

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**ID #11549
RESOLUTION E-4538
September 27, 2012**

REDACTED

R E S O L U T I O N

Resolution E-4538. San Diego Gas & Electric (SDG&E) requests approval of two purchase and sale agreements for renewable energy credits with Cabazon Wind Partners LLC and Whitewater Hill Wind Partners LLC.

PROPOSED OUTCOME: This Resolution approves cost recovery for SDG&E's purchase and sale agreements for renewable energy credits with Cabazon Wind Partners LLC and Whitewater Hill Wind Partners LLC.

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

By Advice Letter 2377-E filed on July 6, 2012 and Advice Letter 2377-E-A filed on July 11, 2012.

SUMMARY

SDG&E's proposed purchase agreements for renewable energy credits with Cabazon Wind Partners LLC and Whitewater Hill Wind Partners LLC comply with the Renewables Portfolio Standard (RPS) procurement guidelines and are approved without modifications.

SDG&E filed Advice Letter (AL) 2377-E on July 6, 2012 and AL 2377-E-A on July 11, 2012 requesting Commission review and approval of two purchase and sale agreements (Agreements) for renewable energy credits (RECs) with Cabazon Wind Partners LLC and Whitewater Hill Wind Partners LLC. The short-term agreements provide RECs from operating wind facilities for a period of two years. The wind facilities associated with the Agreements are located in Palm Springs, California in the San Gorgonio wind resource area. The energy associated with the RECs is procured separately by SDG&E.

The following table summarizes the REC-only agreements:

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Generating Facilities	Project Technology Type	Minimum Capacity (MW)	Minimum Energy (GWh)	Contract Delivery Start Date	Contract Term (Years)	Project Location
Cabazon I	Wind, existing	40.9	119	1/1/12	2	Palm Springs, CA
Whitewater Hill	Wind, existing	61.5	175	1/1/12	2	Palm Springs, CA

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

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 (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

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 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).

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

NOTICE

Notice of AL 2377-E and AL 2377-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

No protests were received.

DISCUSSION

SDG&E requests approval of two REC purchase agreements and classification of the "re-bundled" RECs and associated energy as "Category 1" product for purposes of RPS compliance.

On July 6, 2012 SDG&E filed AL 2377-E requesting Commission approval of two REC purchase agreements with Cabazon and Whitewater Hill. On July 11, 2012, SDG&E filed AL 2377-E-A to update and supplement information provided in AL 2377.

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 40.9 megawatts (MW) and the Whitewater Hill facility is 61.5 MW. SDG&E estimates that the facilities will generate a minimum of 294 gigawatt-hours (GWh) annually.

The Agreements considered herein are for the RECs associated with the electricity that SDG&E has been procuring and will be procuring simultaneously from the Cabazon and Whitewater Hill wind facilities. Specifically, the electricity is being procured through previously executed and approved power purchase agreements (PPAs) that the California Department of Water Resources (CDWR) negotiated during the California Energy Crisis.⁴ These CDWR PPAs expressly

⁴ In D.02-09-053 and D.02-09-053, 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.

did not convey the RECs from the wind farms to CDWR.⁵

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

1. The Proposed Agreements are consistent with SDG&E's CPUC-approved RPS Plan and procurement from the Proposed Agreements will contribute towards SDG&E's RPS procurement obligation.
2. SDG&E's entry into the Proposed Agreements and the terms of such agreements are reasonable; therefore, the Proposed Agreements are approved in their entirety and all administrative and procurement costs associated with the Proposed Agreements, including the RECs, are fully recoverable in rates over the term of the Proposed Agreements, subject to Commission review of SDG&E's administration of the Proposed Agreements.
3. RECs procured pursuant to the Proposed Agreements constitute RECs from generation 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 Renewable Portfolio Standard program (Public Utilities Code §§ 399.11, et seq. and/or other applicable law) and relevant Commission decisions.
4. The RECs purchased pursuant to the Proposed Agreements (i) are deemed to have satisfied the product content requirements set forth in Public Utilities Code Section 399.16(b)(1) ("Category 1"), as adopted in California Senate Bill 2 (1x) (Stats. 2011, Ch. 1) and implemented by the California Public Utilities Commission in D.11-12-052; and (ii) will be counted as a Category 1 product for purposes of compliance with the requirements of the California Renewables Portfolio Standard Program and other applicable Law.

Energy Division Review of the Proposed Agreements

Energy Division evaluated the Agreements for the following criteria:

- Consistency with SDG&E's 2011 RPS Procurement Plan (Plan);
- SDG&E's RPS Procurement Portfolio Need;

⁵ Cabazon power purchase agreement:

http://www.cers.water.ca.gov/pdf_files/power_contracts/shellwind/041202_cabazon_exctn_vrsn.pdf and Whitewater Hill power purchase agreement:

http://www.cers.water.ca.gov/pdf_files/power_contracts/shellwind/011003whtwtrHIIAmen_dedPPA.pdf

- Consistency with the SDG&E's least-cost best-fit requirements;
- Consistency with RPS standard terms and conditions (STC);
- Consistency with renewable energy credits (REC) rules;
- Consistency with long-term contracting requirements;
- Consistency with Portfolio Content Categories Requirements;
- Cost reasonableness;
- Independent Evaluator review;
- Procurement Review Group (PRG) participation;
- Consistency with the Interim Emissions Performance Standard; and
- Contract viability.

Consistency with SDG&E's 2011 RPS Procurement Plan

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, 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.⁶

California's RPS statute also requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.⁷ The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan.⁸

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 2020.⁹ Specifically, SDG&E's 2011 RPS Plan 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

⁶ Pub. Util. Code, §399.13(a)(5).

⁷ Pub. Util. Code, §399.13.

⁸ SDG&E's 2011 RPS Procurement Plan was approved by D.11-04-030 on April 14, 2011.

⁹ 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. Since the SDG&E's 2011 Plan was approved, the RPS requirement was raised to 33 percent by 2020 by SB 2 (1X).

2015 for terms of one month to 30 years in length. Proposals could be for peaking, baseload, dispatchable, or as-available deliveries. SDG&E additionally expressed preference for projects that could contribute towards SDG&E's Sunrise Powerlink commitment. Lastly, SDG&E 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 Agreements are contracts for RECs that fit SDG&E's identified renewable resource needs. Additionally, the RECs were generated by facilities that are RPS-certified and could contribute towards SDG&E's RPS requirement.

Thus, the Agreements are consistent with SDG&E's 2011 RPS Procurement Plan, approved by D.11-04-030.

SDG&E's RPS Procurement Portfolio Need

When adjusting SDG&E's RPS procurement portfolio to account for a certain amount of contract failure, the Commission forecasts SDG&E's primary need for additional renewable generation to be in Compliance Period 2011-2013 and Compliance Period 2017-2020.^{10, 11} Figure 1 depicts the Commission's forecast of SDG&E's RPS net long/short position for each compliance period under a risk-adjusted scenario. 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. Compliance Period 2017-2020 is also shown as under-contracted, but all or a portion of excess procurement from Compliance Period 2014-2016 could be applied towards Compliance Period 2017-2020 requirements, subject to certain limitations.¹²

¹⁰ The Commission's forecast of SDG&E's RPS Procurement Portfolio is based on SDG&E's March 2012 RPS Progress Report, SDG&E's March 2012 Project Development Status Report, and the Commission's RPS Project Status Table. The Commission's forecast does not include any contracts pending Commission approval, executed - but not filed, nor contracts under negotiation.

¹¹ 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.

¹² See D.12-06-038 regarding rules for applying excess procurement in one compliance period to future compliance periods

¹³ Includes: operating RPS-eligible generation under CPUC-approved PPAs and RPS-

Figure 1: The Commission’s Forecast of SDG&E RPS Portfolio Net Short/Long Position¹³

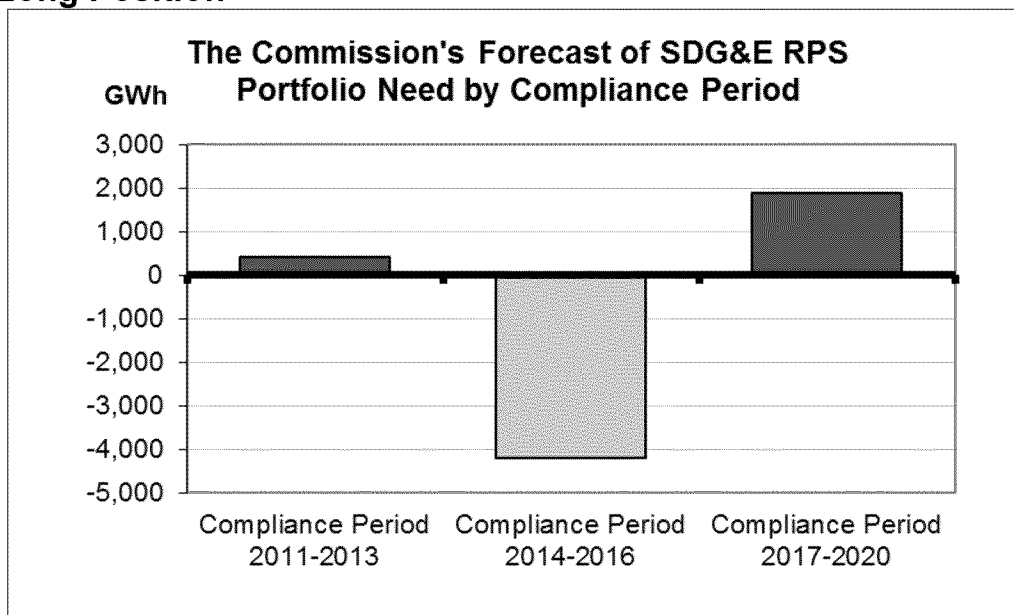


Table 1, below, provides a summary of: 1) The Commission’s forecast of SDG&E’s RPS procurement portfolio (includes projects currently in operation and those with CPUC-approved contracts under a risk-adjusted scenario); 2) the Commission’s forecast of SDG&E’s RPS procurement portfolio net long/short positions relative to the RPS compliance periods’ quantity requirements; and 3) the forecasted RECs pursuant to the Agreements. The Agreements are expected to provide 294,000 RECs annually towards SDG&E’s Compliance Period 2011-2013 RPS procurement needs.

Table 1: Expected RECs pursuant to the Cabazon and Whitewater Hill Agreements will contribute significantly to SDG&E’s RPS Portfolio Requirements in Compliance Period 2011-2013

eligible generation under CPUC-approved PPAs that are under development. The Commission made several assumptions in developing its forecast: 1) operational projects will generate 100% of contracted generation; 2) projects under development will have a 60 percent rate of meeting the terms and conditions of the PPAs; 3) no carrying over of forecasted excess generation from one compliance period to another because SDG&E may or may not choose to apply all excess procurement towards subsequent requirements (but, if all forecasted eligible excess procurement is applied to future compliance periods, SDG&E is forecasted to have a net long position, instead of a net short position, for Compliance Period 2017-2020); and 4) no prior deficits that may need to be satisfied in its estimate of SDG&E’s RPS target because that determination has not yet been made.

	Compliance Period 2011-2013	Compliance Period 2014-2016	Compliance Period 2017-2020
RPS Target	10,283	12,836	23,202
Operating	7,803	6,515	6,671
Approved ^a	<u>2,050</u>	<u>10,531</u>	<u>14,643</u>
Subtotal	9,853	17,047	21,313
Need ^b	430	-4,210	1,889
Cabazon and Whitewater Hill Agreement	588	0	0

Units: GWh

^a The Commission assumed 60% success for projects under development

^b The Commission assumed no carrying over of excess forecasted generation because SDG&E may or may not choose to apply all excess procurement towards subsequent requirements. The Commission also did not assume any prior deficits that may need to be satisfied in its estimate of SDG&E's RPS target.

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.¹⁴ 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 their methodology for evaluating REC-only contracts in their advice letters seeking approval of the contracts.

¹⁴ See former §399.14(a)(2)(B), amended and renumbered as §399.13(a)(4)(A) in 2011 by SB 2 (1X)

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 executed the Agreements as the result of its 2011 RPS solicitation. In AL 2377-E, SDG&E explains that it evaluated the Cabazon and Whitewater bids consistent with its LCBF methodology. See the "Cost Reasonableness" section of this resolution for a discussion of how the contract compares to SDG&E's 2011 RPS solicitation and recently executed contracts.

The Agreements were evaluated consistent with the LCBF methodology identified in SDG&E's 2011 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 Agreements 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 regarding Renewable Energy Credits

In D.10-03-021, as modified by D.11-01-025, the Commission authorized the procurement and use of unbundled RECs for compliance with the California RPS program. The decision also established a temporary price cap of \$50/REC and requirements for advice letters requesting approval of REC contracts.¹⁵ The Agreements prices are below the temporary \$50/REC price cap.

¹⁵ The REC price cap is a limit on the maximum that may be paid for unbundled RECs to be used for RPS compliance; it is not a REC price reasonableness benchmark. The REC price cap 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 RECs, information on an IOU's REC portfolio, and price comparisons of the RECs. (See, Ordering Paragraph 32 of D.10-03-021, as modified by D.11-01-025.)

Consistency with Long-Term Contracting Requirement

In D.12-06-038, the Commission established a long-term contracting requirement that must be met in order for retail sellers to count RPS procurement from contracts less than 10 years duration for compliance with the RPS program.¹⁶ In order for the procurement from any short-term contract(s) signed after June 1, 2010 to count for RPS compliance, the retail seller must execute long-term contract(s) in the same compliance period in which the short-term contract(s) is signed. The volume of expected generation in the long-term contract(s) must be sufficient to cover the volume of generation from the short-term contract(s).¹⁷

The Agreements trigger the minimum quantity condition because the contract terms are less than 10 years and were signed after June 1, 2010. SDG&E's retail sales for 2010 were 16,283 GWh, and 0.25 percent of its 2010 retail sales are 40.7 GWh. SDG&E has executed a number of contracts in Compliance Period 2011-2013 that are longer than 10 years in contract term length (Table 5). In total, the listed contracts represent 3,926 GWh. Thus, SDG&E has satisfied the minimum quantity condition because the contracts SDG&E executed in Compliance Period 2011-2013 exceed the minimum quantity threshold.

Table 2: List of SDG&E PPAs that are greater than 10 years in contract term length and were executed in Compliance Period 2011-2013

Project Name	Execution Date	Term (Years)	Capacity (MW)	Generation (GWh/yr)
NRG Borrego	1/25/2011	25	26	60
Ocotillo Express Wind Project	2/1/2011	20	315	1022
CSolar Imperial Valley Solar West	3/8/2011	25	150	356
Energia Sierra Juarez	4/6/2011	20	156	414
Sol Orchard San Diego 1-23	4/11/2011	25	50	47
Soitec (5 contracts)	5/17/2011	30	160	398

¹⁶ For the purposes of the long-term contracting requirement, contracts of less than 10 years duration are considered "short-term" contracts. (D.12-06-038)

¹⁷ Pursuant to D.12-06-038, the methodology setting the long-term contracting requirement is: 0.25% of Total Retail Sales in 2010 for the first compliance period; 0.25% of Total Retail Sales in 2011-2013 for the second compliance period; and 0.25% of Total Retail Sales in 2014-2016 for the third compliance period.

Arlington Valley Solar Energy II	6/3/2011	25	127	270
Catalina	6/3/2011	25	110	244
SolarGen 2	6/24/2011	25	150	361
Mt. Signal Solar I	2/3/2012	25	200	495
Manzana Wind Project	2/15/2012	20	100	259
			1,544	3,926

Consistency with Portfolio Content Categories

In D.11-12-052, the Commission defined and implemented portfolio content categories for the RPS program and authorized the Director of Energy Division to require the investor-owned utilities to provide information regarding the proposed contract’s portfolio content category classification in each advice letter seeking Commission-approval of an RPS contract. The purpose of the information is to allow the Commission to evaluate the claimed portfolio content category of the proposed RPS contract and the risks and value to ratepayers if the proposed contract is subsequently classified as a different portfolio content category.

In AL 2377-E and AL 2377-E-A, SDG&E claims that the procurement pursuant to the Agreements will be classified as Portfolio Content Category 1. To support its claim, SDG&E refers to the exception that D.11-12-052 gives to unbundled RECs associated with three contracts executed by CDWR during the Energy Crisis. Specifically, D.11-12-052 states that in these unique and limited circumstances SDG&E and Southern California Edison (SCE) should be allowed to acquire the RECs separately from the energy but receive RPS compliance credit as though they had been purchased together. SDG&E thus surmises that because the underlying energy associated with the Agreements is purchased pursuant to contracts executed by CDWR during the Energy Crisis that the unbundled RECs pursuant to the Agreements are exempted from Category 3 classification. Further, SDG&E claims that not only do the Agreements meet the exception provided in D.11-12-052, but the Agreements should be classified as a Category 1 for RPS compliance purposes. To support its claim, SDG&E states that D.11-12-052 provides an exception that allows the RECs to be treated as bundled; the Cabazon and Whitewater Hill facilities have first points of interconnection into a California Balancing Authority; and the Cabazon and Whitewater Hill facilities have been certified by the California Energy Commission as RPS-eligible facilities..

Consistent with D.11-12-052, SDG&E provided information in AL 2377-E and AL 2377-E-A regarding the expected portfolio content category classification of the renewable energy credits procured pursuant to the Agreements.

Energy Division agrees with SDG&E's characterization of the Agreements and the applicability of D.11-12-052 (Ordering Paragraph 14). In this resolution, however, the Commission makes no determination regarding the proposed Agreements' portfolio content category classification because the RPS contract evaluation process is a separate process from the RPS compliance determination and portfolio content category classification which requires consideration of several factors based on various showings in a compliance filing.¹⁸ Thus, making a portfolio content classification determination in this resolution regarding the procurement considered herein is not appropriate. SDG&E should incorporate the procurement resulting from the Agreements and all applicable supporting documentation to demonstrate portfolio content category classification in the appropriate compliance showing(s) consistent with all applicable RPS program rules. Any determination made by the Commission regarding the compliance showing(s) will be consistent with Commission decisions and rules.

Cost Reasonableness

The Commission's reasonableness review for RPS contract prices includes comparisons of proposed contracts to bids from recent RPS solicitations and recently executed contracts. Applying this analysis and the confidential analysis provided by SDG&E in AL 2377-E, the Commission determines that the Agreements' costs are reasonable. However, SDG&E's and the Commission's methodology for determining cost reasonableness of the REC transactions considered in this resolution is not precedent setting. As noted above in this resolution, LCBF evaluation of REC 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 cost reasonableness analysis see Confidential Appendix A for a detailed discussion.

The total expected costs of the Agreements are reasonable based on the Agreement's prices relative to SDG&E's 2011 RPS solicitation and recently executed contracts.

Provided that the RECs are from eligible renewable energy resources, payments made by SDG&E pursuant to the Agreements are fully recoverable in rates over

¹⁸ D.11-12-052, pp. 8, 12

the life of the Agreements, subject to Commission review of SDG&E's administration of the Agreements.

Independent Evaluator (IE) Review

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 2011 RPS solicitation. Also, as required, SDG&E submitted an IE Report prepared by PA with AL 2377-E.

According to the IE Report submitted with AL 2377-E, PA reviewed SDG&E's evaluation of the 2011 solicitation and the resulting contracts. In its IE Report, PA recommends that the Commission approve the Agreements because they are "priced at a significant discount to the market for bundled RECs due to the special circumstances related to the re-uniting of the TRECs [tradable renewable energy credits] with the null power from the CDWR contracts." PA supports this recommendation by noting that the Cabazon and Whitewater Hill contracts were negotiated a fair price that is significantly more favorable than the market alternative; the Agreements compare favorably with the offers shortlisted in the 2011 RFO; and the Agreements will also provide significant renewable energy credit in Compliance Period 2011-2013.

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

Consistent with D.06-05-039 and D.09-06-050, an independent evaluator (IE) reviewed the contracts.

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 Agreements were discussed at PRG meetings in August 2011, September 2011, October 2011, November 2011, and December 2011.

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.

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

Compliance With The Interim Greenhouse Gas Emissions Performance Standard (EPS)

California Pub. Util. Code §§ 8340 and 8341 require that the Commission consider emissions 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 power plant. The EPS applies to all energy contracts for baseload generation that are at least five years in duration.²⁰ 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. Moreover, the Commission determined that RECS do not have "any value for EPS compliance."²¹

The Agreements are not subject to the EPS because among other things, the agreements are not for the purchase of energy for a term of at least five years.

Contract Viability

The Cabazon and Whitewater Hill facilities are currently in operation, thus, it is reasonable to expect that Cabazon and Whitewater Hill will be able to meet the terms and conditions of the Agreements.

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

²⁰ "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).

²¹ D.07-01-039, pp. 21, 124

California RPS, and that the seller use commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.²²

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.”²³

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 Agreements. 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 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

²² See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

²³ See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

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

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

FINDINGS AND CONCLUSIONS

1. The Cabazon and Whitewater Hill Agreements are consistent with SDG&E's 2011 RPS Procurement Plan, approved by D.11-04-030.
2. The Cabazon and Whitewater Hill Agreements were evaluated consistent with the LCBF methodology identified in SDG&E's 2011 RPS Procurement Plan.
3. The Cabazon and Whitewater Hill Agreements include the Commission-adopted RPS standard terms and conditions including those deemed "non-modifiable."
4. The prices of the Cabazon and Whitewater Hill Agreements are below the temporary \$50/REC price cap established in D.10-03-021, as modified by D.11-01-025.
5. The Cabazon and Whitewater Hill Agreements trigger the long-term contracting requirement because the contract terms are less than 10 years and the Agreements were signed after June 1, 2010.
6. SDG&E has satisfied the long-term contracting requirement.
7. Consistent with D.11-12-052, SDG&E provided information in AL 2377-E and AL 2377-E-A regarding the expected portfolio content category classification of the Renewable Energy Credits procured pursuant to the Cabazon and Whitewater Hill Agreements.

8. The Commission makes no determination regarding the proposed Agreements' portfolio content category classification because the RPS contract evaluation process is a separate process from the RPS compliance determination and portfolio content category classification.
9. SDG&E's and the Commission's methodology for determining cost reasonableness of the REC transaction in this resolution is not precedent setting because LCBF evaluation of REC contracts is under consideration in R.11-05-005.
10. The total expected costs of the Cabazon and Whitewater Hill Agreements are reasonable based on the Agreements' prices relative to bids received in response to SDG&E's most recent solicitation and recently executed contracts.
11. 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 Agreements, payments made by SDG&E under the Agreements are fully recoverable in rates over the life of the Agreements, subject to Commission review of SDG&E's administration of the Agreements.
12. Consistent with D.06-05-039 and D.09-06-050, an independent evaluator (IE) oversaw SDG&E's 2011 RPS solicitation and negotiations with Cabazon and Whitewater Hill.
13. Pursuant to D.02-08-071, SDG&E's Procurement Review Group (PRG) participated in the review of the Cabazon and Whitewater Hill agreements.
14. The Cabazon and Whitewater Hill Agreements are not subject to the EPS because among other things, the agreements are not for the purchase of energy for a term of five years.
15. It is reasonable to expect that Cabazon and Whitewater Hill will meet the terms and conditions of the Agreements because the Agreements are for Renewable Energy Credits from operating wind facilities.
16. Procurement pursuant to the Cabazon and Whitewater Hill 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.

17. 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 Agreements.
18. 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.
19. AL 2377-E and AL 2377-E-A 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 with Cabazon Wind Partners, LLC and Whitewater Hill Wind Partners, LLC, as requested in Advice Letter 2377-E and Advice Letter 2377-E-A, 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 27, 2012; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Evaluation and Contract Summary

[Redacted]

Confidential Appendix B

Excerpt from the Independent Evaluator Project-Specific Report²⁴

[Redacted]

²⁴ Report of the Independent Evaluator on the Cabazon I and Whitewater Hill Renewable Energy Credit contracts selected in the 2011 Request for Offers from Eligible Renewable Resources (2011 Renewable RFO), April 25, 2012, M. Smith, J. Jacobs, N. Batra - PA Consulting, submitted in SDG&E AL 2377-E, pps. 5-1 and 6-2.