PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item 41 ID #3883

ENERGY DIVISION **RESOLUTION E-3890**

September 23, 2004

R E S O L U T I O N

Resolution E-3890. San Diego Gas & Electric Company requests approval of a new renewable resource procurement contract with **[Redacted]**.

By Advice Letter 1596-E Filed on June 15, 2004.

SUMMARY

SDG&E's request for a new renewable resource procurement contract with [Redacted] is approved.
San Diego Gas and Electric Company (SDG&E) filed Advice Letter (AL) 1596-E on June 15, 2004, requesting Commission review and approval of a new renewable energy contract with **[Redacted]**. On August 19, 2004 the Commission adopted Resolution E-3884, which rejected the proposed contract. On September 2, 2004 the Commission approved a Motion for Reconsideration of Resolution E-3884. This resolution, E-3890, approves the proposed contract.

SDG&E demonstrated that the contract confers price and other ratepayer benefits.
SDG&E made a sufficient showing that this contract is in the ratepayers' interest. Specifically, the contract meets SDG&E's obligation to procure renewable resources under long-term contract at or below the price benchmark adopted in D.02-08-071. Approval of this contract provides SDG&E more certainty that it would meet its annual renewable procurement target because the project is scheduled to be operational no later than the end of 2005. In addition, the development of the **[Redacted]** will provide substantial and immediate stimulus to a low-income area.

SDG&E's Procurement Review Group either supported or did not oppose approval of the contract.
The members of SDG&E's Procurement Review Group (PRG) have the right to consult with the utilities and review the details of proposed procurement

contracts before any of the contracts are submitted to the Commission for review. The PRG either supported or did not oppose the approval of this contract.

Confidential information about the contract should be publicly revealed.
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 should be unredacted upon Commission approval of the Resolution.

BACKGROUND

The Commission provided guidance to the utilities on procuring renewable energy resources prior to full implementation of the Renewables Portfolio Standard (RPS) Program.
D. 02-08-071 authorized the utilities to enter into procurement contracts between the effective date of the decision and January 1, 2003. The Decision adopted an interim reasonableness benchmark of 5.37 cents per kilowatt-hour for procurement contracts.

On August 13, 2003, the Assigned Commissioner in Rulemaking (R.) 01-10-024 issued a ruling, "Assigned Commissioner's Ruling Specifying Criteria for Interim Renewable Energy Solicitations" (ACR), which specified criteria for any further renewable energy procurement by the utilities prior to full RPS implementation. We stated in R.04-04-026 that we anticipate a solicitation conducted under the full suite of RPS parameters to occur by July 1, 2004.

The ACR set forth general process requirements:

1. A utility must abide by the terms of the Commission's first RPS implementation decision (D.03-06-071).
2. Utilities may engage in bilateral negotiations or may issue a competitive solicitation (request for offer (RFO)) to receive bids.
3. Issuance of an interim RFO by a utility does not constitute filing of a RPS procurement plan under the terms of D.03-06-071.
4. Any renewable procurement in the interim period must not anticipate the use of any Supplemental Energy Payments (SEPs) to be awarded by the California Energy Commission (CEC) pursuant to Public Utilities Code Sec. 383.5(d).

5. The utilities are allowed to "roll over" any under-procurement in 2003 into the Annual Procurement Target (APT)[1] for 2004 without penalty. A decision not to issue an RFO prior to full RPS implementation will not waive this immunity. Conversely, any contract signed as a result of a bilateral negotiation or an RFO, and approved by the Commission, should count toward the APT.
6. Following PRG review of any proposed contracts, the utility may submit those contracts for Commission approval via Advice Letter.

The RPS Program requires each utility to increase the amount of renewable energy in its portfolio, subject to requirements specified by the Legislature and the Commission.

The RPS Program, created by SB 1078 (Statutes of 2002, Chapter 516), requires each utility to increase the amount of renewable energy in its portfolio to 20 percent by 2017, increasing by a minimum of one percent per year. The Energy Action Plan (EAP) called for acceleration of this goal to reach 20 percent by 2010. R-04-04-026 encourages the utilities to procure cost-effective renewable generation in excess of their APTs for 2004, in order to make progress towards the goal expressed in the EAP.

In order for the output of a renewable resource to count toward a utility's RPS requirements, the resource must meet the requirements of an "eligible renewable energy resource" under the definitions of the program. Wind energy facilities are eligible renewable energy resources.

R.04-04-026 established a framework for further implementation of the RPS Program, including establishing baseline quantities and 2004 procurement targets for the utilities.

As stated above, the RPS Program requires each utility to increase the amount of renewable energy in its portfolio to 20 percent by 2017, increasing by a minimum of one percent per year. The Commission establishes an APT for each utility, which consists of two separate components: the baseline, representing the amount of renewable generation a utility must retain in its portfolio to continue

[1] The APT is the minimum amount of renewable generation the utility must procure each year to meet its RPS requirement, subject to the flexible compliance mechanisms authorized in D.03-06-071.

to satisfy its obligations under the RPS targets of previous years; and the incremental procurement target (IPT), defined as at least one percent of the previous year's total retail electrical sales, including power sold to a utility's customers from its DWR contracts. D.04-06-014 established a 2004 APT for SDG&E of 423 GWh[2].

Recent Commission decisions have implemented the RPS program and SDG&E has initiated its solicitation for 2004.
The Commission has implemented the RPS program via recent Commission decisions[3] and the adoption of SDG&E's 2004 renewable procurement plan[4]. Furthermore, the adopt procurement plan granted SDG&E the authority to issue their 2004 RPS RFO, which SDG&E issued on July 1, 2004.

SDG&E's Procurement Review Group participated in review of the contract.
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: California Department of Water Resources, California Energy Commission, the Commission's Energy Division, Natural Resources Defense Council, Office of Ratepayer Advocates, and The Utility Reform Network. SDG&E briefed its PRG regarding this contract on June 7, 2004.

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[2] D.04-06-014, Appendix B (p. 5)

[3] D.03-06-071, D.04-06-013, D.04-06-014, D.04-06-015, and D.04-70-029

[4] Letter from Energy Division Director (SDGE Plan Appl1.doc), dated June 28, 2004.

The Commission initially rejected the proposed contract, but has approved a Motion for Reconsideration

On August 19, 2004 the Commission adopted Resolution E-3884, which rejected SDG&E's request for approval of a new renewable energy contract with **[Redacted]**. On September 2, 2004 the Commission approved a Motion for Reconsideration of E-3884.

NOTICE

Notice of AL 1596-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 AL 1596-E was not protested.

DISCUSSION

The Commission's vote to make contract information public is in the public interest.

Energy Division recommends 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.[5] Accordingly, text in this resolution, marked "**[REDACTED]**" in

[5] SDG&E addressed the issue of confidentiality for the proposed contract through its filed comments on alternate draft resolution E-3884. SDG&E stated that the Commission should not disclose the redacted confidential contract information because the disclosure of such information will make it more difficult for SDG&E to obtain advantageous contract terms in future negotiations, particularly in the 2004 RPS RFO negotiations. This could potentially harm ratepayers. In addition, SDG&E claimed that disclosing confidential contract information is inconsistent with the treatment of confidential contract information, as outlined in the Standard Contract Terms and Conditions decision (D.04-06-014). In response to these comments, Energy Division noted that D.04-06-014 adopts Renewable Portfolio Standard (RPS) guidelines and contract language for Renewable RFOs. The subject wind energy contract was

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 disclosure outweighs public interest in confidentiality.

Energy Division examined SDG&E's request in AL 1596-E on multiple grounds:

- Contract's compliance with ACR on Interim Procurement
- Reasonableness of contract terms and prices
- Contingencies contained in the contract
- Fulfillment of SDG&E's requirements under the Renewables Portfolio Standard (RPS)
- PRG involvement
- Impact of project on low-income communities
- Avian risk assessment

The proposed contract is in compliance with a prior ruling on interim renewable procurement.

As discussed above, the August 13, 2003 ACR set forth criteria and process requirements for renewable energy procurement by the utilities prior to full RPS implementation

The proposed contract with **[Redacted]** meets the requirements of the ACR.

The contract price and terms are reasonable.

Contract Price

The ACR did not adopt an interim benchmark, but instead allowed the utilities to develop their own benchmarks and apprise the Commission and the PRG of their derivation and use in evaluating contracts. The ACR explicitly states that such a benchmark is not to be considered a Market Price Referent (MPR). The MPR is to be used in evaluating contracts under the RPS Program, and will not

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negotiated outside of the RPS RFO, and therefore is not subject to the rules of confidentiality in D.04-06-014. Energy Division concluded that SDG&E did not adequately demonstrate that disclosing confidential contract information would harm ratepayers.

be available until the utilities have developed a short-list of bids from the first RPS solicitation, which we anticipate no later than October, 2004.

[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 contract price and terms provide value to SDG&E's ratepayers that will continue into future years of the RPS Program.

Contract Terms

The contract outlines terms that protect the ratepayer from under-performance / default of the generator while also providing SDG&E all of the Renewable Energy Certificates (RECs) associated with purchased output. The key terms include:

- In the event that actual annual output is below guaranteed energy production, **[Redacted]** will credit SDG&E the difference between guaranteed energy production and the actual output for that year, multiplied by **[Redacted]**.
- **[Redacted]** must pay late pricing concessions if the project does not come on line by January 1, 2005.
- **[Redacted]** will be the Scheduling Coordinator and assume all imbalance penalties and Generator Meter Multiplier (GMM) line losses.
- All Renewable Energy Credits (RECs) associated with output purchased by SDG&E shall be the property of SDG&E at no additional cost and in their entirety without unbundling of any component attributes.

The proposed contract is contingent upon several conditions:

1) Commission approval of terms, conditions, and of full recovery of costs associated with Agreement

2) Commission finding that output delivered under the Agreement will count towards SDG&E's APT and that the Agreement is in compliance with the California RPS program requirements under SB 1078[6].
3) Commission finding that the output purchased by SDG&E under the Agreement includes all RECs associated with that output.

This resolution satisfies these three conditions.

The proposed contract helps SDG&E fulfill its obligation to meet 2010 RPS target of 20%.

SDG&E claims all "Environmental Attributes" associated with the project output.

In light of recent rulings by the Federal Energy Regulatory Commission[7] related to "renewable energy credits," the new contract explicitly conveys any such credits to SDG&E. Thus, SDG&E retains all environmental attributes necessary to count the purchased output of the resource toward its RPS requirements.

The output of the facility under the PPA counts toward SDG&E's RPS requirements.

SDG&E seeks a finding that procurement pursuant to the contract qualifies as RPS-eligible procurement for purpose of determining SDG&E's requirements under the RPS. This resolution confirms that the total output purchased from this resource will count toward SDG&E's Annual Procurement Target.

The Commission will establish an APT for each utility annually. To the extent that a utility incurs a deficit, or procures excess renewable energy, it can use the flexible compliance mechanisms already established.

Approval of this contract provides SDG&E more certainty that it will meet its 2010 RPS target of 20%.

SDG&E continues to aggressively pursue renewable resources with the goal of meeting the Commission's 20% goal by 2010. This contract would provide 51

[6] California Energy Commission is responsible for determining the RPS-eligibility of a renewable generator

[7] See, FERC decisions in *American Ref-Fuel Company, et al.* at 105 FERC ¶61,104 (2003) and 107 FERC ¶61,016 (2004).

MW of additional renewable wind power and will have a substantial impact on SDG&E's renewable portfolio (the output to be provided under the Agreement will constitute approximately **[Redacted]** of SDG&E's total power deliveries).

SDG&E began discussions with **[Redacted]** in November 2003. **[Redacted]** intends to commence construction as soon as financing is approved and anticipates the project will become operational no later than the end of 2005. The PPA Agreement contains penalty provisions if the project is delayed beyond December 31, 2005. Further, **[Redacted]** has spent the last 13 months negotiating the land agreements for the project with the **[Redacted]**. Finalization of the agreements is contingent on the approval of a PPA by mid 2004. Delaying the approval of the PPA could jeopardize finalizing the land lease agreements.

As currently contemplated, SDG&E would file the results of its 2004 RPS RFO during the 1st quarter of 2005, with Commission approval likely to be 2 to 3 months later. This means that final Commission approval might not occur until June 2005. Approval of this contract provides SDG&E more certainty that it would meet its APT because the project is scheduled to be operational no later than the end of 2005.

Approval of contract will not displace bidders in SDG&E's 2004 RPS RFO. SDG&E has currently achieved 4.4% of its 2010 RPS target of 20%. Although this project could potentially provide **[Redacted]** towards this goal by the end of 2005, SDG&E would still be required to procure an additional **[Redacted]** by 2010. In addition to this contract, SDG&E must procure an average of an additional 2.5% of renewable energy per year to meet its long-term goal of 20% by 2010.

In negotiating and submitting the agreement to the Commission for approval, SDG&E took into account the timing of its then upcoming RFO as well as the timing of when the project would seek to come online and the efforts expended in achieving a mutually beneficial agreement. SDG&E does not intend to seek approval of any other bilateral agreement at this time, as SDG&E will be focusing on negotiating agreements resulting from its RFO.

The Procurement Review Group either supports or does not oppose the contract amendments.
SDG&E briefed its PRG regarding this contract on June 7, 2004. The PRG had access to the details of the contracts and amendments. The members of SDG&E's PRG either supported or did not oppose the approval of this contract.

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.

Project will benefit a low-income community.
[Redacted] represents that as a result of construction and operation of this project, economic benefits will accrue to approximately 500 Tribal members of the **[Redacted]**.

The current per capita income of the local tribes is less than $10,000 per year. The US Department of Health and Human Services defines the poverty level for a family of four to be $18,400. Upon commissioning of the wind facility, the project will immediately result in an approximate payment of $1,000,000 to the **[Redacted]**.

In addition, each year the project will generate approximately $350,000 of revenue. All proceeds from the project are allocated proportionately to the **[Redacted]** based upon the individual wind turbines installed on their respective property. Therefore, the development of the **[Redacted]** will provide substantial and immediate stimulus to this low-income area.

There is no significant avian risk associated with the project
An avian risk assessment for the **[Redacted]** concluded that based on what is known about risks to birds at wind power plants in North America and Europe, and what was learned from the literature search, site visits, and interviews, there is no indication that the **[Redacted]** will result in biological significant collision impacts to birds.

SDG&E may apply all annual netted metered MWh, up to the reconciled scheduled amounts, to its Annual Procurement Target
SDG&E requested specific authorization to apply all annual netted metered MWh up to the reconciled scheduled amounts towards its RPS APT. Because

the proposed contract is with an intermittent resource, it may deliver more or less than the scheduled amount of power on an hourly basis. SDG&E requests authorization to reconcile the monthly over- and under-production and apply the net amount, up to the reconciled scheduled amount, toward its APT. SDG&E's request is reasonable and should be approved.

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.

All parties in the proceeding have stipulated to reduce the 30-day waiting period required by PU Code section 31l(g)(1) to 20 days. Accordingly, this matter will be placed on the first Commission's agenda 8 days prior to the Commission meeting scheduled for September 23, 2004. By stipulation of all parties, comments shall be filed no later than 7 days following the mailing of this draft resolution. Reply comments will be waived.

SDG&E and the Center for Energy Efficiency and Renewable Technologies (CEERT) filed comments on September 10, 2004. The Utility Reform Network (TURN) sent informal comments also on September 10, 2004. SDG&E, CEERT and TURN all support draft Resolution E-3890 and urge Commission approval of the proposed contract.

FINDINGS

1. D.02-08-071 directed SDG&E to file an Advice Letter to seek pre-approval of any contract for transitional procurement.
2. "Assigned Commissioner's Ruling Specifying Criteria for Interim Renewable Energy Solicitations," issued on August 13, 2003, specified criteria for any further renewable energy procurement by the utilities prior to full RPS implementation. The Ruling stated that a utility may submit renewable energy contracts for Commission approval via Advice Letter.
3. SDG&E filed Advice Letter 1596-E on June 15, 2004, requesting Commission review and approval of a new renewable energy contract with **[Redacted]**.

4. On August 19, 2004 the Commission adopted Resolution E-3884, which rejected SDG&E's request for approval of the proposed contract. On September 2, 2004 the Commission approved a Motion for Reconsideration of E-3884.
5. The RPS Program requires each utility, including SDG&E, to increase the amount of renewable energy in its portfolio to 20 percent by 2017, increasing by a minimum of one percent per year. The Energy Action Plan (EAP) called for acceleration of this goal to reach 20 percent by 2010.
6. Wind energy facilities are RPS-eligible renewable energy resources.
7. D.04-06-014 established a 2004 APT for SDG&E of 423 GWh[8].
8. 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.
9. The PRG for SDG&E consists of: California Department of Water Resources, California Energy Commission, the Commission's Energy Division, Natural Resources Defense Council, Office of Ratepayer Advocates, and The Utility Reform Network.
10. On June 7, 2004 SDG&E briefed its PRG on the contract. The members of SDG&E's PRG either supported or did not oppose the approval of this contract.
11. Recent Commission decisions have implemented the RPS program and SDG&E has initiated its solicitation for 2004.
12. 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. 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.
13. SDG&E's proposed contract satisfies the requirements of the August 13, 2003 ACR.
14. The contract price provides value to SDG&E's ratepayers

[8] D.04-06-014, Appendix B (p. 5)

15. The purchased output of the **[Redacted]** facility under the PPA counts toward SDG&E's RPS requirements.
16. Nothing in this resolution prejudges the development of a RPS Market Price Referent or any other criteria for evaluating RPS contracts.
17. The terms of the proposed contract are just and reasonable and should be approved.
18. Approval of contract will not displace bidders in SDG&E's 2004 RPS RFO.
19. The project could benefit a low-income community.
20. Avian risk assessment indicates that project will not result in biological significant collision impacts to birds
21. SDG&E should apply all annual netted metered MWh up to the reconciled scheduled amount towards its Renewable Portfolio Standards Annual Procurement Target.
22. SDG&E is authorized to book the costs of the contract to its Energy Resource Recovery Account.
23. AL 1596-E was not protested.
24. CEERT and TURN urge Commission approval of the proposed contract submitted by SDG&E in AL 1596-E.
25. AL 1596-E should be approved.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter AL 1596-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 September 23, 2004; the following Commissioners voting favorably thereon:

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STEVE LARSON
Executive Director