B 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 2118-E was timely protested on November 17, 2009 by the Division of Ratepayer Advocates (DRA).

SDG&E responded to the protest of DRA on November 24, 2009.

DISCUSSION

SDG&E requests approval of two bilateral REC-only PSAs, classification of the "re-bundled" RECs and associated energy as "bundled generation," and use of the "bundled" RECs for its 2011 RPS compliance obligations

On October 28, 2009, SDG&E filed AL 2118-E requesting Commission approval of bilaterally negotiated REC-only purchase and sale agreements with Cabazon and Whitewater Hill. On June 2, 2011, SDG&E filed AL 2118-E-A to update AL 2118-E to include amendments to the PSAs; provide delivery data from 2009 through April 2011; and address the classification of the transactions for RPS compliance purposes.[6] On June 10, 2011, SDG&E filed AL 2118-E-B to include additional information as required by D.10-03-021, as modified by D.11-01-025.

The Cabazon and Whitewater Hill wind facilities began operating in 2002 and 2003, respectively, and are RPS-certified by the California Energy Commission (CEC). Both wind facilities are located in Palm Springs, California. The Cabazon facility is 42.9 megawatts (MW) and the Whitewater Hill facility is 61.5 MW. SDG&E estimates that the facilities will generate a minimum of 285 gigawatt-hours (GWh) annually.

[6] The PSA amendments include the following three modifications to the original PSAs: (1) modifies the delivery term (and related changes) to provide for the purchase of RECs associated with underlying generation received beginning on January 1, 2009 instead of at the CPUC approval date; (2) updates the non-modifiable terms included in the PSAs, as required by the Decision 10-03-021, as modified by D.11-01-025; and (3) adds conditions precedent related to Commission approval of the amendment and for approval by the California Energy Commission of SDG&E's ability to retire RECs generated in 2009 and 2010 in WREGIS for 2011 RPS compliance with terms and conditions reasonably acceptable to SDG&E. All other terms of the PSAs remain in full force and effect. (AL 2118-E-A, p.2)

The PSAs considered herein are for the RECs associated with the energy that is under contract to the California Department of Water Resources (CDWR). Specifically, the energy is being procured through previously executed and approved power purchase agreements (PPAs) that CDWR negotiated during the California Energy Crisis. In D.02-09-053 and D.02-12-069, the Commission assigned the CDWR PPAs with Cabazon Wind Partners, LLC and Whitewater Hill, LLC to SDG&E and ordered SDG&E to administer the PPAs on CDWRs behalf. SDG&E has been receiving, and will continue to receive the energy from the Cabazon and Whitewater Hill wind facilities throughout the term of the proposed PSAs. These CDWR PPAs expressly provided that the RECs from the wind facilities remain the property of the seller and not the buyer, CDWR.[7]

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

1. Approves the proposed agreements, as amended, in their entirety, including approval of the full cost recovery in rates through the Energy Resource Recovery Account ("ERRA") mechanism of all payments made by SDG&E in association with these contracts, subject to Commission review of SDG&E's administration of the PSA agreements, as amended.
2. Finds that any RECs procured pursuant to the proposed agreements, to the extent that they are reunited with the associated generation received under contracts administered by SDG&E on behalf of the California Department of Water Resources, may be treated as "bundled" procurement as that term is defined in D.10-03-021, from an eligible renewable energy resource
3. Finds that the "bundled" Renewable Energy Credits conveyed to SDG&E conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11, et seq.), Decision 03-06-071, or other applicable law.

[7] Cabazon power purchase agreement: http://wwwcers.water.ca.gov/pdf_files/power_contracts/shellwind/041202_cabazon_exctn_vrsn.pdf and Whitewater Hill power purchase agreement: http://wwwcers.water.ca.gov/pdf_files/power_contracts/shellwind/011003whtwtrHllAmendedPPA.pdf

4. Finds that the "bundled" Renewable Energy Credits conveyed to SDG&E for 2009, 2010, and 2011 in connection with AL 2118-E/2118-E-A may be counted toward its RPS compliance obligation for the 2011 compliance year.

We will address SDG&E's requests in two parts. First, we will address its request for approval of the PSAs. Second, we will address SDG&E's request for classification of the proposed PSAs as "bundled generation," and the subsequent use of the procurement for its 2011 RPS compliance obligations.

Energy Division Review of the Proposed PSAs

Energy Division evaluated the PSAs for the following criteria:

- Consistency with bilateral contracting guidelines
- Consistency with SDG&E's 2011 RPS Procurement Plan
- Consistency with least-cost best-fit methodology identified in SDG&E's RPS Procurement Plan
- Consistency with RPS standard terms and conditions (STC)
- Consistency with tradable renewable energy credits (TREC) rules
- Cost reasonableness
- Cost containment
- Procurement Review Group (PRG) participation
- Independent Evaluator review
- Project viability

Consistency with Bilateral Contracting Guidelines

In D.06-10-019, the Commission determined that bilateral contracts were permissible provided that they were at least one month in duration, submitted for approval by advice letter, do not receive above-market funds (AMFs), and that the contracts be deemed reasonable. In D.09-06-050, the Commission determined that bilateral contracts should be reviewed according to the same processes and standards as contracts that are the result of a competitive solicitation. Accordingly, as described in this resolution, Energy Division reviewed the PSAs using the same standards used to review contracts resulting from an annual solicitation. Applying the above standards, the PSAs are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.

Consistency with SDG&E's 2011 RPS Procurement Plan

Pursuant to statute, SDG&E submitted its 2011 RPS Procurement Plan (Plan) on May 4, 2011. The Plan included an assessment of SDG&E's supply and demand to determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.[8] SDG&E's 2011 Plan was approved by D.11-04-030 on April 14, 2011.

California's RPS statute also requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.[9] The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan.

SDG&E's 2011 Plan discussed plans to procure renewable energy generation through an annual solicitation, unsolicited bilaterals, and utility-owned generation as well as renewable energy credits to meet its 20 percent RPS mandate and stated goal of 33 percent of its retail sales from renewable resources. The bilateral contracts are for RECs from RPS-certified facilities that fit SDG&E's resource needs. Thus, the PSAs are consistent with SDG&E's 2011 RPS Procurement Plan, approved by D.11-04-030.

Consistency with SDG&E's least-cost best-fit (LCBF) methodology

In D.04-07-029, the Commission directs the utilities to use certain criteria in their LCBF selection of renewable resources.[10] The decision offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations. In D.10-03-021, as modified by D.11-01-025, the Commission notes that LCBF evaluation of REC-only transactions will be considered in Rulemaking (R.)11-05-005, and until such a consideration takes place the utilities should explain in their advice letters seeking approval of REC-only contracts their methodology for evaluating the contracts.

As described in its 2011 RPS Procurement Plan, SDG&E's LCBF bid evaluation includes a quantitative analysis and qualitative criteria for bundled contracts and

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

[9] Pub. Util. Code, Section §399.14.

[10] *See* §399.14(a)(2)(B)

a quantitative analysis for TREC contracts. SDG&E's quantitative analysis or market valuation for bundled contracts includes evaluation of price, time of delivery factors, transmission costs, congestion costs, and resource adequacy. SDG&E's qualitative analysis focuses on comparing similar bids across numerous factors, such as location, benefits to minority and low income areas, resource diversity, etc.

SDG&E negotiated the PSAs bilaterally, and therefore they did not compete directly with other RPS projects. However, in AL 2118-E, SDG&E explains that it evaluated the bilateral agreements using the same LCBF evaluation methodology it employs for evaluating bids in its RPS solicitation.[11] To compare the REC-only contracts against the bundled offers from SDG&E's recent solicitation, bilateral offers and recently approved contracts, SDG&E evaluated the total cost of the energy and RECs from these facilities by adding the price of the CDWR contracts to the Cabazon and Whitewater Hill contract prices. While the IE agreed that SDG&E's comparison to other offers is valid, he disagreed on the appropriateness of adding the CDWR contracts to the REC-only contracts and suggested that a more appropriate energy substitute would be a forecast of the price of as-available qualifying facility (QF) energy because it would be a better representation of the current market.

In AL 2118-E and AL 2118-E-A, SDG&E also provided a comparison of the Cabazon and Whitewater Hill REC-only contracts to other REC-only contracts that had been offered to SDG&E. This comparison is consistent with SDG&E's 2011 LCBF evaluation for REC-only contracts, which compares TREC bids solely on their price. The IE found that this evaluation methodology is reasonable for evaluating the Cabazon and Whitewater Hill PSAs. Energy Division agrees that this evaluation methodology is reasonable at this time, but notes that LCBF evaluation of REC-only contracts will be reviewed in R.11-05-005 and that the methodology used for evaluating these contracts is not precedent setting.

(See the "Cost Reasonableness" section of this resolution for a discussion of how the PSA prices compare to SDG&E's recent RPS solicitation and bilateral offers and Confidential Appendix A for SDG&E's LCBF evaluation of the PSAs.)

The PSAs were evaluated consistent with the LCBF methodology identified in SDG&E's 2011 RPS Procurement Plan.

[11] When the PSAs were executed, SDG&E's most recently approved LCBF methodology was from its 2009 RPS Procurement Plan.

Consistency with RPS Standard Terms and Conditions

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, four of which are considered "non-modifiable." The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028. More recently in D.10-03-021, as modified by D.11-01-025, the Commission further refined these STCs.

The PSAs include all of the Commission adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.

Consistency with Commission rules governing the use of TRECs for RPS compliance

On March 11, 2010, the Commission approved D.10-03-021, which authorizes the procurement and use of TRECs for compliance with the California RPS program.
The decision also established a temporary price cap of $50/TREC, a temporary TREC usage limit, and requirements for advice letters requesting approval of TREC contracts.[12] Under the temporary TREC usage limit, the amount of TRECs an investor-owned utility (IOU) may use for its annual RPS compliance obligations is limited to no more than 25 percent its annual procurement target (APT). However, if an IOU acquires more TRECs than 25 percent of its APT in any year, though, it may carry over the excess TRECs for compliance in future years (subject to any TRECs usage limitation applicable to the later year).[13]

In AL 2118-E and AL 2118-E-B, SDG&E provided a showing that the PSAs' prices are below the interim $50 price cap. (See Confidential Appendix A of this resolution for more information about how the PSA prices compare to the REC-price cap.)

SDG&E also provided a comparison of the PSAs and any previous REC-only contracts against SDG&E's annual TREC usage limit for years 2009 through 2013.

[12] The TREC price cap and usage limit will sunset December 31, 2013 (See, Ordering Paragraphs 19 and 21 of D.10-03-021, as modified by D.11-01-025.) Advice letter requirements include information on the facilities providing the TRECs, information on an IOU's TREC portfolio, and price comparisons of the TRECs. (See, Ordering Paragraph 32 of D.10-03-021, as modified by D.11-01-025.)

[13] SB 2 (x1) establishes new product categories and limits on the products from the various categories that can contribute towards its RPS portfolio (See §399.16(b))

Cost Reasonableness

Based on SDG&E's multiple LCBF evaluations of the transactions, SDG&E determined that the PSAs are favorable relative to proposals received in response to its recent solicitations, bilateral offers, and recently executed contracts. As noted above, however, we agree with the IE that the evaluation and comparison of the proposed contracts to other REC-only offers is a more appropriate LCBF methodology for comparisons and determining cost reasonableness.

The Commission's reasonableness review for RPS contract prices includes comparisons of proposed contracts to other proposed RPS projects from recent RPS solicitations, recent bilateral offers, and recently approved contracts. Applying this analysis and the confidential analysis provided by SDG&E in AL 2118-E and 2118-E-A, we determine that the PSAs' costs are reasonable.[14] However, SDG&E's and the Commission's methodology for determining cost reasonableness of REC-only transactions in this resolution is not precedent setting. As noted above in this resolution, LCBF evaluation of REC-only contracts is under consideration in R.11-05-005 which could provide additional or different rules for determining cost reasonableness in the future. For more information on the contractual pricing terms see Confidential Appendix A for a detailed discussion.

The total expected costs of the PSAs are reasonable based on their relation to recent bids, bilateral offers, and executed contracts.

Provided the RECs are from an eligible renewable energy resource, payments made by SDG&E under the PSAs are fully recoverable in rates over the life of the PSA, subject to Commission review of SDG&E's administration of the PSAs.

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.[15] Contracts that meet certain criteria are eligible AMFs.[16] Since the PSAs are for

[14] 2011 RPS solicitation data was not available for the Commission's analysis of these contracts. Thus, the most recent solicitation was the 2009 RPS solicitation.

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

[16] 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

only RECs, they are not eligible for AMFs. Furthermore, SDG&E has exhausted its AMFs provided by statute;[17] thus, SDG&E is not required to procure RPS-eligible generation at above-MPR costs but may voluntarily choose to do so.[18]

Procurement Review Group (PRG) Participation

The Procurement Review Group (PRG) was initially established in D.02-08-071 as an advisory group to review and assess the details of the IOUs' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission.[19] SDG&E asserts that the PSAs were discussed at nine different PRG meetings prior to submittal of AL 2118-E. Discussions at PRG meetings began in 2004 and continued at subsequent meetings until the filing of AL 2118-E in 2009.

Pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the PSAs.

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 consistent and objective manner. Specifically, the IE's role is to review SDG&E's bid evaluation, monitor negotiations, and review the resulting agreements. SDG&E retained PA Consulting (PA) as the IE for SDG&E's 2008, 2009 and 2011 RPS solicitations. Also, as required, SDG&E submitted IE Reports prepared by PA with AL 2118-E.

According to the IE Report submitted with AL 2118-E, PA reviewed SDG&E's evaluation of the contracts and the resulting PSAs. In its Independent Evaluator Report, PA concludes that the Cabazon and Whitewater Hill contracts are

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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.

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

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

[19] SDG&E's PRG includes representatives of the Union of Concerned Scientists, the Coalition of California Utility Employees, The Utility Reform Network, the California Public Utility Commission's Energy Division and Division of Ratepayer Advocates, and the California Department of Water Resources.

reasonably priced in comparison to SDG&E's other options. The IE came to his conclusion, however, using a different methodology than SDG&E used to evaluate the contracts. While the IE agreed that SDG&E's conclusions and methodologies were valid and reasonable, he was of the opinion that an alternative methodology was more appropriate. The IE compared the contract price plus energy price against the fast-track approval benchmark for short-term RPS contracts that was adopted by the Commission in D.09-06-050. The IE's conclusion, based on his alternative analysis, supports SDG&E's assertion that the contracts are reasonable and that the contracts merit Commission approval.

An excerpt from the IE Report's contract-specific evaluation of the PSAs can be found in confidential Appendix B to this resolution.

Consistent with D.06-05-039 and D.09-06-050, an independent evaluator reviewed the proposed PSAs.

Project Viability

The Cabazon and Whitewater Hill facilities are currently in operation, thus there are no project viability concerns associated with the facilities.

SDG&E's request for "bundled generation" classification and its use of the RECs for RPS compliance obligations

In AL 2118-E-A, SDG&E asserts that the PSAs "re-bundle" the RECs from the Cabazon and Whitewater Hill facilities with their underlying energy to create "bundled" transactions.[20] In support of its assertion that the transactions should be considered "bundled," SDG&E argues that the transactions do not meet the definition of a REC-only transaction as defined in D.10-03-021, as modified by D.11-01-025. These decisions define a REC-only transaction, in relevant part, as one that the buyer receives RECs, but not the underlying energy. SDG&E also says that the classification of the PSAs as "bundled" is consistent with SB 2 (1X) based on SDG&E's assumption that the transactions would be considered a "Category 1" transaction pursuant to the portfolio content categories and definitions in Pub. Util. Code § 399.16(b), as enacted by SB 2 (1X).

Staff reviewed and evaluated the proposed PSAs pursuant to current RPS program rules. The AL could not be reviewed pursuant to the rules or definitions in SB 2 (1X) since SB 2 (1X) is not yet effective and the legislation has yet to be

[20] The underlying energy is under contract to CDWR pursuant to contracts that CDWR negotiated during the Energy Crisis. The Commission assigned the CDWR PPAs to SDG&E, and SDG&E administers the PPAs on CDWR's behalf.

implemented by this Commission. Under current rules, the PSAs are REC-only contracts because they are for the procurement of only RECs. D.10-03-021, as modified by D.11-01-025, does not contain definitions of, or rules about, "rebundled" transactions.

However, this is an exceptional situation where the retail seller is buying the RECs and simultaneously receiving the energy via a different transaction with the same generation source. The energy from the Cabazon and Whitewater Hill wind farms is under contract to CDWR, while the proposed PSAs convey only the RECs from the wind facilities to SDG&E. Although the initial energy-only CDWR contracts are assigned to SDG&E, it is not at fault for the fact that the original contracts with the Cabazon and Whitewater Hill wind facilities did not include the associated RECs.

The Commission recognizes the exceptional circumstances concerning these PSAs and also that SDG&E ratepayers should receive for the full benefit of the renewable energy generated by the Cabazon and Whitewater Hill wind facilities. Therefore, these circumstances merit an exception to the current rules so that the PSAs, to the extent that they are reunited with the underlying renewable generation, should be treated as “bundled” procurement from an eligible renewable energy resource. This determination is applicable only to this exceptional circumstance and does not set a precedent for future Commission policy.

SDG&E should incorporate the procurement approved in this resolution in its appropriate compliance showing(s) consistent with RPS program rules.

DRA protests AL 2118-E

On November 17, 2009, DRA filed a protest to AL 2118-E. DRA made the recommendation to hold AL 2118-E in abeyance until the Commission has sufficient time to consider SDG&E’s Petition for Modification of D.06-10-019 or until the Commission issues a final decision on the issue of TRECs for RPS compliance. On March 11, 2010, the Commission issued a decision on TRECs, which was subsequently modified on January 13, 2011 by D.11-01-025, which authorized the use of TRECs for California RPS compliance; therefore, DRA’s protest of AL 2118-E is denied.

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Pub. Util. Code § 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is

procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable "eligibility" language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an "Eligible Renewable Energy Resource," that the project's output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller use commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.[21]

The Commission requires a standard and non-modifiable clause in all RPS REC-only contracts that requires "CPUC Approval" of an agreement to include an explicit finding that "any procurement pursuant to this Agreement is procurement of Renewable Energy Credits that conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (*Public Utilities Code Section 399.11 et seq.*), Decision 03-06-071, or other applicable law."[22]

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 absolve the purchasing utility of its obligation to enforce compliance with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in the PSA. 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. Util. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the

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

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

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 deliveries begin, except contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

COMMENTS ON THIS RESOLUTION

Public Utilities Code section 311(g)(1) requires draft resolutions to be issued for comment at least 30 days before being voted on by 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 alternate resolution was neither waived nor reduced. Accordingly, this alternate draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

Prior to this alternate draft resolution a draft resolution was mailed on July 19, 2011. Comments to the July 19, 2011 draft resolution were filed in a timely fashion on August 8, 2011 by SDG&E, The Utility Reform Network (TURN), and Shell Energy North America (Shell Energy). This draft alternate resolution implements changes that were suggested by parties in their comments to the draft resolution that was mailed to parties for comments on July 19, 2011.

SDG&E, TURN, and Shell Energy comment that the draft resolution should be modified to classify the Cabazon and Whitewater Hill PSAs as bundled transactions

In their comments, SDG&E and Shell Energy argue that the draft resolution's classification of the PSAs as REC-only transactions is incorrect because the underlying energy associated with the RECs serves California load. SDG&E further argues that the draft resolution takes an overly restrictive view of REC transactions and that they should be viewed holistically with the CDWR energy contracts, since the purpose of the PSAs is to unite the RECs with the generation SDG&E receives under the CDWR energy contracts. TURN argues that SDG&E is seeking to correct CDWR's mistake of not including the RECs in the underlying energy contracts when CDWR originally executed them and that the post-

transaction outcome should be recognized to determine whether the procurement is considered bundled or REC-only.

As noted above in this resolution, under current RPS program rules the Cabazon and Whitewater Hill PSAs are REC-only contracts. However, the Commission will make an exception due to the circumstances concerning these PSAs. Modifications were made throughout this resolution to address SDG&E's and TURN's concerns.

SDG&E comments that the draft resolution should be modified such that cost recovery for SDG&E payments for RECs are fully recoverable

SDG&E requests that the draft resolution be modified to clarify that payments made by SDG&E pursuant to the Cabazon and Whitewater Hill PSAs are fully recoverable, even if the RECs purchased pursuant to the PSAs cannot ultimately be used by SDG&E for RPS compliance. There is no need for modification; the draft resolution found that payments made by SDG&E under the PSAs are fully recoverable in rates over the life of the contracts, subject to compliance with Standard Term and Condition 6 and Commission review of SDG&E's administration of the PSAs.

FINDINGS AND CONCLUSIONS

1. The PSAs are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.
2. The PSAs are consistent with SDG&E's 2011 RPS Procurement Plan, approved by D.11-04-030.
3. The PSAs were evaluated consistent with the LCBF methodology identified in SDG&E's 2011 RPS Procurement Plan.
4. The PSAs include the Commission-adopted RPS standard terms and conditions including those deemed "non-modifiable".
5. The total expected costs of the PSAs are reasonable based on their relation to bids received in response to SDG&E's recent solicitations, bilateral offers, and executed agreements.
6. Provided the Renewable Energy Credits are compliant with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in the PSAs, payments made by SDG&E under the PSAs are fully recoverable in rates over the life of the PSAs, subject to Commission review of SDG&E's administration of the PSAs.
7. The PSAs are not eligible for AMFs.

8. Pursuant to D.02-08-071, SDG&E's Procurement Review Group (PRG) participated in the review of the PSAs.
9. Consistent with D.06-05-039 and D.09-06-050, an independent evaluator (IE) oversaw SDG&E's RPS procurement process and reviewed the contracts.
10. There is no project viability risk associated with the PSAs because the associated wind facilities are currently operating.
11. DRA's protest is denied.
12. SDG&E should be granted an exception to the current RPS rules due to the exceptional circumstances described in this resolution.
13. The PSAs, to the extent that they are reunited with the associated generation received under contracts administered by SDG&E on behalf of the CDWR, should be treated as "bundled" procurement from an eligible renewable energy resource. This determination is applicable only to this exceptional circumstance and does not set a precedent for future Commission policy.
14. Procurement pursuant to the PSAs is procurement of Renewable Energy Credits that conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, for purposes of determining SDG&E's compliance with any obligation it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable law.
15. The immediately preceding finding shall not be read to absolve SDG&E of its obligation to enforce compliance with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009, and included in these PSAs.
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 2118-E, AL 2118-E-A, and AL 2118-E-B should be approved.

THEREFORE IT IS ORDERED THAT:

1. The request of San Diego Gas & Electric Company for Commission review and approval of green attribute purchase and sale agreements, as amended, with Cabazon Wind Partners, LLC. and Whitewater Hill Wind Partners, LLC., as requested in Advice Letter 2118-E, Advice Letter 2118-E-A, Advice Letter 2118-E-B, is approved.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on September 22, 2011; the following Commissioners voting favorably thereon:

_____
PAUL CLANON
Executive Director

Confidential Appendix A

Contract Summary

[Redacted]

Confidential Appendix B

Excerpt from the Independent Evaluator Project-Specific Report[23]

[Redacted]

[23] Report of the Independent Evaluator on the Whitewater Cabazon and Whitewater Hill contracts, October 26, 2009, Jonathan M. Jacobs - PA Consulting, submitted in SDG&E AL 2118-E, pps. 2-1 and 2-2.