PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

E-2b ID 2045

ENERGY DIVISION **RESOLUTION E-3816**
April 17, 2003

R E S O L U T I O N

Resolution E-3816. Southern California Edison Company for approval of one power purchase agreement (PPA) contributing toward procurement of at least an additional one percent of the utility's annual electric sales from renewable energy resources irrespective of the utility's residual net short. Consideration of this PPA had previously been deferred from Resolution E-3809 and is now being addressed here.

By Advice Letter 1676-E Filed on December 24, 2002.

SUMMARY

Southern California Edison Company (SCE) filed Advice Letter (AL) 1676-E on December 24, 2002, requesting Commission approval of five power purchase agreements (PPAs) contributing toward procurement of at least an additional one percent of the utility's annual electricity sales from renewable energy resources1 irrespective of the residual net short. Resolution E-3809 approved four of the five proposed PPAs, deferring consideration of the [REDACTED] contract to a later meeting. We now consider and approve the [REDACTED] contract, as modified, in this resolution, E-3816.

Notwithstanding the 2003 online requirement, as set forth in D.02-08-071, (which ORA, the CEC, and SCE support relaxing or eliminating) we opt to make an exception in this case, and allow the [REDACTED] to come online after 2003, due to the unique facts present which [REDACTED], (2) the reasonableness of the contract price relative to the benchmark and in comparison to current market prices, (3) [REDACTED], and (4) [REDACTED].

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[1] SCE refers to renewable energy resources as "eligible renewable resources" (ERRs).

We have held this resolution once from the agenda as we have, among other things, wrestled with whether, and to what degree, to disclose information submitted to us under seal. It is incumbent upon this Commission to keep sensitive information confidential while still making plain to the public at large the bases for Commission decisions. In the final analysis, it is the Commission's responsibility to make decisions in the light of day, and we give that obligation great weight in determining whether commercial information is of such critical sensitivity as to override broader public concerns.

This resolution finds that certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should be disclosed for the reasons discussed in the body of this resolution. Accordingly, all text in this resolution, except for specific pricing information which **[[[underlined in triple brackets]]]** (including [REDACTED] amounts), which appears [REDACTED], or which is marked "[REDACTED]" in the redacted copy, should be made public upon Commission approval of this resolution. We wish to make clear that the decision we make here is based on the unique facts before us today, and we will adopt broadly applicable standards governing confidentiality elsewhere.[2]

[REDACTED]

Specifically, SCE would like the Commission to make the following four findings regarding the proposed PPA:

1. The PPA and SCE's entry into the PPA is reasonable and prudent for all purposes, including, but not limited to, recovery of all payments made pursuant to the PPA in rates, subject only to review with respect to the reasonableness of SCE's administration of the PPA.

2. SCE's solicitation of renewable power that resulted in the PPA has been conducted reasonably.

[2] Specifically, in R.01-10-024 (the "Procurement Rulemaking"), and also in A.03-02-002 (Pacific Gas and Electric Company's "ERRA Mechanism Application").

3. Any procurement pursuant to the PPA is deemed part of SCE's "baseline" quantity of eligible renewable resources for purposes of Section 399.15 of the Public Utilities Code or other applicable law.

4. Any procurement pursuant to the PPA is deemed transitional procurement by SCE from a renewable resource for purposes of determining SCE's compliance with any obligation that it may have pursuant to D.02-08-071 and D. 02-10-062, or other applicable law, to procure an additional 1% of its annual electricity sales from renewable resources.

This resolution makes the above findings with certain qualifications to the second, third, and fourth proposed findings.

SCE demonstrated that the bid solicitation was conducted in an open competitive manner and that the evaluation methodology used to select the power procurement contracts was reasonable for the purposes of this interim solicitation, although we order removal of contract [REDACTED] clauses and [REDACTED] from the PPA, and reiterate our position that Renewables Portfolio Standard (RPS) rules will be developed in due course.

SCE made a sufficient showing that proposed PPA is in the ratepayers' interest because it further contributes toward SCE's obligation to procure renewable resources [REDACTED] relative to the provisional benchmark price provided in D.02-08-071.

AL 1676-E was submitted in compliance with Ordering Paragraphs 2, 3, 4, 5, and 6 of Decision (D.) 02-08-071, which: (1) allowed SCE to obtain California Department of Water Resources (DWR) credit support; (2) allowed SCE to use an expedited contract approval process set forth by the Commission; (3) required SCE to make advice letter filings for contract pre-approval within 30 days of contract signing or selection; (4) stated that the aforementioned requirements also apply to renewable and Qualifying Facility (QF) procurement during the transitional process; and (5) required the respondent utilities, including SCE, to "procure at least one percent of their annual electricity sales through a set-aside competitive procurement process for renewable resources [in which] utilities must solicit bids with contract terms of five, ten, and fifteen years, and enter into contracts with a mixture of lengths of not less than five years." (D. 02-08-071, Ordering Paragraph 6)

The PPA, for which SCE is seeking approval, was solicited under SCE's September 28, 2002 "Request for Proposals [RFP] from Eligible Renewable Resources (ERRs) Suppliers" (Renewables RFP). Responses to the Renewables RFP were due on October 10, 2002.

DWR credit support is not required the counterparty to the PPA proposed by SCE.

As originally submitted, SCE AL 1676-E was protested by the Office of Ratepayer Advocates (ORA), the Utility Reform Network (TURN), the Coalition of California Utility Employees (CUE), the California Energy Commission (CEC), Ridgewood Olinda, LLC (Ridgewood), and California Wind Energy Association (CalWEA). SCE submitted a confidential response to the protests of ORA, TURN, CUE, CEC, Ridgewood, and CalWEA on January 9, 2003, under Public Utilities Code Section 583. On January 10, 2003, SCE submitted a revised confidential Appendix A to its January 9, 2003 response in order to correct several non-substantive typographical errors.

SCE requested that AL 1676-E be effective on January 30, 2003, pursuant to the Procurement Contract Review Process set forth in Appendix B of D.02-08-071, under the shortened notice authority under Section V. B. of General Order 96-A and Section 491 of the Public Utilities (PU) Code.

Although six parties filed protests to AL 1676-E, the proposed PPA was only contested by the Utility Reform Network (TURN), the Coalition of California Utility Employees (CUE), and the California Energy Commission (CEC). In contrast, the Office of Ratepayer Advocates (ORA) supported the approval of all five contracts submitted in AL 1676-E, including the proposed PPA. ORA also recommended that SCE sign an additional contract. Ridgewood, and CalWEA did not support or oppose any specific contracts, as these market participants did not have access to confidential, contract-specific material.

Several issues were raised by protestants regarding the [REDACTED] contract: (1) CUE contends that the [REDACTED] contract does not qualify for expedited review; (2) CUE asserts that the Commission should consider (in a non-expedited process) [REDACTED].

As noted and addressed in E-3809, some members of SCE's Procurement Review Group (PRG) protested SCE AL 1676-E over compliance with D.02-08-071, the bid solicitation process and evaluation criteria, whether ratepayer interest would

be adequately served by the five contracts filed with the advice letter, and SCE's submission of AL 1676-E on December 24, 2002 which precluded Commission consideration of the request before the close of 2002.

This resolution approves the [REDACTED] contract submitted in AL 1676-E, as modified, effective today.

BACKGROUND

On January 30, 2003, the Commission issued Resolution E-3809 which approved, in part, SCE's request to enter into certain renewable power purchase agreements. In AL 1676-E, SCE requested authority to enter into five power purchase agreements contributing toward procurement of at least an additional one percent of its annual electricity sales from renewable energy resources. Resolution E-3809 approved four of the five proposed PPAs, which would allow SCE to exceed the goal of adding an additional one percent of renewable energy sales to its existing portfolio.

The Background section in Resolution E-3809 applies here as well and is incorporated by reference.

The PPA for which SCE is now seeking approval was solicited under SCE's September 28, 2002 "Request for Proposals [RFP] from Eligible Renewable Resources (ERRs) Suppliers" (renewables RFP).

Background Specific to the Proposed [REDACTED] Contract

[REDACTED]

NOTICE

Notice of Advice Letter 1676-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 III-G of General Order 96-A.

PROTESTS

D. 02-08-071 adopted an expedited schedule that requires a significantly reduced protest period. Protests were due within seven days of the advice letter filing and replies to protests were due within three days of the protest.

SCE's Advice Letter 1676-E was timely and confidentially protested on January 6, 2003 by ORA, TURN, CUE, and the CEC, and publicly protested by Ridgewood and CalWEA.

SCE submitted a confidential response to the protests of ORA, TURN, CUE, and the CEC on January 9, 2003, under Public Utilities Code Section 583. On January 10, 2003, SCE submitted a revised confidential Appendix A to its January 9, 2003 response in order to correct several non-substantive typographical errors.

Although six parties filed protests to AL 1676-E, the proposed PPA was only contested by the Utility Reform Network (TURN), the Coalition of California Utility Employees (CUE), and the California Energy Commission (CEC). In contrast, the Office of Ratepayer Advocates (ORA) supported the approval of all five contracts submitted in AL 1676-E, including the proposed PPA. Ridgewood, and CalWEA did not support or oppose any specific contracts, as these market participants did not have access to confidential, contract-specific material.

Several issues were raised by protestants regarding the [REDACTED] contract: (1) CUE contends that the [REDACTED] contract does not qualify for expedited review; (2) CUE asserts that the Commission should consider (in a non-expedited process) [REDACTED]

DISCUSSION

D.02-08-071 adopted a process to review and approve transitional period procurement contracts. It provided the utilities with an opportunity for an expedited resolution that resolves reasonableness issues, while ensuring effective Commission oversight, and a provisional benchmark of 5.37 cents per kWh was set forth in order to gauge the reasonableness of all contracts for which utilities seek approval. The utilities had the burden to show that the evaluation criteria used in the process were reasonable.

We examine SCE's request based on the directives set forth in D.02-08-071, as clarified in D.02-12-074, and generally with regard to the bid solicitation process and evaluation criteria, level of ratepayer benefit, timeliness, and PRG involvement. Prior to such examination, we disclose more details regarding the proposed contract.

Disclosure of [REDACTED]

[REDACTED]

[REDACTED]

Bid Solicitation Process

In many respects, SCE has substantially complied with the directives set forth in D.02-08-071. SCE was required to "hold a separate competitive solicitation for renewable resources in the amount of at least an additional 1 percent of their annual electricity sold beginning January 1, 2003." The contract for which SCE is now seeking approval was solicited under SCE's Renewables RFP. Prior to the issuance of the renewables RFP, SCE circulated a notice of availability via electronic mail and facsimile to prospective participants[3] inviting them to submit a Proposal Request Form. Responses to the renewables RFP were due on October 10, 2002.

In contrast to SCE's September 18, 2002 General (all-source) RFO for generation capacity, energy, and related products, SCE did not post the September 28, 2002 Renewables RFP on its website. SCE did not state why the Renewables RFP was not posted on its website, but SCE did post "Responses to Request for Proposal Inquiries" on its website and stated that ”SCE is posting the frequently asked questions (FAQs) and responses … as a means of providing those who have presented [renewable] proposals with equal access to information."[4] SCE also posted a revised definition of eligible renewable resources (ERRs) on this same webpage.[5]

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[3] [REDACTED]

[4] SCE Renewables FAQs:
http://www.sce.com/sc3/005_regul_info/005i_qualifying_facilities/RFP_QandA.htm

[5] SCE's revised definition of eligible renewable resources (ERRs) in its RFP:
http://www.sce.com/NR/rdonlyres/eujv6pasxnth4vy6uau4mieceu5fmn2df6hsr4legvw32yjuxqy47q422oidkaxujcfc3ulkl6c7qdv2qxc3e4zj7cd/QF_Protocol_Upd_20021001.pdf

Electricity Delivery in 2003

D.02-08-071 required SCE to "solicit bids for electricity to be delivered beginning January 1, 2003, and extending for five, ten, and 15 year terms, with no contract shorter than five years." SCE complied with this requirement in Section V.(C)(2) of its RFP:

[REDACTED]

Several protestants took issue with this approach, including the CEC:

[REDACTED]

TURN notes that SCE placed further pricing restrictions on each contract term in RFP "Section V.(C)(4) Levelized Energy Price (Minimum 5 Year Duration)" which includes the following:

[REDACTED]

[REDACTED]

We agree that these additional pricing provisions made SCE's Renewables RFP more complex, but though these provisions could have contributed to higher prices, all participants were subject to the same requirements and it has not been shown that these provisions were discriminatory toward any participant or technology. Thus, these pricing provisions are in compliance.

D.02-08-071 also required that "any contracts for new renewables projects … come online and begin delivering electricity before the end of 2003." CUE contends that the [REDACTED] contract does not qualify for expedited review because it cannot possibly meet the 2003 year-end online requirement:

[REDACTED]
Notwithstanding the 2003 online requirement, as set forth in D.02-08-071, (which ORA, the CEC, and SCE support relaxing or eliminating) we opt to make an exception in this case, and allow the [REDACTED] to come online after 2003, due to the unique facts present which [REDACTED], (2) the reasonableness of the contract price relative to the benchmark and in comparison to current market prices, (3) [REDACTED], and (4) [REDACTED]. Accordingly, we approve PPA cost recovery in connection with this contract.

[REDACTED]

We also reiterate that neither SCE nor [REDACTED] have submitted to us any [REDACTED]

Contracts for a Mixture of Term Lengths

D.02-08-071 required SCE to "enter into contracts with a mixture of term lengths." SCE has complied with this requirement. [REDACTED]

Preference for Existing Renewable Resources

D.02-08-071 required SCE to give "preference to existing renewable resources in the bidding process if their bids are equal to or lower than prices offered by new projects." On pages 7-8 of Confidential Appendix A to AL 1676-E, SCE notes that:

> SCE "gave greater weight to bidders with projects that were presently in operation to comply with the [D.02-07-071] requirement that IOUs prefer existing resources, and in recognition of the fact that existing resources are most likely to be able to lower their price due to the 'sunk' nature of their capital cost."

SCE's RFO contained a similar statement noting SCE's preference for existing projects. (See Section III. B., Page 5 of SCE RFP Protocols)

Although the proposed PPA would be a new project, the results of SCE's solicitation, previously considered in E-3809, did demonstrate a preference for operating resources.

Compliance with the One Percent Requirement

D.02-08-071 stated that the "requirement for a 1 percent increase in renewable resources is irrespective of the residual net short, though we encourage the utilities to solicit bids from innovative renewables projects that can help meet the utilities' residual net short requirements." The Commission has recently assigned a significant number of DWR contracts to SCE which created the

concept of a utility's residual net short.[6] We disclose here that the proposed PPA would contribute an additional [REDACTED] percent, annually, to SCE's existing portfolio of electricity generated from renewable resources. In addition, SCE has already complied with this requirement in that the four contracts already approved in E-3809 exceed the one percent goal.

Transitional Procurement and Baseline Confirmation Issues

SCE requested the following two findings in AL 1676-E:

> "Any procurement pursuant to the PPA is deemed part of SCE's "baseline" quantity of eligible renewable resources for purposes of Section 399.15 of the Public Utilities Code or other applicable law." (SCE AL 1676-E, page 3)
>
> "Any procurement pursuant to the PPA is deemed transitional procurement by SCE from a renewable resource for purposes of determining SCE's compliance with any obligation that it may have pursuant to D.02-08-071 and D. 02-10-062, or other applicable law, to procure an additional 1% of its annual electricity sales from renewable resources." (SCE AL 1676-E, page 4)

In approving the proposed PPA as amended, we confirm that procurement pursuant to the PPA will be deemed part of SCE's baseline, and will be counted toward SCE's one percent purchase requirement under D.02-08-071 and D.02-10-062.

Public Goods Charge (PGC) Funds Issues and [REDACTED] Clauses

D.02-08-071 required "that bids to provide renewable power clearly identify any expected funds from the public goods charge (PGC) administered by the CEC that are included in the resource pricing." [REDACTED].

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[6] The assignment of DWR contracts to SCE, and other IOUs, spawned the term "residual net short," which refers to a utility's open position relative to its system load. An IOU's "net short" is simply its System Load, less its Utility Retained Generation (URG). Residual net short is simply System Load, less URG, less DWR contracts.

The other two utilities (Pacific Gas & Electric and San Diego Gas & Electric) did not utilize [REDACTED] contract clauses. This contract language was not set forth in the Renewables RFP, nor was it part of the standard contract boilerplate. It appears that this language was formulated during contract negotiations. The use of such clauses was not envisioned by this Commission. As we did in E-3809, we again conclude that the use of these [REDACTED]contract clauses are not consistent with the D.02-08-071 requirement that "utilities … solicit bids for electricity to be delivered beginning January 1, 2003, and extending for five, ten, and 15 year terms, with no contract shorter than five years" for the reason that the use of such clauses could result in contracts shorter than five years which is inconsistent with our directives on this point. Accordingly, we direct SCE to remove the contract [REDACTED]clauses from the proposed PPA that tie contract [REDACTED]rights to [REDACTED]. In addition, we direct SCE to remove the [REDACTED] requirements from the proposed PPA, in order to allow the CEC to make a more objective [REDACTED] determination.

However, even without the desired [REDACTED], the proposed PPA would require [REDACTED] relative to the provisional benchmark price provided in D.02-08-071 which is discussed in the following section.

Reasonableness Benchmark and PGC Funding [REDACTED]

> In D.02-08-071, we set forth a provisional benchmark of 5.37cents / kWh in an attempt to establish an acceptable level for *per se* reasonableness. However, the ORA protest to the previous advice letter filing (AL 1676-E) correctly noted that, "D.02-08-071 did not specify whether the benchmark price was in nominal or constant dollars" (ORA Protest to SCE AL 1676-E, page 2). Notwithstanding that point, without [REDACTED], the proposed PPA [REDACTED], as required by SCE's Renewables RFP and D.02-08-071. However, there is considerable uncertainty as to whether [REDACTED]

[REDACTED]

It should be noted that we do not establish a routine practice or new methodology in this resolution, as the approval of this contract is not indicative of approval of any contracts to be submitted in the future.

Sanctions Issue

TURN and the CEC renewed their requests that the Commission find SCE in contempt of D.02-08-071 and D.02-10-062 pursuant to Section 2113 of the PU Code. Resolution E-3809 addressed this issue in some detail, and we continue to defer consideration of sanctions for SCE's non-compliance with the above referenced decisions.

Procurement Review Group (PRG) Involvement

D.02-08-071 required SCE, PG&E, and SDG&E to establish a Procurement Review Group (PRG) in order to ensure that interim procurement contracts entered into by the utilities are subject to sufficient and expedited review and pre-approval. The PUC Energy Division and ORA staff would be ex officio members of each PRG, and membership of the PRG would be open to an appropriate number of interested parties who are not "market participants."

PRG members have the right to consult with and review the details of: (1) each utility's overall interim procurement strategy; (2) proposed procurement contracts with the utilities before any of the contracts are submitted to the PUC for expedited review; and (3) proposed procurement processes including but not limited to RFPs, which result in contracts being entered into in compliance with the terms of the RFP.

From September 2002 through December 2002, SCE sponsored two face-to-face PRG meetings[7] in San Francisco and arranged three telephone conferences[8] concerning SCE's renewable solicitation. In a meeting on September 16, SCE reviewed its draft RFO documents with its PRG. SCE received feedback on the draft documents during a September 19 conference call, and took it into account before finalizing and issuing the RFO to potential renewable bidders on September 28. At this meeting, the PRG concurred that SCE should accept bids from projects with on-line dates after December 31, 2003, but that SCE should

[7] These meetings took place at the Hyatt Regency Hotel in San Francisco on September 16 and November 8, 2002.

[8] The phone conferences were held on September 19, November 14, and December 4, 2002.

prefer those resources, if possible, that came on-line as soon as possible. SCE concurrently provided a copy of the final RFP to each of its PRG members. At the November 8 PRG meeting, SCE reviewed the status of its solicitation by providing preliminary results and substantial detail regarding the progress of negotiations with "short listed" bidders.

During the November 14 PRG conference call, SCE again discussed the progress of the negotiating and contracting process. On December 4, SCE provided the PRG with near-final versions of "term sheets" that provided substantial detail regarding proposed contract terms with the bidders who were being selected from SCE's "short list." During a PRG conference call that same day, SCE reviewed the term sheets and SCE's intent to file shortly an advice letter requesting Commission approval of finalized contracts based on the material terms reflected in the term sheets.

ORA, TURN, CEC, NRDC, DWR, CUE, and the Commission's Energy Division actively participated in this PRG process.

Disclosure of Confidential Material[9]

We have held draft resolution E-3816 once from the agenda as we have, among other things, wrestled with whether, and to what degree, to disclose information submitted to us under seal. It is incumbent upon this Commission to simultaneously keep sensitive information confidential while still making plain to the public at large the bases for Commission decisions. In the final analysis, it is the Commission's responsibility to make decisions in the light of day, and we give that obligation great weight in determining whether commercial information is of such critical sensitivity as to override broader public concerns.

SCE is the sole proponent of keeping the redacted material confidential, and so we devote the bulk of our discussion to addressing SCE's concerns. We quote at length from SCE's first set of comments on draft resolution E-3814 (which we think apply equally well here to E-3816) regarding confidentiality, and address

[9] The " Disclosure of Confidential Material" discussion section was essentially taken from draft resolution E-3814 which addresses SCE AL 1680-E. We believe that SCE's comments regarding the disclosure of confidential material in response to draft resolution E-3814 apply equally well to draft resolution E-3816 with regard to the proposed PPA as filed in SCE AL 1676-E.

SCE's comments in some detail. As we noted at the outset of this resolution, the government of this state is generally supposed to be conducted in the sunshine. There are, of course, exceptions to this general rule, and so we face a balance between keeping confidential that which, if released, would harm ratepayers, while making clear to the public at large what we are doing, and why we are doing it. With that backdrop, we turn to the questions at hand: whether to release redacted information to the public, and, if so, what redacted information to make public.

SCE points out, correctly, in its comments on draft resolution E-3814 that:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]

[REDACTED]

" . . .assures that staff will not disclose information received from regulated utilities unless that disclosure is in the context of a Commission proceeding or is otherwise ordered by the Commission." (*Re Southern California Edison Company (Edison*) [Decision (D.) 91-12-019] (1991) 42 Cal.P.U.C.2d 298, 300.) Section 583 neither creates a privilege of nondisclosure for a utility, nor designates any specific types of documents as confidential. (Id., 42 Cal.P.U.C.2d at 301.) As we noted in *Edison*, supra:

The Commission has broad discretion under Section 583 to disclose information. See, for instance, Southern California Edison Company v. Westinghouse Electric Company, 892 F.2d 778 (1989) in which the United States Court of Appeals for the Ninth District stated (at p. 783):

> On its face, Section 583 does not forbid the disclosure of any information furnished to the CPUC by utilities. Rather, the statute provides that such information will be open to the

> public if the commission so orders, and the commission's authority to issue such orders is unrestricted.[10]

In Resolution L-290, we go on to explain that:

> The legal test for state agency disclosure of public records is set forth in the California Public Records Act (PRA) (Government Code Section 6250 et seq.). The PRA is intended to provide "access to information concerning the conduct of the people's business," while being "mindful of the rights of individuals to privacy." (Government Code Section 6250.) PRA exemptions of certain classes of records from public disclosure must be narrowly construed to ensure maximum disclosure of government operations. (New York Times v. Superior Court (1990) 218 Cal.App.3d 1579, 1585.) The PRA requires that the public be given access to government records unless they are specifically exempt from disclosure, or the public interest in nondisclosure clearly outweighs the public interest in disclosure. (Government Code Section 6255.) The listing of a record among the specific exemptions in the PRA does not prohibit the release of the records. We have long recognized that PRA exemptions are permissive, not mandatory; "they permit nondisclosure but do not prohibit disclosure." (Re San Diego Gas & Electric Company (SDG&E) (1993) 49 Cal.P.U.C.2d 241, 242, citing Black Panther Party v. Kehoe (1974) 42 Cal.App.3d 645, 655.) The general policy of the PRA clearly favors disclosure. Unless there is a showing that the public interest in confidentiality clearly outweighs the public interest in disclosure, we will generally release records upon request.[11]

It is, in short, within this Commission's sole discretion to determine whether to release or keep confidential information submitted pursuant to § 583. And there is a presumption in favor of release upon request.

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[10] Resolution No. L-290, California Public Utilities Commission, 2000 Cal. PUC LEXIS 1087, June 22, 2000.

[11] Resolution L-290, above.

[REDACTED]

[REDACTED] We are certainly cognizant of the impossibility of "unringing the bell" and making again confidential that which has been publicly disclosed. Nonetheless, we feel that it is sufficiently clear that it is in the public interest to release the information disclosed by this resolution [REDACTED].

Therefore, this resolution finds that certain material filed under seal pursuant to Pub. Util. Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, will be made public. Accordingly, all text in this resolution, except for specific pricing information which **[[[underlined in triple brackets]]]** (including [REDACTED] amounts), which appears [REDACTED], or which is marked "[REDACTED]" in the redacted copy, should be made public upon Commission approval of this resolution.

COMMENTS

PU 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.

Energy Division requests that the 30-day comment period for this resolution be reduced to four days: (1) because of the expedited schedule set forth in D.02-08-071; and (2) because SCE's Procurement Review Group has been active throughout the interim procurement process leading up to the advice letter and resolution, and, hence, no comments would alter our response to their protests.[REDACTED]

Comment Period on Draft Resolution E-3809

Although now the subject of E-3816, the proposed PPA was considered in draft Resolution E-3809 at the Commission's February 23, 2003 meeting (Agenda 3108, Item E-4 2/27/2003). At that meeting, Commissioner Wood sponsored an amendment to Item E-4 to defer consideration of the proposed PPA to a subsequent meeting. Item E-4 (E-3809) was approved with the Wood amendment.

On January 28, 2003, draft resolution E-3809 was circulated to exclusively to the PRG via email by the Energy Division at 1:34 PM for a confidential one-day

comment period. Comments were due back via email to the Energy Division by 2:00 PM on Wednesday, January 29, 2003. Draft resolution E-3809 contained confidential material protected by the Non-Disclosure Agreement for SCE's PRG, and by Section 583 of the Public Utilities Code. Comments were filed by ORA, TURN, NRDC, CUE, CEC, and SCE. Minor, clarifying revisions were made to the draft resolution in response to comments.

Comment Periods on Draft Resolution E-3816 and Alternates

On Friday, March 7, 2003 at about 4:00 PM, the draft resolution prepared by the Energy Division (Agenda Item ID 1771) was circulated exclusively to the PRG by the Energy Division via email for a confidential three-day comment period. Originally, comments were due back via email to the Energy Division by 3:00 PM on Monday March 10, 2003 but was extended to Tuesday March 11, 2003 at 9:00 AM.

Also on Friday, March 7, 2003 at about 5:00 PM, a draft resolution (Wood Alternate, Agenda Item ID 1844) was circulated exclusively to the PRG by the Energy Division via email for a confidential comment period of three calendar days. Comments were due via email to the Energy Division by 9:00 AM on Tuesday, March 11, 2003. Comments were filed by ORA, CEC, CUE, and SCE. These comments are discussed in detail below in the "Discussion of Comments Received From March 7th Comment Period" section of this resolution.

The draft resolutions that were circulated contained confidential material protected by the Non-Disclosure Agreement for SCE's PRG, and by Section 583 of the Pub. Util. Code. Energy Division received comments from ORA, CEC, and SCE supporting Agenda Item ID 1771 with modifications, while CUE commented in support of the Wood Alternate, Agenda Item ID 1844.

This draft Kennedy Alternate (Agenda Item ID 2045) was circulated for comment on Monday, April 7, 2003 at about 5:00 PM for an approximately seven-day comment period. A public, redacted copy was circulated to the Rulemaking (R.) 01-10-024 service list, while a confidential, unredacted copy was circulated to the SCE PRG. Comments were due back via email to the Energy Division by 9:00 AM on Monday April 14, 2003. Each distribution was advised that this is an ample comment period and we see no reason to grant any requested extensions. Comments were filed by TURN, ORA, CUE, and SCE. These comments are discussed in detail below in the "Discussion of Comments Received From April 7th Comment Period" section of this resolution.

Discussion of Comments Received From March 7th Comment Period

On Friday, March 7, 2003, both the draft resolution prepared by the Energy Division (Agenda Item ID 1771) and a draft alternate resolution (Wood Alternate, Agenda Item ID 1844) were circulated exclusively to the PRG by the Energy Division via email for a confidential three-day comment period. Originally, comments were due back via email to the Energy Division by 3:00 PM on Monday March 10, 2003 but was extended to Tuesday March 11, 2003 at 9:00 AM. Comments were filed by ORA, CEC, CUE, and SCE.

The issue of central concern to the commenters is the 2003 online requirement. CUE is supportive of both the draft and the alternate with regard to the use of a [REDACTED] clause designed to ensure a 2003 online date,[12] although CUE supports the alternate that rejects the proposed contract. ORA supports the draft but suggests that the 2003 online requirement be "eliminated or changed to a later date." The CEC stated that "the Commission should relax this [2003] online requirement." SCE contends that the 2003 online requirement should be "eliminated" because DWR credit support is not a component of the proposed PPA.

Notwithstanding the 2003 online requirement, as set forth in D.02-08-071, (which ORA, the CEC, and SCE support relaxing or eliminating) we opt to make an exception in this case, and allow the [REDACTED] to come online after 2003, due to the unique facts present which [REDACTED], (2) the reasonableness of the contract price relative to the benchmark and in comparison to current market prices, (3) [REDACTED], and (4) [REDACTED]. It should be noted that our exception on this point does nothing to alter the reasonableness finding made regarding this solicitation. In E-3809 (Finding 10), we found that "SCE's solicitation of renewable power … has been conducted reasonably for purposes

[12] As mentioned earlier, the purpose of this [REDACTED] clause is to assure compliance with D.02-08-071 (be online in 2003), in contrast to the SCE [REDACTED] clauses that are tied to [REDACTED] would put undue pressure on the CEC and potentially put the PPA in conflict with our own multi-year (5, 10, 15-year) contract term provision in D.02-08-071.

of this interim procurement, although we order several changes …."

With regard to the specifics of the proposed PPA, this deal is for a **[[[REDACTED PRICING INFO]]]** reasonable price, **[[[REDACTED PRICING INFO]]]** reasonableness benchmark, and provides for [REDACTED] reliable renewable power. The contract originally provided for [REDACTED] Both the draft resolution and the alternate resolution acknowledge that the price and other contract terms are reasonable, and resulted from an open and competitive solicitation. This deal did not displace any comparable bidders. The next bidder in the stack offered a significantly higher price and nowhere near the quantity of power.

Passing on this deal now, and leaving it to a later solicitation would not be prudent. There is not likely to be another solicitation until, at the earliest, the end of this year, and, possibly, not until next year, because SCE cannot be required to solicit until 90 days after it becomes creditworthy. Further, it is uncertain as to whether SCE could duplicate these pricing terms at a later date, given that the market price for power has gone up significantly since this contract was selected.

[REDACTED]

[REDACTED]

Discussion of Comments Received From April 7th Comment Period

This draft Kennedy Alternate (Agenda Item ID 2045) was circulated for comment on Monday, April 7, 2003 at about 5:00 PM for an approximately seven-day comment period. A public, redacted copy was circulated to the Rulemaking (R.) 01-10-024 service list, while a confidential, unredacted copy was circulated to the SCE PRG. Comments were due back via email to the Energy Division by 9:00 AM on Monday April 14, 2003. Each distribution was advised that this is an ample comment period and we see no reason to grant any requested extensions. Comments were submitted by TURN, ORA, CUE, and SCE.

As a result of the April 7th comment period, two issues were of central concern: (1) the 2003 online requirement, and (2) the intended level of disclosure of confidential material by the Commission upon approval of this resolution. SCE is "strongly supportive" of the Kennedy alternate particularly with regard to the 2003 online requirement exemption, however, SCE "strongly opposes" the release

of certain confidential information, and, instead "would encourage the Commission to release certain limited information" in a manner proposed by SCE. TURN supports the Kennedy alternate and urges its approval, including the modification of the 2003 online requirement set forth in D.02-08-071[13] such that the [REDACTED] project would be allowed to come online after 2003.

ORA has supported the proposed [REDACTED] contract since it was filed and only offered one edit to note that ORA had recommended the approval of an additional contract not selected by SCE. CUE is the only commenter that does not support exempting the proposed [REDACTED] contract from the 2003 online requirement. CUE contends that approval of the [REDACTED] contract would lead
to a waste of Commission and party resources, [REDACTED]. In spite of its opposition, CUE also submitted several technical corrections which will improve the accuracy of the alternate.

The 2003 Online Requirement. As we have noted before in this resolution, TURN, ORA, the CEC, and SCE support relaxing or eliminating the 2003 online requirement in this case, given the unique facts present which [REDACTED], (2) the reasonableness of the contract price relative to the benchmark and in comparison to current market prices, (3) [REDACTED], and (4) [REDACTED]. For these reasons, we opt to make an exception in this case, and allow the [REDACTED] to come online after 2003.

SCE's Confidentiality Concerns and Proposal. In its April 14th comments, SCE stated that it "strongly opposes" the release of certain confidential information as proposed in the Kennedy alternate, and, instead "would encourage the Commission to release certain limited information" in a manner proposed by SCE. SCE is concerned that the Kennedy alternate "appears to release price information and specific contract terms and conditions [REDACTED] contained in the [[REDACTED]] contract" (SCE April 14, 2003 Comments, page 3, footnote 7). SCE further states that, "it is unclear what highlighted information the [Kennedy alternate] would consider 'specific pricing information' which would remain under seal if the [Kennedy alternate] is voted out" (SCE April 14, 2003

[13] "We also require that any contracts for new renewables projects … come online and begin delivering electricity before the end of 2003" (D.02-08-071, page 33).

Comments, Exhibit A -- "SCE Marked [Redlined] Version [of the Draft Kennedy Alternate]", page 2, last paragraph, text in bold). TURN also stated in its comments that the Kennedy alternate is "not entirely clear with respect to whether specific pricing data for the [REDACTED] contract would remain redacted" (TURN Comments, page 1-2).

With regard to what text is actually regarded as "specific pricing information," SCE's and TURN's points are well-taken. Accordingly, this revised draft of the Kennedy alternate clearly designates all text which is considered "specific pricing information."

With regard to the [REDACTED] contract and the Kennedy alternate's proposed release of some confidential information, SCE proposes that the Commission be guided by a recent SCE/TURN agreement on confidentiality which was negotiated as part of the implementation of Renewable Procurement Standards (RPS) legislation in R. 01-10-024. The SCE/TURN agreement states disclosed information "should only be revealed *after* a decision approving or rejecting the PPA becomes final ("Final Commission Action"), i.e., only *after* a Commission decision approving or rejecting the PPA is no longer subject to rehearing or appeal" (SCE April 14, 2003 Comments, page 3, para.1).

SCE acknowledges that SCE/TURN agreement on confidentiality "applies only to the future solicitation of renewable PPAs via the RPS implementation process" (SCE April 14, 2003 Comments, page 2, footnote 6)[14], however, SCE encourages the Commission to apply that standard of disclosure in the [REDACTED] case. In contrast, TURN's April 14, 2003 comments on the Kennedy alternate made no mention of the SCE/TURN agreement on confidentiality, and is thus silent on whether the Commission should apply this standard of disclosure to the proposed [REDACTED] interim procurement contract.

It should be noted that confidentiality issues and effective public participation are actively being explored in R.01-10-024. On April 4, 2003, a joint Administrative Law Judge (ALJ) Ruling was issued "Regarding Confidentiality of Information and Effective Public Participation." With regard to resource data

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[REDACTED]

for renewables, specifically, the issue of "[a]ggregate data relating to renewable energy supplies, including summary of PPA information," the ruling stated that:

> "The Joint Parties agree that this issue should be addressed in the renewables phase of this proceeding. All parties should have the opportunity to address the confidentiality issues associated with renewables in their March 27 testimony, and the confidentiality issues should be addressed after the filing of that material." (April 4, 2003 Joint ALJ Ruling in R.01-10-024, page 11)

Because the proposal of the [REDACTED] contract predates the SCE/TURN agreement on confidentiality, and for other reasons already stated, (1) we will not apply the SCE/TURN agreement standard on confidentiality to the [REDACTED] contract because the SCE/TURN agreement was entered into by both parties regarding future solicitations, not for interim procurement contracts, and (2) we will not disclose any specific pricing information as now clearly marked in this resolution as **[[[underlined in triple brackets]]]**.

Conclusions Regarding the Shortening of the Comment Periods

In addition, Decision 99-11-052 discussed the need to reduce or waive the comment period due to public necessity. Rule 77.7(f)(9) requires this Commission to engage in a weighing of interests and refers to circumstances in which the public interest in the Commission adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment.

We have balanced the public interest in avoiding the possible harm to public welfare flowing from delay in considering the Resolution against the public interest in having the full 30-day period, or even a reduced period, for review and comment, and have concluded that the former outweighs the latter. Failure to adopt this resolution before the expiration of the 30-day review and comment period would cause significant harm to the public welfare. Public necessity requires the waiver of the 30-day comment period in order to secure the potential benefits of the proposed interim procurement contracts to SCE customers. Thus, the 30-day comment period for the proposed PPA was reduced, due to public necessity, to one comment period of one-day for E-3809, one three-day comment period for E-3816 and the Wood Alternate, and one approximately seven-day comment period for the Kennedy Alternate.

FINDINGS

1. D.02-08-071 directed SCE, PG&E, and SDG&E to file an Advice Letter to seek pre-approval of any contract for transitional procurement, including contracts with renewables energy resources.

2. DWR credit support is not required the counterparty to the PPA proposed by SCE in AL 1676-E.

3. The PRG for SCE comprises the California Energy Commission (CEC), California Utility Employees (CUE), Department of Water Resources (DWR), Energy Division, Office of Ratepayer Advocates (ORA), Natural Resources Defense Council (NRDC), and The Utility Reform Network (TURN).

4. SCE filed AL 1676-E on December 24, 2002 requesting approval of five power purchase agreements (PPAs) contributing toward procurement of at least an additional one percent of the utility's annual electricity sales from renewable energy resources irrespective of utility residual net short.

5. On January 30, 2003, the Commission issued Resolution E-3809 which approved four of the five PPAs submitted in SCE AL 1676-E, deferring consideration of the [REDACTED] contract to a later meeting, which is now the subject of this resolution, E-3816.

6. AL 1676-E was confidentially protested by ORA, TURN, CUE, and the CEC, and publicly protested by Ridgewood, and CalWEA on January 6, 2003.

7. SCE submitted a confidential response to the protests of ORA, TURN, CUE, and the CEC on January 9, 2003, and on January 10, 2003, SCE submitted a revised confidential Appendix A to its January 9, 2003 response in order to correct several non-substantive typographical errors.

8. SCE complied with the following requirements of D.02-08-071:
   (a) "Each IOU hold a separate competitive solicitation for renewable resources in the amount of at least an additional 1 percent of their annual electricity sold beginning January 1, 2003.
   (b) "Utilities should solicit bids for electricity to be delivered beginning January 1, 2003, and extending for five, ten, and 15 year terms, with no contract shorter than five years.
   (c) "Utilities should enter into contracts with a mixture of term lengths.

(d) "During the solicitation process, utilities should give a preference to existing renewable resources in the bidding process if their bids are equal to or lower than prices offered by new projects.

(e) "This requirement for a 1 percent increase in renewable resources is irrespective of the residual net short, though we encourage the utilities to solicit bids from innovative renewables projects that can help meet the utilities' residual net short requirements.

(f) "We also require that bids to provide renewable power clearly identify any expected funds from the public goods charge (PGC) administered by the CEC that are included in the resource pricing.

(g) "During the transitional period, any contract that meets or exceeds the 5.37 cents per kWh benchmark will be deemed *per se* reasonable, though other contracts at prices above the benchmark may also be approved by the Commission for cost recovery through the process outlined in this decision."

9. The PPA and SCE's entry into the PPA are reasonable and prudent for all purposes, including, but not limited to, recovery of all payments made pursuant to the PPA in rates, subject only to review with respect to the reasonableness of SCE's administration of the PPA.

10. SCE's solicitation of renewable power that resulted in the PPA has been conducted reasonably for purposes of this interim procurement, although we order several changes to the terms of the PPA and reiterate our position that RPS rules will be developed in due course.

11. As proposed, the contract [REDACTED] clauses could result in contracts shorter than five years which is inconsistent with our directives on this point; therefore, we direct SCE to remove the contract [REDACTED] clauses from the proposed PPA that tie contract [REDACTED] rights to [REDACTED].

12. We direct SCE to remove the [REDACTED] requirements from the proposed PPA, in order to allow the CEC to make a more objective [REDACTED] determination.

13. SCE made a sufficient showing that proposed PPA is in the ratepayers' interest because it further contributes toward SCE's obligation to procure renewable resources at [REDACTED] relative to the provisional benchmark price provided in D.02-08-071.

14. Any procurement pursuant to the PPA is deemed part of SCE's "baseline" quantity of eligible renewable resources for purposes of Section 399.15 of the Public Utilities Code or other applicable law.

15. Any procurement pursuant to the PPA is deemed transitional procurement by SCE from a renewable resource for purposes of determining SCE's compliance with any obligation that it may have pursuant to D.02-08-071 and D. 02-10-062, or other applicable law, to procure an additional 1% of its annual electricity sales from renewable resources.

16. Notwithstanding the 2003 online requirement, as set forth in D.02-08-071, (which ORA, the CEC, and SCE support relaxing or eliminating) we opt to make an exception in this case, and allow the [REDACTED] to come online after 2003, due to the unique facts present which [REDACTED], (2) the reasonableness of the contract price relative to the benchmark and in comparison to current market prices, (3) [REDACTED], and (4) [REDACTED].

[We do not establish a routine practice or new methodology in this resolution, as the approval of this contract is not indicative of approval of any contracts to be submitted in the future.

17. The confidential material being made public pursuant to this resolution was not disclosed in the redacted agenda resolution provided for public review on the Escutia table prior to the April 17, 2003 meeting. All text in this resolution, except for specific pricing information which **[[[underlined in triple brackets]]]** (including [REDACTED] amounts), which appears [REDACTED], or which is marked "[REDACTED]" in the redacted copy, should be made public upon Commission approval of this resolution.

18. We should approve the [REDACTED] contract submitted in AL 1676-E, as modified, effective today.

THEREFORE IT IS ORDERED THAT:

1. SCE's request to enter into the [REDACTED] contract contributing toward procurement of at least an additional one percent of its annual electricity sales from renewable energy resources, in Advice Letter 1676-E, is approved as

modified.

2. All text in this resolution, except for specific pricing information which **[[[underlined in triple brackets]]]** (including [REDACTED] amounts), which appears [REDACTED], or which is marked "[REDACTED]" in the redacted copy, should be made public upon Commission approval of this resolution, as allowed under Public Utilities Code Section 583.

3. 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 April 17, 2003; the following Commissioners voting favorably thereon:

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WILLIAM R. AHERN
Executive Director