

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID # 11873
RESOLUTION E-4564
February 28, 2013

REDACTED
RESOLUTION

Resolution E-4564. Southern California Edison requests approval of a power purchase agreement with Alta Wind XIII, LLC which is a wholly-owned subsidiary of Terra-Gen Power, LLC.

PROPOSED OUTCOME: This Resolution approves cost recovery for the power purchase agreement between Southern California Edison and Alta Wind XIII, LLC.

SAFETY CONSIDERATIONS: The Alta Wind XIII facility will be operational on January 1, 2019. During the construction of the facility, CEQA review will be performed by Kern County as part of considering the Conditional Use Permit. Prudent Electrical Practices shall be followed by the Seller. Applicable laws including but not limited to industrial safety shall apply.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter 2740-E filed on May 29, 2012.

SUMMARY

Cost recovery for Southern California Edison's renewable energy power purchase agreement (PPA) with Alta Wind XIII, LLC is approved.

Southern California Edison (SCE) requests approval of a power purchase agreement (PPA) with Alta Wind XIII, LLC which is a wholly-owned subsidiary of Terra-Gen Power, LLC. Alta Wind XIII proposes to develop a wind facility with a capacity between 100-180 megawatts (MW) near Mojave, CA. The proposed facility's capacity is 100 MW, but it may be increased from 100 MW to 180 MW at the option of the developer, Terra-Gen, provided that notice of such a capacity increase is given no later than 30 days following CPUC approval. Alta Wind XIII's forecasted annual generation is between 306-552 gigawatt hours (GWh), dependent on the final size of the facility, and is contracted to be delivered over a 20-year term beginning on January 1, 2019.

The PPA under consideration for approval was bilaterally negotiated outside SCE’s 2011 Renewables Portfolio Standard (RPS) solicitation. SCE and Terra-Gen entered into negotiations to amend two previous PPAs, Alta Wind X and Alta Wind XI, to defer their Commercial Online Dates (CODs) by two years from January 1, 2013 to January 1, 2015 to better align generation with SCE’s RPS portfolio need. These amendments were approved by the California Public Utilities Commission (CPUC) in Resolution E-4487 on March 22, 2012. As part of the negotiation to modify the original Alta Wind X and Alta Wind XI CODs, Terra-Gen would only defer the existing PPA’s CODs if SCE agreed to execute a new Alta Wind XIII PPA. SCE and Terra-Gen agreed to execute the Alta Wind XIII PPA, and filed an Advice Letter 2740-E on May 29, 2012 requesting Commission approval of Alta Wind XIII.

The CPUC approves cost recovery for the PPA between SCE and Alta Wind XIII. Cost recovery is being approved for three reasons. First, the price and value of the PPA compares favorably against shortlisted bids resulting from SCE’s 2011 RPS Solicitation. Second, the guaranteed commercial online date (GCOD) is on January 1, 2019 which is in alignment with SCE’s RPS portfolio need. Third, the Alta Wind XIII project scores high in viability due to Terra-Gen’s previous experience in constructing and operating wind energy projects in the Tehachapi region. In addition, Terra-Gen has demonstrated its ability to achieve important project milestones early in the Alta Wind XIII development process.

The following table summarizes the project-specific features of the agreement:

Generating Facility	Type	Term Years	MW Capacity	Annual Deliveries	Online Date	Project Location
Alta Wind XIII	Wind	20	100-180	307-552 GWh	1/1/2019	Mojave, CA

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 specified.

(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 AL 2740-E was made by publication in the Commission's Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

SCE's Advice Letter 2740-E was not protested.

DISCUSSION

Southern California Edison (SCE) requests Commission approval of a renewable energy Power Purchase Agreement (PPA) between SCE and Alta Wind XIII.

In late 2011, as part of an endeavor to reduce near-term ratepayer costs and better match RPS deliveries with SCE's needs, SCE negotiated with Terra-Gen to defer the energy-delivery terms of the Alta Wind X and XI PPAs that were expected to have a combined capacity of 228 MW, annual deliveries of 715 GWh, and a commercial online dates (COD) of January 1, 2013. Terra-Gen agreed to modify the existing PPAs and push out the Alta Wind X and XI CODs two years if SCE agreed to execute a new bid from Terra-Gen, which resulted in the execution of the Alta Wind XIII PPA. The Alta Wind X and Alta Wind XI PPA amendments were submitted for approval to the Commission on December 29, 2011 in Advice Letters (AL) 2683-E and 2684-E respectively, which were approved on March 22, 2012 in resolution 4487-E.

As a result of the Alta Wind X and Alta Wind XI PPA amendments, the Alta Wind XIII PPA negotiations began between SCE and Terra-Gen in January 2012.

³ D.11-12-020 established a methodology to calculate procurement requirement quantities for the three different compliance periods set forth in Section 399.15 (2011-2013, 2014-2016, and 2017-2020).

After extensive negotiations, SCE and Terra-Gen executed a new bilaterally-negotiated PPA on March 30, 2012, after which SCE filed AL 2740-E on May 29, 2012 seeking Commission approval of the PPA.

Alta Wind XIII is a wholly-owned subsidiary of Terra-Gen Power, LLC, developer of geothermal, wind, and solar generation facilities. The 100-180 megawatt (MW) Alta Wind XIII project is proposed to deliver an estimated annual generation between 307-552 gigawatt hours (GWh), dependent on its final size, over a term of 20 years.

The Alta Wind XIII has a COD of January 1, 2019 and will be subject to California Environmental Quality Act (CEQA) review by Kern County as the lead agency. The seller shall operate the generating facility in accordance with Prudent Electrical Practices⁴. The Contract includes deferred maintenance as a provision that does not constitute force majeure. Facility decommissioning is not addressed specifically in the PPA.

SCE requests that the Commission issue a resolution containing:

1. Approval of the Alta Wind XIII PPA in its entirety;
2. A finding that the Alta Wind XIII PPA is consistent with SCE's 2011 RPS Procurement Plan;
3. A finding that the Alta Wind XIII PPA is compliant with the Emissions Performance Standard;
4. A finding that any procurement pursuant to the Alta Wind XIII PPA is procurement from an eligible renewable energy resource for the purposes of determining SCE'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.

⁴ Prudent Electrical Practices includes taking reasonable steps to ensure that: Equipment is not Operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the Transmission Provider's electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits.

5. A finding that the Alta Wind XIII PPA, and SCE's entry into it, is reasonable and prudent for all purposes, including, but not limited to, cost recovery in rates for payments made pursuant to the Alta Wind XIII PPA and administrative costs associated with the Alta Wind XIII PPA, subject only to further review with respect to the reasonableness of SCE's administration of the Alta Wind XIII PPA; and
6. Any other and further relief as the Commission finds just and reasonable.

Energy Division Evaluated the PPA on these Grounds:

- Consistency with SCE's 2011 RPS Procurement Plan
- Consistency with Least-Cost Best-Fit Requirements
- RPS Portfolio Need
- Price Reasonableness and Value
- Independent Evaluator (IE) Report
- Consistency with RPS Standard Terms and Conditions
- Procurement Review Group Participation
- Contribution to Minimum Long Term Contracting Requirement
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard

Consistency with SCE's 2011 RPS Procurement Plan

California's RPS statute requires the Commission to direct each utility to prepare a Renewable Energy Procurement Plan (Plan) and then review and accept, modify, or reject the Plan prior to the commencement of a utility's annual RPS solicitation.⁵ The Commission must then accept or reject proposed PPAs based on their consistency with the utility's approved Plan. SCE has stated that its evaluation criteria would consider the benefit of 1) offers with facilities located near approved transmission infrastructure, and 2) offers with facilities that have a first point of interconnection to a California balancing authority area⁶ within the

⁵ § 399.13.

⁶ In D.11-12-052, the Commission determined that there are currently five California balancing authority areas that meet the criteria in Section 399.12(d). These California balancing authority areas are: California Independent System Operator (CAISO), Balancing Authority of Northern California (formerly Sacramento Municipal Utility District), Imperial Irrigation District, Los Angeles Department of Water and Power, and Turlock Irrigation District.

Western Electricity Coordinating Council. Also, SCE informed potential participants to SCE's 2011 RPS solicitation that SCE preferred offers that could initially deliver in the latter half of the decade (i.e., 2016-2020) when SCE is expected to have a need for incremental RPS generation.⁷

The Alta Wind XIII project will be located in California and interconnect to the California Independent System Operator (CAISO) balancing authority area. Also, the Alta Wind XIII project is located near approved transmission infrastructure. Lastly, because the GCOD of the Alta Wind XIII PPA is not until January 1, 2019, the Alta Wind XIII project can help SCE meet its long-term needs in the third compliance period that begins in 2017.

The PPA is consistent with SCE's 2011 RPS Procurement Plan approved by D.11-04-030.

Consistency with SCE's Least-Cost Best-Fit Requirements

The LCBF decision directs the utilities to use certain criteria in their bid ranking.⁸ 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. SCE's bid evaluation includes a quantitative and qualitative analysis, as well as each proposal's absolute value to SCE's customers and relative value in comparison to other proposals. The basic components of SCE's LCBF evaluation and selection criteria and process for RPS PPAs were established in the Commission's LCBF Decisions D.03-06-071 and D.04-07-029. Consistent with these decisions, the three main steps undertaken by SCE are: (1) initial data gathering and verification; (2) a quantitative assessment of proposals, and; (3) adjustments to selection based on proposals' qualitative attributes.

In AL 2740-E, SCE evaluated the reasonableness Alta Wind XIII PPA against projects resulting from its 2011 RPS Solicitation, the most recent set of cohorts at the time of contract execution. When compared against these cohorts, the Alta Wind XIII PPA compares favorably on price, value, and need. See Confidential Appendix A for more details.

SCE adequately examined the reasonableness of the PPA utilizing its LCBF methodology during the time the PPA was being negotiated and executed.

⁷ See SCE's "2011 RENEWABLE RFP BIDDERS CONFERENCE" presentation (May 26, 2011). Most recently accessed on April 26, 2012: http://asset.sce.com/Documents/Shared/2011_SCEBiddersPresentation.pdf.

⁸ See D.04-07-029.

RPS Portfolio Need

The California RPS Program was established by Senate Bill (SB) 1078 and has been recently modified by SB 2 (1X), which became effective on December 10, 2011. SB 2 (1X) made significant changes to the RPS Program.⁹ SB2 (1X) established new RPS procurement targets such that retail sellers must procure "...from January 1, 2011 to December 31, 2013...an average of 20 percent of retail sales...25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020."¹⁰

SCE's RPS portfolio need falls within the third compliance period which is between 2017 and 2020. The GCOD for the Alta Wind XIII project is January 01, 2019 which aligns deliveries from the project with SCE's RPS compliance needs. See Confidential Appendix A for more details.

The Commission finds that generation from the Alta Wind XIII project adequately fits the portfolio need requirements of SCE's RPS portfolio.

Price Reasonableness and Value

The PPA was executed on March 30, 2012 and submitted to the Commission for approval on May 29, 2012. The most recent cohorts to compare the PPA's price and value against are shortlisted bids from SCE's 2011 RPS Solicitation (RFP) and contracts that were recently executed by SCE.

SCE evaluated the quantifiable attributes of each 2011 RFP proposal individually and subsequently ranked them based on the proposal's benefit and cost relationship, specifically the renewable premium. SCE calculated a renewable premium for the Alta Wind XIII PPA using the aforementioned methodology and the PPA ranked favorably on price and value, as measured by the renewable premium, compared to shortlisted bids from the 2011 RFP. The Alta Wind XIII PPA was also compared in a similar manner to SCE's recently executed contracts by the Independent Evaluator (IE). The PPA also ranked favorably on price and value when compared to these cohorts. See Confidential Appendix A for a price and value comparison.

The price and value of the PPA are reasonable compared to shortlisted projects resulting from SCE's 2011 RPS Solicitation and recently executed contracts.

⁹ The Commission opened Rulemaking (R.) 11-05-005 (May 5, 2011) to implement the new RPS law.

¹⁰ See § 399.15(b)(2)(B), SB 2 (1X).

The CPUC approves cost recovery for the PPA between SCE and Alta Wind XIII.

Independent Evaluator Report

SCE used Sedway Consulting, Inc. as the Independent Evaluator for the PPA. The IE states in its report:

“In comparison to the four bids that SCE shortlisted from its 2011 RPS solicitation and the seven RPS transactions recently executed by SCE, the Alta XIII PPA compares favorably in the main evaluation categories of price, portfolio fit, and viability... Sedway Consulting does not believe that there is any material deficiency in the Alta XIII PPA or project that would warrant the CPUC’s rejection of this PPA.”

The IE benchmarked the PPA against shortlisted bids resulting from the 2011 RPS Solicitation and all RPS projects or PPA amendments that SCE had recently executed prior to Alta Wind XIII’s March 30, 2012 execution. All of the projects/PPAs were ranked based on their renewable premium. Sedway Consulting found that the Alta Wind XIII PPA compared favorably to its cohorts from both a quantitative and qualitative perspective in the main evaluation categories of price, portfolio fit, and viability. See Confidential Appendix B for a detailed explanation of the IE’s findings.

Consistent with D.06-05-039, an independent evaluator oversaw SCE’s RPS procurement process. Additionally, an independent evaluator oversaw SCE’s negotiations with Terra-Gen, LLC and compared the costs, value and viability of the Alta Wind XIII LLC, PPA to the most recent offers received in the 2011 RPS solicitation. The independent evaluator recommends that the Commission approve the Alta Wind XIII LLC, PPA.

Consistency with RPS Standard Terms and Conditions

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

The 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.

Procurement Review Group Participation

The Procurement Review Group (PRG) process was initially established in D.02-08-071 as an advisory group of non-market participants to review and assess the details of the investor-owned utilities' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission as an interim mechanism for procurement review.

According to SCE, participants in its PRG included representatives from the Commission's Energy and Legal Divisions, the Division of Ratepayer Advocates, the Utility Reform Network, the Natural Resources Defense Council, California Utility Employees, the Union of Concerned Scientists, and the California Department of Water Resources. SCE briefed the PRG of the Alta Wind XIII PPA on March 14, 2012.

Pursuant to D.02-08-071, SCE complied with the Commission's rules for involving the Procurement Review Group.

Contribution to Minimum Quantity Requirement for Long-Term PPAs

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 term of the Alta Wind XIII PPA is greater than 10 years in length, the PPA may be construed as counting toward the minimum quantity requirements that the Commission established in D.12-06-038.

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

California Public Utilities Code Sections 8340 and 8341 require the Commission to consider emissions associated with new long-term (five years or greater) PPAs procured on behalf of California ratepayers.

D.07-01-039 adopted an interim 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. The EPS applies to all energy PPAs for baseload generation that are at least five years in duration.¹¹

¹¹ "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).

Generating facilities using certain renewable resources, including geothermal energy, are deemed compliant with the EPS.¹²

The Alta Wind XIII PPA PPA is exempt from EPS regulations because it will utilize wind turbine generators, which have been deemed compliant with the EPS standard under D.07-01-039.

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Public Utilities Code Section 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 PPA, the Commission has required standard and non-modifiable “eligibility” language in all RPS PPAs. 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.¹³

The Commission requires a standard and non-modifiable clause in all RPS PPAs 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.*), D.11-12-020 and D.11-12-052, or other applicable law.”¹⁴

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is not 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 finding absolve the seller of its obligation to obtain CEC certification, or the utility

¹² D.07-01-039, Attachment 7, p. 4.

¹³ See, e.g. D.08-04-009 at Appendix A, STC 6, Eligibility.

¹⁴ See, e.g. D.08-04-009 at Appendix A, STC 1, CPUC Approval.

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 such contracts.

CONFIDENTIAL INFORMATION

The Commission, in implementing Public Utilities Code Section 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 PPAs. Such information, including 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. Under the current confidentiality rules, the Alta Wind XIII PPA will remain confidential until 2022 due to its 1/1/2019 COD.

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 PPA is consistent with SCE's 2011 RPS Procurement Plan approved by D.11-04-030.
2. SCE adequately examined the reasonableness of the Alta Wind XIII PPA utilizing its LCBF methodology during the time the PPA was being negotiated and executed.
3. The Commission finds that generation from the Alta Wind XIII PPA adequately fits the portfolio need requirements of SCE's RPS portfolio.

4. The price and renewable premium of the Alta Wind XIII PPA are reasonable compared to shortlisted projects resulting from SCE's 2011 RPS Solicitation.
5. Consistent with D.06-05-039, an independent evaluator oversaw SCE's negotiations with Terra-Gen, LLC and compared the costs, value and viability of the Alta Wind XIII PPA to the offers received in SCE's 2011 RPS solicitation. The independent evaluator believes that the Alta Wind XIII PPA merits Commission approval.
6. The Alta Wind XIII 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. Pursuant to D.02-08-071, SCE complied with the Commission's rules for involving the Procurement Review Group.
8. Because the term of the Alta Wind XIII PPA is greater than 10 years in length, the PPA may be construed as counting toward the minimum quantity requirements that the Commission established in D.12-06-038.
9. The PPA is not covered procurement subject to EPS because the Alta Wind XIII PPA will utilize wind turbine generators, which have been deemed compliant with the EPS standard under D.07-01-039.
10. Procurement pursuant to the PPA is procurement from an eligible renewable energy resource for purposes of determining SCE'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.
11. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under the PPA to count towards an RPS compliance obligation. Nor shall that finding absolve SCE of its obligation to enforce compliance with the Alta Wind XIII PPA.
12. 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.
13. The Alta Wind XIII PPA should be approved in its entirety.
14. Advice Letter 2740-E should be approved effective today without modification.

15. Payments made by SCE under the Alta Wind XIII PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of SCE's administration of the PPA.

THEREFORE IT IS ORDERED THAT:

1. The power purchase agreement between Southern California Edison and Alta Wind XIII, LLC as proposed in Advice Letter 2740-E 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 February 28, 2013; the following Commissioners voting favorably thereon:

Paul Clanon
Executive Director

Confidential Appendix A

Price/Value Reasonableness, Need and Viability

[REDACTED]

Confidential Appendix B

Independent Evaluator Conclusions and Recommendations

[REDACTED]

Confidential Appendix C

PPA Terms and Conditions

[REDACTED]