

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #11278
RESOLUTION E-4497
May 24, 2012

REDACTED

R E S O L U T I O N

Resolution E-4497. San Diego Gas & Electric Company requests approval of amendments to a power purchase agreement with USS Energy Star 2, LLC.

PROPOSED OUTCOME: This resolution approves cost recovery of an amended power purchase agreement with USS Energy Star 2, LLC. The amended power purchase agreement is approved without modifications.

ESTIMATED COST: Costs of the amended power purchase agreements are confidential at this time.

By Advice Letter 2258-E filed on June 9, 2011 and Advice Letter 2258-E-A filed on February 17, 2012.

SUMMARY

San Diego Gas & Electric Company's amended renewable energy power purchase agreement with USS Energy Star 2, LLC complies with the Renewables Portfolio Standard procurement guidelines and is approved without modifications.

San Diego Gas & Electric Company ("SDG&E") filed Advice Letter 2258-E on June 9, 2011 requesting California Public Utilities Commission ("Commission") approval of an amendment to a renewable energy power purchase agreement between SDG&E and MMR Power Solutions, LLC (MMR) and USS Energy Star 2 LLC. The amendment changes the project technology from concentrating solar thermal / biomass hybrid to solar photovoltaic and assigns the project to a different developer. Additionally, due to the technology and developer change, Conditions Precedent dates, the Commercial Operation Deadline, capacity size, and interconnection are also modified. On February 17, 2012, SDG&E filed supplemental Advice Letter 2258-E-A, requesting approval of an additional amendment to the power purchase agreement between SDG&E and USS

Energy Star 2, LLC that reduces the price of the power purchase agreement, adds a milestone to require a portion of the project to be placed in-service prior to commercial operation deadline, and changes the project name from Mount Signal Solar to Campo Verde Solar.

The original PPA was the result of SDG&E’s 2005 RPS solicitation and was approved in 2007 (E-4073). The Commission previously approved amendments to the PPA in 2008 (E-4176) and 2009 (E-4172) to increase the PPA price and modify milestone dates. The amendments that SDG&E is requesting approval of in Advice Letters 2258-E and 2258-E-A do not modify the project location, expected annual generation, or term length.

The table below provides an overview of the proposed amended USS Energy Star 2, LLC PPA:

Table 1. Summary of the USS Energy Star 2, LLC PPA

Generating facility	Type	Term Years	MW Capacity	GWh Energy	Online Date	Location
Campo Verde Solar	Solar PV	20	123 - 139	304	9/30/2013	El Centro, Imperial Valley, CA

This resolution approves the amendments to the USS Energy Star 2 PPA without modifications. SDG&E’s execution of the amendments to the PPA is consistent with its 2011 RPS Procurement Plan, including its resource need, which the Commission approved in Decision 11-04-030. Deliveries under the amended PPA are reasonably priced and fully recoverable in rates over the life of the power purchase agreement, subject to Commission review of SDG&E’s administration of the PPA.

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, SB 1036, and SB 2 (1X).¹ The RPS program is codified in Public Utilities Code Sections 399.11-399.31.² Under SB 2

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); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

² All further references to sections refer to Public Utilities Code unless otherwise

(1X), the RPS program administered by the Commission requires each retail seller to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources be an amount that equals an average of 20 percent of the total electricity sold to retail customers in California for compliance period 2011-2013; 25 percent of retail sales by December 31, 2016; and 33 percent of retail sales by December 31, 2020.³

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

Notice of Advice Letter 2258-E and Advice Letter 2258-E-A was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letters were mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

SDG&E Advice Letter 2258-E was timely protested by the Division of Ratepayer Advocates (DRA), The Vote Solar Initiative (Vote Solar), the North American Photovoltaic Developers Association (NAPVDA), and the Western Power Trading Forum (WPTF) on or about June 29, 2011. SDG&E responded to the protests on July 7, 2011.

SDG&E Advice Letter 2258-E-A was timely protested by DRA on March 9, 2012. SDG&E responded to the protest on March 16, 2012. USS Energy Star 2, LLC also provided a response to DRA's protest on March 16, 2012.

DISCUSSION

San Diego Gas & Electric Company requests approval two amendments to an approved renewable energy power purchase agreement with USS Energy 2, LLC.

The California Public Utilities Commission ("Commission") approved the original power purchase agreement (PPA) on March 15, 2007 (E-4073). The original

specified.

³ D.11-12-020 established a methodology to calculate procurement requirement quantities for the three different compliance periods covered in SB 2 (1X) (2011-2013, 2014-2016, and 2017-2020).

PPA was executed between San Diego Gas and Electric Company (SDG&E) and Bethel Energy, LLC (Bethel). On October 1, 2007, Bethel, MMR Power Solutions (MMR), and SDG&E executed an Assignment, Assumption and Consent Agreement whereby Bethel assigned all rights, title and interest in the PPA to MMR. On September 18, 2008, the Commission approved an amendment to the PPA that modified the technology from solar thermal to solar thermal/biomass hybrid, increased the amount of generation, increased the contract price, and updated standard contract terms and conditions (E-4176). Additionally, on September 24, 2009, the Commission approved two amendments that modified the commercial operation date, extended project milestones, increased project development security, and updated standard terms and conditions (E-4271).

Also, in D.08-12-058 the Commission approved the Sunrise Powerlink.⁴ The Campo Verde Solar project (formerly known as Bethel I and MMR I) was included in D.08-12-058 as one of five Commission approved renewable energy projects that, in total, were forecasted to provide 2,253 GWh that could be deliverable over Sunrise Powerlink.⁵ D.08-12-058 also noted that SDG&E committed to replacing any of the approved renewable energy contracts, including Campo Verde Solar, if any of the approved contracts fail.⁶

On June 9, 2011, SDG&E filed Advice Letter (“AL”) 2258-E requesting Commission approval of an amended and restated fourth amendment with MMR Power Solutions and USS Energy Star 2, LLC. The amended and restated fourth amendment modifies the project technology from solar thermal/biomass hybrid to solar photovoltaics (PV) and assigns the project from MMR to USS Energy Star 2, LLC (USS Energy Star). Additionally, condition precedent dates are modified along with modifying the commercial operation deadline (COD) from December 31, 2011 to September 30, 2013, increasing capacity size from 49.8 MW to 123 - 139 MW, and moving the interconnection from the Imperial Irrigation District (IID) balancing authority to the Imperial Valley Substation.

On February 17, 2012, SDG&E filed AL 2258-E-A requesting Commission approval of an additional amendment (New Sixth Amendment).⁷ The New Sixth

⁴ D.08-12-058:

<http://www.cpuc.ca.gov/environment/info/aspen/sunrise/D.08-12-058.pdf>.

⁵ D.08-12-058 at p. 65.

⁶ *Ibid.*

⁷ The Amended and Restated Fourth Amendment terminated, superseded, and replaced the Fifth Amendment, Sixth Amendment, and Seventh Amendment.

Amendment decreases the contract price; adds a milestone to require a portion of the project to be placed in-service early; and changes the project name from Mount Signal Solar to Campo Verde Solar.

First Solar is developing the Campo Verde Solar project with US Solar Holdings.⁸ The proposed 123 – 139 megawatts (MW) Campo Verde Solar facility will be located near El Centro, CA in Imperial County on private lands and interconnect to the Imperial Valley Substation. SDG&E expects that the project will deliver approximately 304 gigawatt-hours (GWh) per year of RPS-eligible generation. The project has a September 30, 2013 COD for the full project capacity and, as stated above, the New Sixth Amendment requires 50 MW of the project capacity to be placed in-service three months prior to COD.

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

1. The amended PPA is consistent with SDG&E's CPUC-approved RPS Plan and procurement from the amended PPA will contribute towards SDG&E's RPS procurement obligation.
2. SDG&E's entry into the amendments and the terms of such amendments are reasonable; therefore, the amendments are approved in their entirety and all administrative and procurement costs associated with the amended PPA, including for energy, green attributes, and resource adequacy, are fully recoverable in rates over the life of the amended PPA, subject to Commission review of SDG&E's administration of the amended PPA.
3. Generation procured pursuant to the amended PPA constitutes generation from an 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 Renewable Portfolio Standard program (Public Utilities Code §§ 399.11, *et seq.* and/or other applicable law) and relevant Commission decisions.
4. Deliveries made pursuant to the amended PPA will contribute to SDG&E's minimum quantity requirement established in D.07-05-028.
5. Expected deliveries under the amended PPA are eligible for any applicable RPS flexible compliance mechanisms.

⁸ First Solar: <http://www.firstsolar.com/> and US Solar Holdings: <http://www.ussolarholdings.com/>.

6. The electricity product received pursuant to the amended PPA is an eligible renewable energy resource electricity product that meets the requirements of Public Utilities Code §399.16(b)(1) (“RPS portfolio content Category 1”).

Energy Division Evaluated the amended PPA on the following criteria:

- Consistency with SDG&E’s 2011 RPS Procurement Plan
- RPS Procurement Portfolio need
- Consistency with SDG&E’s Least-Cost, Best-Fit requirements
- Cost reasonableness and net market value
- Consistency with RPS standard terms and conditions
- Consistency with Portfolio Content Categories Requirements
- Independent Evaluator review
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard
- Procurement Review Group participation
- Contribution to minimum quantity requirement for long-term/new facility contracts
- Project viability assessment and development status

Consistency with SDG&E’s 2011 RPS Procurement Plans

Pursuant to statute, SDG&E’s 2011 RPS Procurement Plan (Plan) includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.⁹ California’s RPS statute also requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.¹⁰ The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan.¹¹

⁹ Pub. Util. Code, §399.13(a)(5).

¹⁰ Pub. Util. Code, §399.13.

¹¹ SDG&E’s 2011 RPS Procurement Plan was approved by D.11-04-030 on April 14, 2011.

In SDG&E's 2011 RPS Plan, SDG&E expressed a commitment to contract in excess of its mandated annual procurement targets and goal of 33 percent renewables by 2020.¹² SDG&E's 2011 RPS Plan also called for SDG&E to issue a competitive solicitation for electric energy generated by eligible renewable resources that could begin delivering in 2011, 2012, 2013, 2014, and 2015. Additionally, offers were to be for terms of one month to 20 years in length, with terms greater than 20 years also being acceptable. Proposals could be for peaking, baseload, dispatchable, or as-available deliveries. SDG&E additionally expressed a preference for projects that could contribute towards SDG&E's Sunrise Powerlink commitment. SDG&E also stated in its Plan that bilateral offers would be considered if they were competitive when compared against recent RFO offers and provide benefits to SDG&E customers.

The amended USS Energy Star PPA is a contract for renewable generation that fits SDG&E's identified renewable resource needs because the proposed 20 year PPA is for generation from a renewable energy facility that is to provide renewable energy deliveries beginning in 2013 and interconnecting at the Imperial Valley substation. Thus, the generation from the facility could contribute towards SDG&E's near-term and long-term RPS requirement and be deliverable over Sunrise Powerlink.

The amended USS Energy Star PPA is consistent with SDG&E's 2011 RPS Procurement Plan, as approved by D.11-04-030.

SDG&E's RPS Procurement Portfolio Need

As a resource with commercial deliveries beginning in the third quarter of 2013, the amended project will provide deliveries during the end of Compliance Period 2011-2013.¹³ When adjusting SDG&E's RPS procurement portfolio to account for a certain amount of contract failure, SDG&E's primary need for additional renewable generation is projected to be in Compliance Period 2011-2013 and Compliance Period 2017-2020 as shown in Figure 1. Figure 1 depicts the projected RPS net long/short position for each compliance period under a risk-

¹² In D.08-12-058, which approved SDG&E's Sunrise Powerlink, SDG&E committed to procuring 33 percent of its electricity from renewables by 2020.

¹³ In addition to increasing California's RPS requirement to 33 percent from 20 percent, SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session) establishes three different compliance periods. In D.11-12-020 the Commission defined the compliance periods (2011-2013; 2014-2016; and 2017-2020) and the RPS procurement quantity requirements for each compliance period.

adjusted scenario.¹⁴ This graphical illustration shows that SDG&E is forecasted to be over-contracted in Compliance Period 2014-2016, and that it is under-contracted in Compliance Period 2011-2013 and Compliance Period 2017-2020.

Figure 1: SDG&E is forecasted to be under-contracted in Compliance Period 2011-2013 and 2017-2020¹⁵

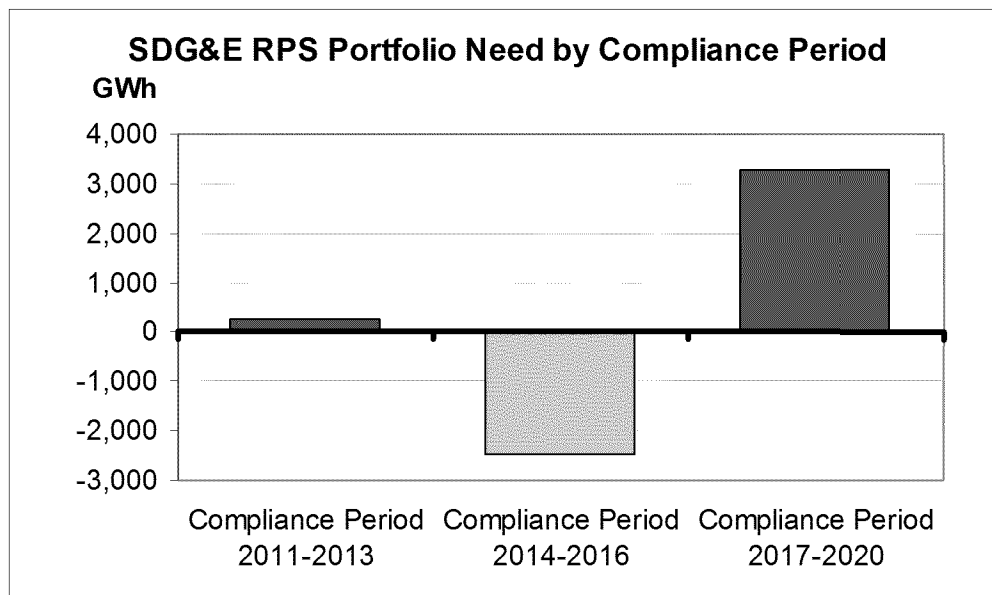


Table 1, below, provides a summary of: 1) forecast of SDG&E’s RPS procurement portfolio (includes projects currently in operation and those with CPUC-approved contracts under a risk-adjusted scenario); 2) the forecast of SDG&E’s RPS procurement portfolio net long/short positions relative to the RPS compliance periods’ quantity requirements; and 3) the forecasted annual generation from 2011 to 2020 for the Campo Verde Solar project. Given the expected third quarter of 2013 online date, projected generation from the Campo Verde Solar project will contribute approximately 130 GWhs towards SDG&E’s

¹⁴ It is assumed that projects under development will have a 60 percent rate of meeting the terms and conditions of the PPAs.

¹⁵ Includes: operating RPS-eligible generation under CPUC-approved PPAs and RPS-eligible generation under CPUC-approved PPAs that are under development. It is assumed that projects under development will have a 60 percent rate of meeting the terms and conditions of the PPAs. While the Campo Verde PPA was previously approved, it is not included in Figure 1 because it is being considered herein.

Compliance Period 2011-2013 RPS procurement needs. The Campo Verde project is expected to contribute 912 GWh in Compliance Period 2017-2020.

Table 2: Campo Verde Solar’s Expected Generation will contribute to SDG&E’s RPS Portfolio Needs in Compliance Period 2011-2013 and Compliance Period 2017-2020

	Compliance Period 2011-2013	Compliance Period 2014-2016	Compliance Period 2017-2020
RPS Target	10,283	13,662	23,487
Operating	7,858	6,515	6,671
Approved ^a	<u>2,159</u>	<u>9,640</u>	<u>13,557</u>
Subtotal	10,017	16,155	20,228
Need ^b	265	-2,493	3,259
Campo Verde	103	912	912

Units: GWh

^aassumes 60% success for projects under development

^bassumes no banking of forecasted generation because banking rules have not been implemented

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.¹⁶ 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. As described in its 2011 RPS Procurement Plan, SDG&E’s LCBF bid evaluation includes a quantitative analysis and qualitative criteria. 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 areas, resource diversity, etc.

SDG&E negotiated the USS Energy Star amendments bilaterally and therefore the amended PPA did not compete directly with other RPS projects. In AL 2258-E-A, SDG&E explains that it evaluated the amended PPA using the same LCBF

¹⁶ See § 399.13(a)(2)(A).

evaluation methodology it employs for evaluating bids from solicitations and that it compared USS Energy Star's LCBF valuation against its recent 2011 RFO bids. Thus, SDG&E used its LCBF methodology to evaluate the amended Campo Verde PPA. See the "Cost Reasonableness" section of this resolution for a discussion of how the project compares to SDG&E's 2011 RPS shortlist and other contracts executed during the same timeframe. In addition, see Confidential Appendix A for SDG&E's LCBF evaluation of the project.

The amended USS Energy Star PPA was evaluated consistent with the LCBF methodology identified in SDG&E's 2011 RPS Procurement Plan.

Cost Reasonableness and Net Market Value

The Commission's reasonableness review for RPS PPA prices includes a comparison of the proposed PPA's price and net market value to other RPS offers received in recent RPS solicitations and to contracts executed in the 12 months prior to the proposed PPA's execution date. Using this analysis and the confidential analysis provided by SDG&E in AL 2258-E and AL 2258-E-A, the Commission determines that the costs of the amended Campo Verde Solar PPA are reasonable. (See Confidential Appendix A for a discussion of the contractual pricing terms.)

The USS Energy Star PPA compares reasonably to RPS offers received in SDG&E's 2011 RPS solicitation and contracts executed by SDG&E 12 months prior to executing the amendments to the Campo Verde Solar PPA.

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

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, the Commission further refined these STCs in D.10-03-021, as modified by D.11-01-025.

The amended USS Energy Star PPA includes 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 Portfolio Content Categories

In D.11-12-052, the Commission implemented portfolio content categories for the RPS program and authorized the Director the Energy Division to require information be provided in the advice letter requesting Commission approval regarding the proposed contract's portfolio content category classification. The information to be provided is to allow the Commission to evaluate the claimed portfolio content category of the proposed contract; the risks if the proposed PPA is classified as a different portfolio content category; and the value to ratepayers if the proposed contract is classified as a different portfolio content category for.

Consistent with D.11-12-052, SDG&E provided information in AL 2258-E regarding the amended USS Energy Star PPA's portfolio content category classification.

In this resolution, however, the Commission makes no determination regarding the PPA's portfolio content category classification because RPS compliance determination portfolio content category classification is a separate process from the RPS contract evaluation process and requires consideration of several factors based on various showings. Thus, making a portfolio content classification determination in this resolution regarding the procurement considered herein is not appropriate. SDG&E should incorporate the procurement approved in this resolution in its appropriate compliance showing(s) consistent with RPS program rules and, if necessary, include any assertions regarding the PPA's classification or definition within those compliance filings.

Independent Evaluator Review

SDG&E retained independent evaluator ("IE") Jonathan Jacobs of PA Consulting Group to oversee SDG&E's amendment negotiations with USS Energy Star and to evaluate the overall merits for CPUC approval of the amended PPA. AL 2258-E and AL 2258-E-A included a public and confidential version of the independent evaluator's report.

In the IE's opinion, the amendments to the USS Energy Star PPA reflect fair negotiations. Additionally, the IE states that the amended Campo Verde Solar PPA price is comparable with projects on SDG&E's 2011 RPS shortlist. Overall, the IE states that he agrees with SDG&E that the amendments to the USS Energy Star PPA merit approval. See Confidential Appendix B and C for excerpts from the IE reports.

Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw SDG&E's amendment negotiations with USS Energy Star.

Compliance with the Interim Greenhouse Gas Emissions Performance Standard

California Pub. Util. Code §§ 8340 and 8341 require that the Commission consider emissions associated with new long-term (five years or greater) baseload power contracts procured on behalf of California ratepayers.¹⁷

D.07-01-039 adopted an interim Emissions Performance Standard (EPS) that establishes an emission rate for obligated facilities at levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. Generating facilities using certain renewable resources are deemed compliant with the EPS.¹⁸

The amended USS Energy Star PPA meets the conditions for EPS compliance because it is for intermittent generation with a capacity factor less than 60 percent.

Procurement Review Group 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 amendments to the USS Energy Star PPA were discussed at regularly-scheduled PRG meetings in March 2010, November 2010, January 2011, February 2011, March 2011, and April 2011.

Pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the amendments to the USS Energy Star PPA.

Contribution to Minimum Quantity Requirement for Long-Term/New Facility Contracts

¹⁷ "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. Util. Code § 8340 (a).

¹⁸ D.07-01-039, Attachment 7, p. 4.

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.

Section 399.13(b) requires that the Commission establish “minimum quantities of eligible renewable energy resources to be procured through contracts of at least 10 years’ duration.” Because the amended USS Energy Star PPA is greater than 10 years in length, the PPA may be construed as counting toward the minimum quantity requirements that the Commission has not yet established in R.11-05-005.

Project Viability Assessment and Development Status

SDG&E asserts that the Campo Verde Solar project is viable and will be developed according to the terms and conditions in the amended PPA. SDG&E bases its assertion on its evaluation of the viability of the projects using the Commission-approved project viability calculator, which uses standardized criteria to quantify a project's strengths and weaknesses in key areas of renewable project development.

Additionally, SDG&E provided the following information about the project’s developer and the project’s development status:

Developers:

First Solar is a vertically integrated manufacturer of thin-film solar PV modules that has access to an expanding manufacturing base and is unlikely to experience supply constraints for panels. Also, First Solar has served as engineering, procurement, and construction contractor for other solar developers and has experience operating and maintaining service contracts for other project owners. Also, US Solar Holdings has experience with conventional and renewable generation. It currently has approximately 1,000 MW of solar projects under development.

Technology and Quality of Resource:

The project will use PV modules that will be wired in series to comprise 1 MW blocks. Based on the project location and associated data regarding the area’s high daily solar insolation, SDG&E stated in AL 2258-E that it has high confidence that the project will be able to meet the contractual requirements.

Site Control and Permitting Status:

The project will be sited entirely on private land and the developer has obtained options to purchase all land needed for the project size. A Right-of-Way Grant is needed from the U.S. Bureau of Land Management (BLM) for the generation-tie because it will cross BLM land. The BLM has published an Environmental Assessment regarding the Right-of-Way Grant. Additionally, a Conditional Use

Permit from Imperial County will be needed which is expected to be obtained in June. All additional permits are expected to be obtained in a timely manner.

Interconnection Status:

The Campo Verde Solar project will interconnect at the Imperial Valley Substation. CAISO Phase I and Phase II studies have been completed, and execution of the interconnection agreement is expected in May 2012.

Financing Plan:

The project is expected to be financed through a combination of debt and equity. ArcLight Capital Partners, LLC is the cash equity sponsor; has nearly \$7 billion of energy assets under management and has successfully closed financing on many energy projects.

Based on the project's project viability calculator score and development progress, it is reasonable to expect that USS Energy Star will meet the terms and conditions of the amended USS Energy Star PPA.

Vote Solar, NAPVDA, DRA, and WPTF's comment on the issue of multiple contract amendments

Both Vote Solar and NAPVDA provided comments regarding AL 2258-E that state they do not take a position regarding the merits of the proposed amended Campo Verde PPA. They do note, however, that the Campo Verde project and PPA have gone through several changes since it was first submitted to SDG&E in its 2005 RPS solicitation. Additionally, they recommend that the policy issues related to resuscitation and re-submission of projects, such as delineating the types of contract modifications that give rise to the treatment of a modified contract as a new contract, be undertaken by the Commission in a proceeding.

DRA and WPTF provided similar observations regarding the multiple contract amendments to the PPA considered herein, but differ in that they recommend in their protests to SDG&E AL 2258-E and AL 2258-E-A that the Commission should reject AL 2258-E and encourage the project to be re-bid into a solicitation. DRA and WPTF assert that AL 2258-E should be rejected because the Campo Verde project is no longer the same project that bid into SDG&E's 2005 RPS solicitation and thus should not be treated as an amendment, but a new project and be bid into a solicitation. They further argue that continual PPA amendments and failure by developers to meet contractual commitments is an abuse of the amendment process and undermines the competitive solicitation process.

In SDG&E's reply to Vote Solar, NAPVDA, DRA, and WPTF's comments, SDG&E recommends that the protests be rejected because the appropriateness of amending approved PPAs should be dealt with as a general policy matter in either the Long-term Procurement Plan and/or the RPS proceedings.

As Vote Solar and NAPVDA acknowledge in their comments the advice letter and resolution process is not the appropriate forum to address policy issues. We agree and note that if Vote Solar, NAPVDA, DRA, or WPTF would like, they may make a motion pursuant to Rule 11.1 of the Commission Rules of Practice and Procedure to request that the Commission or the Administrative Law Judge address this specific policy issue in R.11-05-005 or R.10-05-006. We also note that in the Assigned Commissioner's Ruling issued on April 5, 2012 in R.11-05-005, it was stated that a ruling addressing RPS procurement and review process would be issued which parties may provide comments on.²⁰

Also, the Commission has reviewed AL 2258-E and AL 2258-E-A consistent with our review of new contracts. For instance, SDG&E's need for RPS generation is considered in the Commission's review of AL 2258-E and 2258-E. Additionally, the amended PPA price is compared to SDG&E's 2011 RPS shortlist and recently executed PPAs. Both of these examples are a subset of the Commission's review of AL 2258-E and 2258-E-A and are consistent with the Commission's review of new contracts, not just contract amendments. Therefore, WPTF's and DRA's protests regarding contractual modifications are denied.

DRA's and Western Power Trading Forum (WPTF)'s protests regarding contract price are denied

DRA and WPTF also argue in their protests to AL 2258-E that the PPA price is stale and no longer competitive given change in technology from solar thermal/biomass hybrid to solar PV and recent PV market trends. Since AL 2258-E and WPTF's and DRA's protests were filed, SDG&E filed AL 2258-E-A which requests approval of an amendment which, among several modifications, reduces the PPA price.

DRA also filed a protest to AL 2258-E-A recommending that the Commission reject AL 2258-E-A. In its protest, DRA argues that the amended PPA price is not competitive with other offers available to SDG&E from its 2011 RPS

²⁰ Assigned Commissioner's Ruling Identifying Issues and Schedule of Review for 2012 Renewables Portfolio Standard Procurement Plans Pursuant to Public Utilities Code Sections 399-11 et seq. and Requesting Comments on New Proposals, issued April 5, 2012 in R.11-05-005, p. 3.

solicitation and Renewable Auction Mechanism (RAM) solicitation. DRA additionally asserts that the value of amended PPA is lower than a majority of bids on SDG&E's 2011 shortlist.

In its response to DRA's and WPTF's protests, SDG&E recommends that their protests should be denied because amendments to the PPA increase the viability and competitiveness of the project and PPA. Specifically, SDG&E asserts that the amended PPA price and value compares favorably to its 2011 RPS shortlist and RAM results. SDG&E also asserts that the amended PPA price is comparable to SDG&E's portfolio of recently executed solar PPAs.

As stated above, the Commission finds the PPA value and cost comparable to SDG&E's 2011 shortlist and recently executed contracts. Also, as SDG&E notes in its reply, the price is similar to recently executed solar PV projects in its portfolio. Therefore, WPTF's and DRA's protests regarding contract price are denied.

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 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.

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.

RPS Eligibility and CPUC Approval

Pursuant to Pub. Util. Code § 399.25, 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 uses 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 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 (*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, neither 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 finding absolve the seller of 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 utilities’ administration of contracts.

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, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS AND CONCLUSIONS

1. The amended USS Energy Star 2, LLC PPA is consistent with SDG&E’s 2011 RPS Procurement Plan, as approved by D.11-04-030.

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.

2. Projected generation from the Campo Verde Solar project is expected to contribute to SDG&E's RPS requirements beginning in Compliance Period 2011-2013.
3. The amended USS Energy Star 2, LLC PPA was evaluated consistent with the LCBF methodology identified in SDG&E's 2011 RPS Procurement Plan.
4. The amended USS Energy Star 2, LLC PPA is comparable to SDG&E's 2011 RPS shortlist and contracts executed by SDG&E in the 12 months prior to the execution of the amendments to the USS Energy Star PPA.
5. Payments made by SDG&E pursuant to the amended USS Energy Star 2, LLC PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of SDG&E's administration of the PPA.
6. The amended USS Energy Star 2, LLC PPA includes 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.
7. Consistent with D.11-12-052, SDG&E provided information in AL 2258-E-A regarding the amended USS Energy Star PPA's portfolio content category classification.
8. Consistent with D.06-05-039, an independent evaluator oversaw SDG&E's negotiations with USS Energy Star 2, LLC.
9. The USS Energy Star 2, LLC PPA meets the conditions for EPS compliance because it is for intermittent generation with a capacity factor less than 60 percent.
10. Pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the USS Energy Star 2, LLC PPA.
11. It is reasonable to expect USS Energy Star 2, LLC will meet the terms and conditions of the amended PPA.
12. WPTF's and DRA's protests regarding contractual modifications are denied.
13. DRA's and Western Power Trading Forum (WPTF)'s protests regarding contract price are denied.

14. 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.
15. Procurement pursuant to the USS Energy Star 2, LLC 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.11-12-020 and D.11-12-052, or other applicable law.
16. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under this power purchase agreement to count towards an RPS compliance obligation. Nor shall that finding absolve SDG&E of its obligation to enforce compliance with this power purchase agreement.
17. AL 2258-E and AL 2258-E-A should be approved effective today without modifications.

THEREFORE IT IS ORDERED THAT:

1. San Diego Gas & Electric Company's Advice Letter 2258-E and Advice Letter 2258-E-A, requesting Commission review and approval, is approved without modifications.

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 May 24, 2012; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Evaluation Summary of USS Energy Star PPA

[Redacted]

Confidential Appendix B

Excerpt of Independent Evaluator Report's regarding
AL 2258-E²³

[Redacted]

²³ Excerpt from: Report of the Independent Evaluator on the Amended Mt. Signal Solar contract relative to the shortlist from the 2009 Request for Offers from Eligible Renewable Resources (2009 Renewable RFO), Jonathan Jacobs, PA Consulting, May 19, 2011, as submitted with Advice Letter 2258-E.

Confidential Appendix C

Excerpt of Independent Evaluator Report's regarding
AL 2258-E-A²⁴

[Redacted]

²⁴ Excerpt from: Report of the Independent Evaluator on the New Sixth Amendment to the Campo Verde Solar contract relative to the shortlist from the 2011 Request for Offers from Eligible Renewable Resources (2011 Renewable RFO), Jonathan Jacobs, PA Consulting, February 15, 2012, as submitted with Advice Letter 2258-E-A.