PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-3814**
December 4, 2003

R E S O L U T I O N

Resolution E-3814. Southern California Edison Company for approval of one power purchase agreement 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.

By Advice Letter 1680-E Filed on January 14, 2003.

SUMMARY

Southern California Edison Company (SCE) filed Advice Letter (AL) 1680-E on January 14, 2003 requesting Commission approval of one power purchase agreement (PPA) that would contribute toward procurement of at least an additional one percent of the utility's annual electricity sales from renewable energy resources irrespective of SCE's residual net short. SCE submits this contract for approval pursuant to Commission Decision (D.) 02-08-071. The proposed PPA involves a new 5 MW central station solar photovoltaic facility that would be constructed and operated by TrueSolar Solutions, Inc. near Daggett, California.

In this resolution we approve SCE's request to enter into the proposed PPA with the given caveats and conditions set within.

We have previously held this resolution from the agenda as we have wrestled with whether, and 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. 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 which appears in this light blue highlight in the unredacted electronic copy, in gray highlight in the unredacted hardcopy, or which is marked "[REDACTED]" in the redacted copy, will 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.[1]

In AL 1680-E, SCE requests that the Commission issue a resolution no later than February 13, 2003, approving the PPA as reasonable, and finding that:

1. 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 PPAs;

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

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; and

4. 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 Pub. Util. Code or other applicable law.

SCE requests that AL 1680-E be effective on February 13, 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 Pub. Util. Code.

AL 1680-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

[1] 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").

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)

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

The proposed 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.

Early on, during the September and November 2002 Procurement Review Group (PRG) meetings in San Francisco, SCE's PRG expressed strong concern about the proposed PPA and was somewhat perplexed as to why SCE continued to negotiate with this counterparty.

On January 21, 2003, AL 1680-E was confidentially protested by Office of Ratepayer Advocates (ORA), the California Energy Commission (CEC), jointly protested by The Utility Reform Network (TURN) and the Natural Resources Defense Council (NRDC), and publicly protested by the California Wind Energy Association (CalWEA). On January 27, 2003, SCE submitted a response (most of which was confidential) to the protests of ORA, TURN / NRDC, CEC, and CalWEA.

The protestants expressed concern over compliance with D.02-08-071, the bid solicitation process and evaluation criteria, whether ratepayer interest is adequately served by the proposed PPA as filed, and whether the proposed Public Goods Charge (PGC) funding assumptions are consistent with state law, policy, and regulations.

This resolution finds that SCE’s selection of the proposed PPA is reasonable and consistent with D.02-08-071. This resolution approves AL 1680-E, effective today.

BACKGROUND

On January 30, 2003, in response to SCE AL 1676-E, 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 had 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. The Commission approved four of the five proposed PPAs in E-3809, which will allow SCE to exceed the goal of adding an additional one percent of renewable energy sales to its existing portfolio.

On August 22, 2002, the Commission issued D.02-08-071, which, among other things, set aside a portion of procurement to come from renewable sources. The following month, three renewable energy bills were signed into law.

- Assembly Bill (AB) 57, regarding Electric Utility Procurement Plans, was signed by the Governor on September 24, 2002 and became effective immediately. AB 57 added Section 454.5 to the PU Code, to provide guidance to the utilities and the Commission for the procurement of electricity and electricity demand reduction products. The bill requires the Commission to review and adopt a procurement plan for each utility in accordance with specific plan elements and objectives to ensure that no later than January 1, 2003, the utilities resume procurement for those needs that will no longer be met by DWR.

- Senate Bill (SB) 1078, regarding the California Renewables Portfolio Standard (RPS) Program, was signed by the Governor on September 12, 2002 and became effective January 1, 2003.

- SB 1038, regarding the Renewable Energy Program, Investment Plan and the Public Interest Energy Research (PIER) Program, was signed by the Governor on September 12, 2002 and became effective January 1, 2003.

D.02-08-071 ordered a separate renewables solicitation[2] by each utility for at least an additional one percent of their actual energy and capacity needs. This was roughly equivalent to the Renewables Portfolio Standard Program approach enacted in SB 1078[3]

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[2] The Commission also ordered the utilities to conduct a non-renewable, all-source (a.k.a. general) solicitation. Accordingly, SCE issued a Request for Offers (RFO) on September 18, 2002 for generation capacity, associated energy, and / or ancillary services for the period of January 1, 2003, or later, through December 31, 2007, or earlier. As a result of that RFO process, SCE filed Advice Letter 1660-E on November 5, 2002 for approval of proposed energy and capacity procurement contracts for potential award pursuant to a subsequent bid refresh process, in order to meet a portion of its 2003 through 2007 residual net short. On December 5, 2002, the Commission issued Resolution E-3802 approving AL 1660-E, as modified.

[3] SB 1078, chaptered on September 12, 2002, requires the Commission to establish a program whereby the utilities must purchase a specified minimum percentage of electricity generated by renewable energy resources. The utilities must increase their total procurement of eligible renewable energy resources by at least one percent per

Footnote continued on next page

and reflected in AB 57. D.02-08-071 was issued in anticipation of SB 1078's passage, therefore the decision's requirements were conformed to the controlling language of the bill, even as our authority to order the solicitation derived from PU Code 701.3. D.02-08-071 set forth the requirements for this renewables solicitation at page 32:

> "In particular, PU Code Section 701.3 states, in relevant part:
>
> > The Commission shall direct that a specific portion of future generating capacity needed for California be reserved or set aside for renewable resources.
>
> "AB 57 states, in relevant part:
>
> > [454.5(b)(9)(A)] The electrical corporation will, in order to fulfill its unmet resource needs and in furtherance of Section 701.3, until a 20 percent renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring that at least an additional 1 percent per year of the electricity sold by the electrical corporation is generated from renewable energy resources…[provided sufficient funds are made available pursuant to Section 399.6, to cover the above-market costs for new renewable energy resources.]"[4]

D.02-08-071 set forth the Commission's expectation that utilities should take the mandates of Section 701.3 and AB 57 into consideration at Finding of Fact 22:

> "22. We expect utilities to take into consideration in their resource selection the mandates of Section 701.3 and AB 57."

D.02-08-071 continued to set forth requirements for the power solicitations:

> "Though AB57 … [was] not yet law [when D.02-08-071 was issued], we see no reason to delay movement towards this renewable resource goal. Thus, during the transitional period, we require that [numbered format added]:

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year so that twenty percent of their retail sales are procured from eligible renewable energy resources by December 31, 2017.

[4] The last part of Section 454.5(b)(9)(A) is shown here in its entirety, as taken directly from the July 3, 2002 enrolled version of AB 57. Section 454.5(b)(9)(A) remained unchanged in the chaptered version of AB 57 as signed on September 24, 2002.

1. "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.
2. "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…. Utilities should enter into contracts with a mixture of term lengths…. We also require that any contracts for new renewables projects require that the resources come online and begin delivering electricity before the end of 2003.
3. "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….
4. "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.
5. "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.

"Creating this set-aside in the transitional procurement process for renewable resources should obviate the need to require automatic extensions of renewable contracts currently held by DWR, as requested by Ridgewood Olinda LLC in its June 12 motion. Thus, we deny this motion, but encourage Ridgewood, and any other renewable operators holding existing or recently expired DWR or utility contracts, to participate in the solicitation process described above.

"In comments on this alternate decision, many parties request that the Commission set at least a provisional "benchmark" price for reasonableness review for renewable procurement. AB57 includes provision for such a benchmark, along with any "above-market" costs beyond the benchmark. As a general proposition, any renewable contract approved through the transitional procurement process outlined in this decision will be deemed reasonable, with its costs fully recoverable by the utilities. Thus, establishment of a benchmark for the transitional period is not strictly required. However, to give guidance to bidders and to the utilities, we will adopt an interim, provisional benchmark of 5.37 cents per kWh, which is consistent with prices previously adopted by the Commission in D.01-06-015, and as recommended by the California Biomass Energy Alliance (CBEA). We will revisit this benchmark in the next phase of this proceeding for the long-term procurement process. During the transitional period, any contract that meets or exceeds the 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.
>
> "We also clarify, in response to comments from a number of parties, that this renewable procurement set-aside in the interim period is subject to the same procedural process outlined earlier in this decision, as well as the contract provisions that allow the utilities to partner with DWR.
>
> "Finally, we encourage the utilities to work with the CEC and the CPA to take advantage of their knowledge of available existing and new renewable resources. In the next phase of this proceeding, we will make explicit requirements for the coordination of the CEC's PGC fund awards with utility renewable resource procurement, in compliance with AB57.
>
> "The success of such an effort in the next phase, however, is largely dependent on legislative authorization of the CEC's financial plan for the future of the Renewable Energy Program. We anticipate that the legislature will have finalized the financial reauthorization of the PGC program when we turn to the full Procurement Plans in the next phase, and we will revisit the issue of establishing a benchmark price at that time." (D.02-08-071, pages 32-34)

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. Each utility's overall transitional procurement strategy;
2. Proposed procurement processes including, but not limited to, RFO; and
3. Proposed procurement contracts with the utilities before any of the contracts are submitted to the Commission for expedited review.

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

In D.02-12-074, the Commission, *inter alia*, defined exactly what would constitute an incremental one percent of renewable generation:

> "To be considered incremental renewable generation, the interim procurement must result in a net increase of at least 1% of total 2001 retail sales in the utility's renewable portfolio above its 2002 level. If the 2002 renewable generation baseline amount will shrink in 2003, the utility must procure sufficient renewable

> power over and above this 1% of total 2001 retail sales amount, to result in a total 2003 renewable generation portfolio at least equal to the following: 2002 renewable procurement plus 1% of 2001 retail sales." (D.02-12-074, pages 18-19)

Further, D.02-12-074, which was issued in December 2002, informed SCE that while the Commission generally viewed the company's renewable "procurement targets and the RFO process" as generally reasonable up to that point, SCE's delay in filing specific contracts with the Commission was sanctionable as not in compliance with D.02-08-071:

> "Edison provides in its November 12th filing a moderate amount of information regarding targets and assumptions for its 1 percent incremental renewable procurement. One of these assumptions - that the passage of SB 1078 limits the authority of § 701.3 - has been addressed above. Details regarding procurement targets and the RFO process are contained in confidential Volume II of the short-term plan, and what is disclosed looks, on balance, reasonable.
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> "No Advice Letter filing has been forthcoming, however, despite the utility's pledge to file early this month. This delay unfortunately lends credence to the concerns expressed by TURN and CalWEA that Edison is deliberately stalling the interim procurement process, either to test the Commission's § 701.3 authority or to pre-judge the implementation efforts for the RPS program. Examples such as creation of undue barriers to participation by particular technologies, and of price benchmarks different from the Commission's 5.37¢/kWh target, are cited in support of these assertions. Both of these practices, if verified, would constitute violation of Commission orders and would be subject to sanction. The Commission is actively exploring its options in this regard.
>
> "Subject to further sanction would be the utility's continued failure to simply file an Advice Letter containing renewable contracts of any sort, be they for more or less than the 1 percent target. Waiting to file will not have the effect of avoiding the requirements of D.02-08-071; in fact it will make those requirements more challenging, as the utility will need to procure the same GWh amount over fewer days in the calendar year.
>
> "We find that the utility is in noncompliance with D.02-08-071, and will address this noncompliance in a subsequent Commission order. In the event that this Advice Letter is forthcoming, we reiterate our direction provided to the other utilities regarding calculation of the 1 percent target and the preservation of Edison's baseline level of renewable generation." (D.02-12-074, pages 25-26)

NOTICE

Notice of Advice Letter 1680-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 1680-E was timely and confidentially protested on January 21, 2003 by ORA, TURN / NRDC, and the CEC, and publicly protested by CalWEA.

SCE submitted a confidential response to the protests of ORA, TURN / NRDC, and the CEC on January 27, 2003, under Pub. Util. Code Section 583. On January 27, 2003, SCE submitted a response (most of which was confidential) to the protests of ORA, TURN / NRDC, CEC, and CalWEA.

The protestants expressed concern over compliance with D.02-08-071, the bid solicitation process and evaluation criteria, whether ratepayer interest is adequately served by the proposed PPA as filed, and whether the proposed PGC funding assumptions are consistent with state law, policy, and regulations.

DISCUSSION

In AL 1680-E, SCE requests that the Commission issue a resolution no later than February 13, 2003, approving the PPA as reasonable, and finding that:

1. 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 PPAs;

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

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; and

4. 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 Pub. Util. Code or other applicable law.

We address each in turn. 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.

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, consistency with state law, policy, and regulations, and the degree of PRG involvement.

Bid Solicitation Process, Evaluation Criteria, and PGC Funding

Per 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 proposed PPA 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[5] 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)

[5] The prospective participants included "approximately 500 individuals, representing nearly 300 separate independent power companies, trade associations, law firms, and energy consultants." (AL 1680-E, Appendix A, page 2 -- Filed as Confidential Material)

and responses … as a means of providing those who have presented [renewable] proposals with equal access to information."[6] SCE also posted a revised definition of eligible renewable resources (ERRs) on this same webpage.[7]

In its Renewables RFP, SCE stated its intent to select the "lowest total cost market-based bids first, followed by the next lowest cost Market-Based Proposal, and so on until the Solicitation Goal is achieved, or until there are no remaining Market-Based Proposals" (SCE Renewables RFP Protocols, Section VI. Evaluation of Proposals).

With regard to the proposed TrueSolar PPA in AL 1680-E, SCE set forth its intention to depart from its stated evaluation criteria because SCE considers the proposed PPA an emerging renewable technology which must be analyzed "differently than the other proposed traditional renewable power contracts" submitted in a previous advice letter filing, SCE AL 1676-E. SCE's intent to use an emerging renewable technology-based evaluation criteria is set forth in AL 1680-E, as shown here, in part:

> "Because [the proposed PPA] proposes to provide power from an emerging (as opposed to "traditional" resources such as wind, geothermal, and hydro) renewable technology, SCE necessarily analyzes the PPA differently than other proposed traditional renewable power contracts.[8] Public Goods Charge ("PGC") funding for the project ("Project") would be provided under the "Emerging Account" administered by the California Energy Commission ("CEC") as opposed to the new and existing renewable accounts administered by the CEC, which are the proposed source of PGC funding for other SCE renewable power purchase agreements." (SCE AL 1680-E, Confidential Appendix A, page 1)

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

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

[8] *See* SCE Advice Letter No. 1676-E, filed December 24, 2002, in which SCE seeks Commission approval of five (5) other renewable procurement contracts involving projects utilizing "traditional" *(i.e.*, commercially proven and viable) renewable technologies.

Parties have also commented that the proposed PPA has such an excessive reliance on PGC funding that may never materialize. TURN / NRDC stated that the level of PGC funding assumed by the proposed PPA would require "significant changes in state law, policy, and regulations in order to become effective" (CEC Protest, page 6).

TURN / NRDC contend that the proposed PPA does not currently qualify for PGC Emerging Account funding, nor will it likely qualify for the proposed level of funding in the future.

> "The Commission must reject the [proposed] PPA because the necessary PGC award contemplated by the contract cannot be issued under current state law. The CEC is explicitly prohibited by statute from making emerging program awards to a PV project that is configured solely as a merchant generator. Section 383.5(e)(2)(C) of the Public Utilities Code limits awards from the emerging program to distributed systems "intended primarily to offset part or all of the consumer's own electricity demand", requires that "systems and their fuel resource shall be located on the same premises of the end-use consumer where the consumer's own electricity demand is located", and clearly states "only systems that will be operated in compliance with applicable law and the rules of the commission shall be eligible for funding." SCE has not provided any evidence that the [proposed] project satisfies these criteria. Based on the description of the facility, and the terms of the proposed PPA, it should be obvious that the project fails the statutory tests." (TURN / NRDC Protest, page 4)

TURN / NRDC also cites the CEC's *Emerging Renewable Resources Account Guidebook* to show that the proposed PPA does not qualify for PGC Emerging Account funds:

> "As explained in the current *Emerging Renewable Resources Account Guidebook* [9th Edition, September 2002, pages 3-4] issued by the CEC, "the Buydown Program is intended to foster the siting of small, reliable generating systems throughout California at locations where the electricity produced is needed and consumed." Consistent with this expectation, "the generating system must be installed on the premises of eligible customers and be sized so that the electricity produced is expected to primarily offset part or all of the customer's electrical needs at these premises." As noted in the previous subsection, the [proposed] project does not fit this definition since it is configured as a merchant plant and is not being designed to serve onsite loads. (TURN / NRDC Protest, page 5)

SCE states that the proposed PPA "would encourage the development of this emerging technology at dramatically lower cost to ratepayers and taxpayers" (SCE AL 1680-E, Confidential Appendix A, page 1). However, and in strong contrast, ORA, TURN / NRDC, and the CEC contend that, even if the proposed PPA were somehow

eligible for PGC Emerging Account funding, the proposed PPA is much less cost-effective than the distributed generation alternatives it would supplant.

TURN / NRDC calculate that "[a]warding an equivalent amount of PGC funds to distributed PV projects would yield between 18.9 and 33.8 MW of PV capacity at the end of a decade," instead of just 5 MW of central station PV from the proposed PPA (TURN / NRDC Protest, page 7). SCE's Response to Protests at page 7, presents historical rooftop PV penetration rates.

The CEC also raised several issues concerning SCE's comparative economic analysis of the proposed PPA (Exhibit A-1, SCE AL 1680-E). However, in SCE's response to protests, SCE asserted that the CEC believes in economies of scale advantages and performance-based incentive mechanisms.

While the intent to evaluate emerging renewable technologies differently than traditional renewable technologies was not stated in the Renewables RFP, we are not persuaded by comments to the Advice Letter that not having made an explicit distinction is grounds to deny the proposed PPA.

With respect to the level of expected PGC funding, we note that our direction to the utilities in D.02-08-071 merely asked that bids clearly identify any expected funds from the CEC's administered Public Goods Charge. We further note that in adopting this interim renewables procurement process, we set a transitional benchmark of 5.37 cents per kWh and stated our intention that "any contract that meets or exceeds the benchmark will be deemed *per se* reasonable." However, we were clear that "…other contracts at prices above the benchmark may also be approved by the Commission for cost recovery through the process outlined in this decision."

We take to heart the arguments of TURN / NRDC and CEC staff regarding the level of expected PGC funding. We do not dispute the arguments regarding the CEC's *Emerging Renewable Resources Account Guidebook*. However, we believe that the evaluation of the merits of the proposed PGC funding levels for this PPA is the CEC's sole responsibility and not this Commission's. We note that the threshold we established for the utilities in procuring renewable resources left the discussion of the appropriateness of the level of PGC funding to the CEC. Our evaluation of this proposed PPA must be only on the basis of the requirements as set forth in D.02-08-071. We clearly stated that "any contract that meets or exceeds the [transitional] benchmark [of 5.37 cents per kWh] will be deemed "per se" reasonable." Here, we find that this proposed PPA meets the transitional benchmark and passes the threshold established in D.02-08-071.

To be clear, in approving this Resolution, this Commission in no way obligates or binds the California Energy Commission to approve this contract without going through its own analysis and evaluation of expected PGC funding. Indeed, given the level of controversy, we fully expect and anticipate the CEC to fully evaluate the proposed PPA consistent with its established guidelines and criteria.

Transitional Procurement and Baseline Confirmation Issues

In AL 1680-E, SCE requested the following two findings:

> "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; and" (SCE AL 1680-E, page 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." (SCE AL 1680-E, page 3)

As we state below, we find that this PPA does meet SCE's obligation pursuant to D.02-08-071 and D.02-10-062 to procure an additional 1% of its annual electricity sales from renewable resources. We further find that this PPA is deemed part of SCE's "baseline" quantity of eligible renewable resources for purposes of Section 399.15 of the Public Utilities Code.

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."

In D.02-12-074 we clarified that…

> "To be considered *incremental* renewable, the interim procurement must result in a net increase of at least 1% of total 2001 retail sales in the utility's renewable portfolio above its 2002 level. If the 2002 renewable generation baseline amount will shrink in 2003, the utility must procure sufficient renewable power *over and above* this 1% of total 2001 retail sales amount, to result in a total 2003 renewable

> generation portfolio at least equal to the following: 2002 renewable procurement plus 1% of 2001 retail sales."[9] (emphasis in original)

The Commission has recently assigned a significant number of DWR contracts to SCE which created the concept of a utility's residual net short.[10] The four renewable PPAs approved by the Commission in E-3809 on January 30, 2003 already exceed the one percent goal, while the proposed PPA in AL 1680-E would contribute an additional one-tenth of one percent to that amount. We find that this proposed PPA is in compliance with the 1% renewable requirement.

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." In D.03-05-035, we modified the requirement previously imposed to require a renewable resource procured through a set-aside during the transition period to come online after 2003 if good cause exits.

As for the terms of the proposed PPA, SCE set forth this requirement in Section V.(C)(2) of its Renewables RFP:

> 2. Contract Term
> "Each proposal may specify up to three proposed contract terms, which must be 5, 10, or 15 years. If more than one proposed contract term is specified, then the proposal must specify the pricing terms that will apply to each term. The commencement of the contract term shall be as specified in the SCE Agreement or the CDWR Agreement, as applicable." (Filed as Confidential Material)

SCE further qualified these terms in Renewables RFP "Section V.(C)(4) Levelized Energy Price (Minimum 5 Year Duration)" which includes the following:

> "Participants may not propose a Fixed Energy Price for a term longer than 10 years (even if they proposed a 15-year contract term). Proposals specifying a

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[9] D.02-12-074, p19

[10] The allocation 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 System Load, less URG, less allocated DWR contracts.

> Fixed Energy Price for a term longer than 10 years are subject to disqualification in SCE's sole discretion." (Filed as Confidential Material)

We disclose here that the proposed PPA contract term is 15 years.

As for the online date for this project, we find that good cause exists to allow from the departure from the 2003 online requirement imposed by D.02-08-071. SCE's AL 1680-E does not specify a probable online date for the proposed PPA, or a likely construction lead time. However, the filing does reference a contract default date on page 3 of Exhibit B-1 which is beyond 2003. It should be noted that the proposed PPA is structured subject to the receipt of certain levels of PGC funding as determined by the CEC. Thus, there is a very strong likelihood that the proposed PPA may certainly be online after 2003, given that the proposed counterparty would have to obtain CEC PGC funding approval before construction would commence on the project. Since we have found this proposed PPA meets the threshold required for our evaluation pursuant to D.02-08-071, we do not find it reasonable to impose an online date requirement which would clearly not give the respondents enough time to seek the necessary PGC funding from the CEC.

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[11] in San Francisco and arranged three telephone conferences[12] 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 prefer those resources, if possible, that came on-line as soon as possible. SCE concurrently provided a copy of the final Renewables 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.

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. This Resolution was originally considered at the June 5, 2003 Commission meeting. We reduced the 30-day comment period for this Resolution to a six-day comment period ending June 3, 2003. There were several reasons for the reduced comment period: (1) the provision of the expedited schedule set forth in D.02-08-071; (2) the PRG's active participation throughout the interim procurement process leading

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

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

up to the advice letter and resolution; (3) the ability of parties to provide meaningful comments during the reduced comment periods; and (4) the Commission's ability to incorporate comments received into the resolution to the extent appropriate. Comments on this Resolution were due by 12 pm noon on June 3, 2003. There was no reply comment period.

Timely comments to the Resolution were filed by ORA, TURN, CEC, SCE and NRDC. Based on review of comments, we have made certain corrections, clarifications, and revisions, as set forth herein.

Among other things, comments on the Energy Division Resolution addressed the issue of confidentiality. This Resolution maintains the changes incorporated in the Energy Division Resolution which responded to the confidentiality of information contain within as outlined below.

At Energy Division's request, the Commission held the Energy Division Resolution from its agenda. Energy Division sought additional time to address the confidentiality issues that the parties had raised.

In response to the first comment period, the resolution was revised to: (1) find that material filed under Pub. Util. Code Section 583 should not be disclosed and should remain confidential; and (2) clarifying comments made by the CEC were incorporated at the end of the Bid Evaluation Criteria section and in the second to last paragraph of the Reasonableness Benchmark and PGC Funding Contingencies section. On February 21, 2003, Energy Division circulated to SCE and the PRG members a revised resolution for a second confidential comment period of three calendar days. In response to this February 21, 2003 draft, TURN / NRDC and the CEC provided comments devoted solely to confidentiality issues. TURN / NRDC called for the release of all redacted information, while the CEC proposed the release of some, but not all redacted information.

On Monday, March 3, 2003, Energy Division circulated for a third round of comments a further revised resolution. Comments were due to be received by the Energy Division by 12 PM noon on Monday, March 10, 2003. No provision was made for reply comments.

At the November 13, 2003 meeting, the Commission voted to circulate an unredacted version of this resolution for public comment , but with the pricing information still redacted. Accordingly, this resolution was circulated via email on November 17, 2003 to the R.01-10-024 service list and to the SCE PRG. Comments were due back by 9AM on Monday, December 1, 2003; there was no reply comment period.

On December 1, 2003, eight parties filed comments in opposition to the resolution, while SCE filed comments in support. Parties filing comments in opposition are the California Solar Energy Industries Association (CalSEIA), California Wind Energy Association (CalWEA), Center for Energy Efficiency and Renewable Technologies (CEERT), Independent Energy Producers Association (IEP), Office of Ratepayer Advocates (ORA), PV Now, and jointly-filed comments from The Utility Reform Network (TURN) / Natural Resources Defense Council (NRDC). SCE and TURN / NRDC respectively filed both confidential and public versions of their comments, while ORA filed only confidential comments. All other parties' comments were publicly filed.

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 regarding confidentiality, and address 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, that:

> "The Commission, in issuing the Protective Order, recognized that information related to the solicitation and to particular contract negotiations, is highly sensitive and that the public release of such information would hinder the ability of SCE and the other utilities to negotiate the best possible contractual terms for the benefit of its ratepayers. SCE has, as you know circulated confidential solicitation, negotiation and contract-related materials to SCE's PRG, which has vigorously advocated the interests of the renewable community."

Certainly, the Commission did, and does, recognize that much confidential information would be exchanged within the PRG. But this is in no way dispositive of the question of whether the *particular information that is proposed for release in this resolution* is so commercially sensitive as to warrant it remaining confidential. Thus, while we agree with the generalized assertion that SCE propounds, we find that we must look deeper.

The redacted information in this resolution can be fairly lumped into just a few categories:

1. Discussion of PGC funding

2. Proposed Contract terms (e.g., name of counterparty, pricing, duration, volumes)
3. The relative merits of the proposed contract vis. competing offers
4. RFP terms.

SCE asserts that the Commission must make particularized findings of fact supporting a decision to disclose the redacted information. We disagree, and share the sentiment, expressed by TURN / NRDC, that: "[t]he Commission need not devote pages of the resolution to a lengthy debate over the benefits of public disclosure. It is sufficient simply to include the finding that disclosure is warranted." Nonetheless, in view of the peculiar circumstances surrounding this PPA, and the vacillation in which Energy Division has engaged with respect to disclosure issue, we believe some elaboration is warranted regarding why we choose the course we do. At the outset, we reiterate the basic ground rules concerning § 583, as articulated repeatedly in resolutions that the Commission has issued in response to Public Records Act requests seeking material submitted under § 583. PU Code Section 583:

> . . .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.[13]

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

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.[14]

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.

SCE questions whether there is a public interest in disclosure:

> "SCE is at a loss to know what the public interest could be in this case….Even if the Commission were inclined to approve the PPA, SCE would not understand the basis for publicly releasing confidential information regarding SCE's solicitation or its contract terms and would oppose any such release…. To the extent that the Commission wishes to send a message that it views certain

[14] Resolution L-290, above.

> proposed contract terms to be inappropriate, for example, PGC funding terms, any such message is more than adequately sent by revelation to SCE and the PRG of the Commission's decision concerning such terms. SCE can fathom no reason for publicly discussing such terms, and subjecting SCE and its ratepayers to the disadvantage of having its confidential solicitation materials and materials related to its confidential negotiations publicly revealed."

We agree with SCE (indeed, with *all* commenters) that it is not in consumers' interest to see confidential utility information concerning procurement disbursed willy-nilly, and it is certainly *contrary* to consumer interests to see the procurement process made too transparent to suppliers, who might use certain information to game that process to their pecuniary advantage.

We choose to release hitherto confidential information today because we see a significant public benefit attached to making public the merits and pricing terms of the proposed PPA. It is important for both the public at large, and the generation community in particular, to understand the underlying merits of the proposed PPA We start from the premise that government is conducted in the sunshine. By releasing to the public redacted information, we assure the public that our decisions are made in an open manner. By opening a small window into the PRG process, we assure generators that they will be treated fairly in a procurement process. Finally, we make potential participants in the PGC process who are not PRG members aware of the pricing provisions that will impact the PGC funding process, something they could not have known before now was a possible concern. These ends cannot be served by disclosure to SCE and the PRG alone.

We take comfort in the fact that TURN, the consumer group most active in the PRG process, does not believe that making public the heretofore redacted material in this resolution will adversely affect consumers. As TURN / NRDC state in their second set of comments: "The disclosure of these debates would could not possibly undermine SCE's future ability to receive competitive bids from, or effectively negotiate future contracts with, renewable power suppliers."[15] We are exquisitely sensitive to the possibility of giving market participants data that they could use to game procurement processes. We are quite confident that nothing we make public here, whether viewed alone or in connection with information we have disclosed elsewhere, will materially facilitate gaming.

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[15] TURN / NRDC February 24, 2003 Comments on the Draft Energy Division Resolution, p. 3.

Certainly information about the RFP should be made public. The RFP was widely disseminated to the generation community, so those who stand to benefit most from what SCE characterizes as disclosure of the contents of "confidential solicitation materials" already know the RFP's content. Releasing pricing information concerning the least attractive PPA, and releasing information bolstering that relative ranking, does not do anything to tell any prospective future bidder where we in fact *did* draw the line between what we would accept and what we would reject, so we do not believe we are disclosing market-sensitive information here.

In summary PRG members have requested that we disclose the redacted information in this resolution. We find that the public interest in disclosure is not outweighed by the public interest in confidentiality; in fact, we find a public interest in disclosure that outweighs any public interest in confidentiality.

The CEC's proposal would have us release to the public some, but not all, redacted material. Since we believe all material can and should be made public without harm to ratepayers, we elect not to reach the merits of the CEC's proposed limited redactions.

We turn now to the final portion of SCE's comments. SCE was concerned about resolutions with redacted information being made public prior to a Commission vote, and implicitly sought assurance that there would be no disclosure prior to a vote:

> "SCE further understands that, without a formal Commission finding, no confidential information will be publicly revealed, and therefore any confidential materials will be redacted from any public version of the Draft Resolution, at least before such resolution is voted out by the Commission.

SCE is correct that no release of material submitted under § 583 may take place absent action of the Commission or a Commissioner. The redacted material contained herein was not released until the Commission voted to release it.

SCE concluded that:

> in the event the Commission determines to make a finding, over SCE's objection, that confidential information may be released, such release should only take place upon expiration of the time for filing applications for rehearing of the Resolution. SCE notes that it only learned for the first time last Friday [February 7, 2003] of the Commission's possible intention to waive confidentiality protection as to materials related to its solicitation and the PPA, and respectfully requests a full opportunity to brief the Commission on the significant negative impact that would attend public release of these sensitive materials.

We decline to adopt SCE's proposal. By the time that we vote this resolution out, there will have been several rounds of comments on versions of the resolution calling for complete disclosure of confidential information. SCE will have had ample opportunity to address confidentiality issues. 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 that no further briefing is necessary.

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 which appears in this light blue highlight in the unredacted electronic copy, in gray highlight in the unredacted hardcopy, or which is marked "[REDACTED]" in the redacted copy, should be made public upon Commission approval of this resolution.

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 was reduced to one 6-day comment period, ending June 3, 2003. There was no reply comment period.

The resolution was then circulated again via email on October 22, 2003 to the R.01-10-024 service list and the SCE PRG without a comment period.

At the November 13, 2003 meeting, the Commission voted to circulate an unredacted version of E-3814 for public comment , but with the pricing information still redacted. Accordingly, this resolution was circulated via email on November 17, 2003 to the R.01-

10-024 service list and to the SCE PRG. Comments were due back by 9AM on Monday, December 1, 2003; there was no reply comment period.

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 by the counterparty to the PPA proposed by SCE in AL 1680-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 1680-E on January 14, 2003 requesting approval of one power purchase agreement (PPA) 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. AL 1680-E was confidentially protested by ORA, TURN / NRDC, and the CEC, and publicly protested by CalWEA on January 21, 2003.

6. SCE submitted a confidential response to the protests of ORA, TURN / NRDC, and the CEC, and a public response to CalWEA, on January 27, 2003.

7. 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) "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.
   (d) "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.

(e) "Utilities should enter into contracts with a mixture of term lengths [equal to or between 5 and 15 years in duration].
(f) "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.
(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."

8. The merits, evaluation and analysis of the PGC funding as identified in the proposed PPA falls outside the threshold established by the Commission in D.02-08-071 and is for the CEC to assess.

9. 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, should remain confidential. Accordingly, all text in this resolution which appears in this light blue highlight in the unredacted electronic copy, in gray highlight in the unredacted hardcopy, or which is marked "[REDACTED]" in the redacted copy, is made public upon Commission approval of this resolution.

10. 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.

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

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

13. 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.

14. The proposed PPA meets the threshold established in D.02-08-071 by meeting or exceeding the transitional benchmark and properly identifying the level of expected PGC funding.

15. We approve AL 1680-E, effective today.

THEREFORE IT IS ORDERED THAT:

1. SCE's request to enter into the proposed power purchase agreement contributing toward procurement of at least an additional one percent of its annual electricity sales from renewable energy resources, in Advice Letter 1680-E, is approved, effective today.

2. All text in this resolution which appears in this light blue highlight in the unredacted electronic copy, in gray highlight in the unredacted hardcopy, or which is marked "[REDACTED]" in the redacted copy, is made public upon Commission approval of this resolution.

3. We lift the confidentiality protection from SCE's Advice Letter AL 1680-E, associated protests, and comments, except for the PPA itself which will remain under seal.

4. 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 December 4, 2003; the following Commissioners voting favorably thereon:

_____
WILLIAM AHERN
Executive Director

MICHAEL R. PEEVEY
President
CARL W. WOOD
SUSAN P. KENNEDY
Commissioners

/s/ LORETTA M. LYNCH
I abstain.

/s/ GEOFFREY F. BROWN
I dissent.