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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item 33 ID#3563

ENERGY DIVISION **RESOLUTION E-3867**

May 27, 2004

R E S O L U T I O N

Resolution E-3867. San Diego Gas & Electric Company requests approval of modifications to renewable resource procurement contracts. San Diego Gas and Electric Company's Advice Letter 1554-E is approved.

By Advice Letter 1554-E Filed on January 12, 2004.

SUMMARY

SDG&E requests Commission approval of modifications to four renewable resource procurement contracts.
San Diego Gas and Electric Company (SDG&E) filed Advice Letter (AL) 1554-E on January 12, 2004, requesting Commission review and approval of modifications to four renewable energy contracts that were previously approved in Resolution E-3803. The contract modifications provide SDG&E with concessions for delays in energy delivery by the renewable project developers.

SDG&E demonstrated the modifications confer price and other benefits in the ratepayers' interest.
SDG&E made a sufficient showing that these contracts are in the ratepayers' interest because they meet SDG&E's obligation to procure renewable resources at prices at or below the price benchmark adopted in D.02-08-071, and provide concessions through either reduced contract price or additional renewable generation at a reasonable price. The members of SDG&E's Procurement Review Group (PRG) either supported or did not oppose the approval of these contracts.

AL 1554-E is approved effective today.
SDG&E requests that AL 1554-E be effective on February 11, 2004. AL 1554-E was not protested. This resolution approves AL 1554-E effective today.

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 specific reasons.

BACKGROUND

The Commission previously approved several renewable energy contracts entered into by SDG&E.

SDG&E filed Advice Letter (AL) 1445-E on November 4, 2002, requesting Commission review and approval of fifteen renewable energy contracts. AL 1445-E was submitted in compliance with Decision (D.) 02-08-071, which authorized SDG&E to enter into procurement contracts between the effective date of the decision and January 1, 2003. The contracts were solicited under SDG&E's September 20, 2002 general request for offers (RFO) for generation capacity, energy, ancillary services and related products, and a separate renewable energy RFO. The Commission approved those contracts in Resolution E-3803. Four of the approved contracts are the subject matter of AL 1554-E.

Under the interim procurement authority granted by D.02-08-071, the Commission required that "any contracts for new renewables projects require that the resources come online and begin delivering electricity before the end of 2003." (Decision at p. 34) D.03-05-035 modified D.02-08-071 to allow the Commission flexibility in the requirement that renewable procurement contracts must demonstrate delivery by the end of 2003, if the Commission determines that good cause exists.

SDG&E's Procurement Review Group participated in review of the contract amendments.

In D. 02-08-071, the Commission required each utility to establish a "Procurement Review Group" (PRG) whose members, subject to an appropriate non-disclosure agreement, would have the right to consult with the utilities and review the details of:

1. Overall transitional procurement strategy;
2. Proposed procurement processes including, but not limited to, RFO; and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review.

The PRG for SDG&E consists of: the California Department of Water Resources, the California Energy Commission, the Commission's Energy Division, Natural Resources Defense Council, The Utility Reform Network, and Utility Consumers' Action Network. SDG&E discussed the contract amendments with its PRG on several occasions prior to the submission of the advice letter. The final briefing to the PRG on this matter occurred on December 16, 2003.

SDG&E requests an expedited schedule for this advice letter. On January 15, 2004, the Commission granted a reduction in the time allowed for submitting protests on the advice letter and SDG&E's responses to protests. Protests were due on January 22, 2003, with SDG&E's responses to protests due on January 29, 2003.

NOTICE

Notice of AL 1554-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

Advice Letter 1554-E was not protested.

DISCUSSION

SDG&E requests commission approval of modifications to four renewable energy contracts resulting from delays by developers in achieving the contracted commercial operation date.

In Resolution E-3803, the Commission approved the renewable resource contracts under consideration in this resolution. Three developers representing four renewable energy projects were not able to bring their projects online by the contract date. Rather than terminate the contracts, SDG&E elected to seek concessions from the developers for the delays. The negotiated contract modifications (amendments) are presented to the Commission for approval in AL 1554-E.

Energy Division examined SDG&E's request in AL 1554-E on multiple grounds: value to ratepayers conferred by the amendments, reasonableness of the project delays, and PRG involvement.

Commission's vote to make public certain non-price confidential information is in the public interest.
Energy Division 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 this section. Accordingly, text in this resolution, marked "**[REDACTED]**" in the redacted copy, which contains the redacted information to be disclosed inside the brackets in the unredacted version, should be made public upon Commission approval of this resolution. We find that the public interest in non-price disclosure is not outweighed by the public interest in confidentiality.

Energy Division recommends that specific pricing information which appears **[[[underlined in triple brackets]]]**, and is in light blue highlight in the unredacted electronic copy, or in gray highlight in the unredacted hardcopy, should ***not*** be made public under any circumstances. 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 in proceedings such as the procurement rulemaking (R.04-04-003).

The contract amendments confer value to ratepayers.
The type of contract amendments and their details were filed by SDG&E under confidential seal. However, Energy Division encourages the Commission to reveal the following redacted section so that the contract amendments may be appropriately considered.

[REDACTED]
Attachment A to this resolution summarizes the specific contracts and amendments. The attachment has been redacted due to the confidential nature of SDG&E's filing.[1] However, the Commission may vote to unredact the Attachment in full or in part.

The original contract price of all four contracts was at or below the 5.37 cents per kWh benchmark adopted in D.02-08-071.

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[1] SDG&E filed attachments to AL 1554-E subject to Pub. Util. Code Section 583, General Order 66-C, and the provisions of the May 1, 2002 Protective Order in R.01-10-024.

[REDACTED]

No one can accurately predict long-term energy prices; renewable energy is no exception. We may find today that SDG&E has entered into contracts at reasonable prices, and then renewable energy prices may decline unexpectedly below our estimations in the long-term. Given that uncertainty, Energy Division has applied its best understanding of current renewable energy prices and determined that the concessions obtained by SDG&E provide value to SDG&E's ratepayers that will continue into future years of the RPS Program.

The project delays are reasonable.
D.03-05-035 modifies D.02-08-071 to allow the Commission flexibility in the requirement that renewable procurement contracts must demonstrate delivery by the end of 2003, if the Commission determines that good cause exists. That decision sets forth criteria relevant to the good cause determination:

1. The proposed PPA is the result of an open and competitive bid solicitation that notified all bidders that proposals would be considered for renewable energy projects that did not meet the 2003 online requirement set forth in D.02-08-071.

2. The proposed PPA must contain reasonable prices and terms, provide for reliable renewable power, and not displace any comparable bidders.

3. A factor in the failure of the PPA to meet the 2003 online date is that Commission action or inaction had a role in delaying the project.

The contracts considered here are existing contracts, selected in an open and competitive solicitation, and already approved by the Commission. Energy Division finds that the prices and terms are reasonable, and the contracts will continue to yield reliable renewable power. Therefore, the first and second conditions have been satisfied. The third condition does not apply in this case, as the advice letter was not filed until 2004. Additionally, the delay was caused by the developers, not the Commission or SDG&E. However, we do not believe it is reasonable at this time to order termination of the contracts for their delays in delivering energy. We understand that several factors may reasonably delay renewable resource project development, such as unanticipated delays in

obtaining equipment, permits, and financing. SDG&E has proposed amenable contract amendments to garner concessions for the delays while keeping renewable resources in its portfolio that it needs to comply with the requirements of the Renewables Portfolio Standard (RPS) Program.[2]

SDG&E has stipulated that all four of the projects must be online and delivering energy to SDG&E under the terms of the contracts no later than December 31, 2004. We believe this is a reasonable deadline, and under no circumstances should the projects delay delivery beyond that date. An RPS solicitation will be conducted this year, and it may be unfair to bidders in those solicitations if the facilities under consideration in this resolution are allowed to delay their contracted deliveries.

The PRG either supports or does not oppose the contract amendments.
The PRG was apprised of the delays, the negotiations to obtain concessions, and the outcome of those negotiations. The PRG had access to the details of the contracts and amendments. The final briefing to the PRG on this matter occurred on December 16, 2003. SDG&E notes in AL 1554-E that, based on the discussion during that meeting, the PRG "indicated its unanimous support for the contract modifications." We clarify, however, that Energy Division reserved its conclusions for review and recommendation on the contracts to the resolution process. Energy Division had to review the modifications independently, and allow for a full protest period before concluding its analysis.

COMMENTS

Section 311(g)(2) of the Public Utilities Code allows for a waiver of the public comment period under specific circumstances:

> The 30-day period may be reduced or waived in an unforeseen emergency situation, upon the stipulation of all parties in the proceeding, for an uncontested matter in which the decision grants the relief requested, or for an order seeking temporary injunctive relief.

[2] Under the RPS Program, an electrical corporation must increase the percentage of its portfolio derived from renewable energy by at least one percent of retail sales per year, to achieve 20 percent by 2017. (Pub. Util. Code Section 399.15(b)(1))

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, the otherwise applicable 30-day period for public review and comment is being waived.

In addition, D. 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.

Energy Division requests that the 30-day comment period for this resolution be waived because: (1) further delay in approving the amendments may result in a decrease of renewable energy to SDG&E customers, thereby frustrating the goals of the RPS Program, an outcome which is not in the public interest and would cause significant harm to the public welfare; and (2) because SDG&E's Procurement Review Group has been active throughout the contract amendment process leading up to the advice letter and resolution, and have expressed support for these amendments.

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 and have a significant impact on SDG&E's ability to meet its mandated renewable energy goals. Public necessity requires the waiver of the 30-day comment period in order to secure the potential benefits of the proposed contract amendments to SDG&E customers. Therefore, the 30-day comment period should be waived due to public necessity.

FINDINGS

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

2. SDG&E filed renewable resource procurement contracts in Advice Letter 1445-E pursuant to the authority granted by D.02-08-071.

3. The Commission approved those original contracts in Resolution E-3803.

4. D.02-08-071 states that renewable resource contracts must require that the resources come online and begin delivering electricity before the end of 2003. Any delays in project delivery beyond 2003 are allowable if the Commission determines that good cause exists.

5. SDG&E filed Advice Letter 1554-E on January 12, 2004, requesting approval of modifications to those original contracts. Those modifications provide concessions to SDG&E due to delays in project completion by the renewable resource project developers.

6. The Commission required each utility to establish a Procurement Review Group (PRG) to review the utilities' interim procurement needs and strategy, proposed procurement process, and selected contracts.

7. The PRG for SDG&E is comprised of the California Department of Water Resources, the California Energy Commission, the Commission's Energy Division, Natural Resources Defense Council, The Utility Reform Network, and Utility Consumers' Action Network.

8. SDG&E filed AL 1445-E on November 4, 2002, and requested approval of certain contracts.

9. SDG&E's request to extend the online date for the renewable facilities satisfies the requirements of D.02-08-071 as modified by D.03-05-035 and is reasonable.

10. The terms of the proposed contract amendments are reasonable and should be approved.

11. AL 1554-E was not protested.

12. We should approve AL 1554-E effective today.

THEREFORE IT IS ORDERED THAT:

1. The request of the San Diego Gas and Electric Company to modify four renewable energy contracts, as requested in Advice Letter AL 1554-E, is approved.

2. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on May 27, 2004; the following Commissioners voting favorably thereon:

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WILLIAM AHERN
Executive Director

Attachment A: Summary of Contract Modifications Proposed in AL 1554-E

[REDACTED]