

Exhibit No. \_\_\_\_ (MDF-4)  
Docket UE-100749  
Witness: Michael D. Foisy

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,**

**Complainant,**

**v.**

**PACIFICORP D/B/A PACIFIC POWER  
& LIGHT COMPANY,**

**Respondent.**

**DOCKET UE-100749**

**EXHIBIT TO TESTIMONY OF**

**MICHAEL D. FOISY**

**STAFF**

**OF**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

*California Public Utilities Commission  
Energy Division Resolution E-4264  
Dated October 15, 2009*

**October 5, 2010**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**RESOLUTION E-4264**

**October 15, 2009**

Redacted

**R E S O L U T I O N**

Resolution E-4264. Southern California Edison (SCE) Company.  
PROPOSED OUTCOME: This Resolution approves cost recovery for a renewable portfolio standard power purchase agreement with PacifiCorp, a MidAmerican Energy Holdings Company.

ESTIMATED COST: Actual costs of the power purchase agreement are confidential at this time.

By Advice Letter 2357-E filed on July 1, 2009 and Advice Letter 2357-E-A filed on September 30, 2009.

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**SUMMARY**

**Southern California Edison's PacifiCorp contract complies with the renewables portfolio standard guidelines and is approved**

Southern California Edison (SCE) filed advice letter (AL) 2357-E on July 1, 2009 requesting Commission review and approval of a short-term, bilateral renewable energy power purchase agreement (PPA) executed with PacifiCorp. SCE filed AL 2357-E-A on September 30, 2009 to correct a few calculations in the confidential Appendices of the advice letter.

| Generating facilities  | Type                      | Term (Years) | Contract Capacity (MW) | Energy (GWh)   | Contract Start Date | Location   |
|--|---------------------------|--------------|------------------------|--|---------------------|--|
| 1) Wolverine Creek<br>2) Leaning Juniper<br>3) Marengo<br>4) Marengo II<br>5) Glenrock<br>6) Rolling Hills | Wind, online <sup>1</sup> | 3.25         | 50                     | 110 (2009)<br>328 (2010)<br>328 (2011)<br>329 (2012) | October 1, 2009     | Wind facilities located in ID, OR, WA, WY. PacifiCorp will deliver energy to SCE at Palo Verde |

PacifiCorp owns and/or takes delivery of renewable energy from the above-listed wind farms, located in several western states. Under this PPA, PacifiCorp will sell SCE green attributes from these facilities and sell 50 MW firm to SCE at the Palo Verde trading hub in Arizona. The green attributes may come from any of the six wind facilities listed above, as long as the facility has received its RPS eligibility certification from the California Energy Commission (CEC). SCE will either sell the energy and replace it at a later date with an equivalent amount of energy for import to California, or deliver the energy into California upon receipt. In either event, SCE's imports into California under the PPA shall be consistent with the CEC's RPS delivery guidelines.

The proposed contract price is reasonable, and all costs of the contract are fully recoverable in rates over the life of the contract, subject to Commission review of SCE's administration of the contract.

AL 2357-E and AL 2357-E-A is approved without modification.

**Confidential information about the contract should remain confidential**

This resolution finds that certain material filed under seal pursuant to Public Utilities Code Section 583, General Order (G.O.) 66-C, and D.06-06-066 should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

Pursuant to D.06-06-066 and the decision's Appendix I "IOU Matrix", this Commission adopted a "window of confidentiality" for individual contracts for RPS energy or capacity. Specifically, this Commission determined that RPS

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<sup>1</sup> Although the facilities are already operating, they were built after January 1, 2005 and are considered "new" pursuant to statutory rules.

contracts should be confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their own affiliates, which should be public.

## **BACKGROUND**

### **The RPS Program requires each utility to increase the amount of renewable energy in its portfolio**

The California RPS Program was established by Senate Bill (SB) 1078<sup>2</sup>, and has been subsequently modified by SB 107<sup>3</sup> and SB 1036<sup>4</sup>. The RPS program is set out at Public Utilities (PU) Code Section 399.11, et seq. An RPS policy generally requires that a retail seller of electricity, such as SCE, purchase a certain percentage of electricity generated by Eligible Renewable Energy Resources (ERR). Under the California RPS, each utility is required to increase its total procurement of ERRs by at least 1% of annual retail sales per year so that 20% of its retail sales are supplied by ERRs by 2010. Also, on November 17, 2008, Governor Schwarzenegger issued Executive Order S-14-08, setting a goal for energy retailers to deliver 33 percent of electrical energy from renewable resources by 2020.<sup>5</sup>

In response to SB 1078, SB 107, and SB 1036, the Commission has issued a series of decisions and resolutions that establish the regulatory and transactional parameters of the utility renewables procurement program.

- On June 19, 2003, the Commission issued its "Order Initiating Implementation of the Senate Bill 1078 Renewable Portfolio Standard Program," D.03-06-071.<sup>6</sup>
- Instructions for utility evaluation of each offer to sell ERRs requested in an RPS solicitation were provided in D.04-07-029<sup>7</sup>, as required by PU Code Section 399.14(a)(2)(B). The bid evaluation methodology is known as 'least-cost, best-fit'.

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<sup>2</sup> SB 1078 (Sher, Chapter 516, Statutes of 2002)

<sup>3</sup> SB 107 (Simitian, Chapter 464, Statutes of 2006)

<sup>4</sup> SB 1036 (Perata, Chapter 685, Statutes of 2007)

<sup>5</sup> <http://gov.ca.gov/executive-order/11072/>

<sup>6</sup> [http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/27360.PDF](http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/27360.PDF)

<sup>7</sup> [http://docs.cpuc.ca.gov/WORD\\_PDF/FINAL\\_DECISION/38287.PDF](http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/38287.PDF)

- The Commission adopted standard terms and conditions (STCs) for RPS power purchase agreements in D.04-06-014, as required by PU Code Section 399.14(a)(2)(D). These STCs are compiled in D.08-04-009<sup>8</sup>, as modified by D.08-08-028<sup>9</sup>, and as a result, there are now thirteen STCs of which four are non-modifiable.
- D.06-10-050, as modified by D.07-03-046, compiled the RPS reporting and compliance methodologies.<sup>10</sup> In this decision, the Commission established methodologies to calculate a retail seller's initial baseline procurement amount, annual procurement target (APT) and incremental procurement amount (IPT).<sup>11</sup>
- The Commission adopted its market price referent (MPR) methodology in D.04-06-015<sup>12</sup> for determining the market price of energy, as defined in PU Code Sections 399.14(a)(2)(A) and 399.15(c); the MPR serves as a cost containment tool because the above-MPR contract costs of RPS contracts are limited (PU Code Section 399.15[d]). The Commission refined the MPR methodology for the 2005 RPS Solicitation in D.05-12-042.<sup>13</sup> Subsequent resolutions adopted MPR values for the 2005, 2006, 2007, and 2008 RPS solicitations.<sup>14</sup>
- In D.06-10-019<sup>15</sup>, the Commission adopted rules for the eligibility and approval of RPS short-term contracts (procurement contracts that are less

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<sup>8</sup> [http://docs.cpuc.ca.gov/WORD\\_PDF/FINAL\\_DECISION/81269.PDF](http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/81269.PDF)

<sup>9</sup> [http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/86954.pdf](http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/86954.pdf)

<sup>10</sup> D.06-10-050, Attachment A,

([http://www.cpuc.ca.gov/WORD\\_PDF/FINAL\\_DECISION/61025.PDF](http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/61025.PDF)) as modified by D.07-03-046 ([http://www.cpuc.ca.gov/WORD\\_PDF/FINAL\\_DECISION/65833.PDF](http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/65833.PDF))

<sup>11</sup> The IPT represents the amount of RPS-eligible procurement that the LSE must purchase, in a given year, over and above the total amount the LSE was required to procure in the prior year. An LSE's IPT equals at least 1% of the previous year's total retail electrical sales, including power sold to a utility's customers from its DWR contracts.

<sup>12</sup> [http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/37383.pdf](http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/37383.pdf)

<sup>13</sup> [http://www.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/52178.pdf](http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/52178.pdf)

<sup>14</sup> Respectively, Resolution E-3980:

[http://www.cpuc.ca.gov/WORD\\_PDF/FINAL\\_RESOLUTION/55465.DOC](http://www.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/55465.DOC), Resolution E-4049: [http://www.cpuc.ca.gov/word\\_pdf/FINAL\\_RESOLUTION/63132.doc](http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/63132.doc), Resolution E-4118: [http://www.cpuc.ca.gov/word\\_pdf/FINAL\\_RESOLUTION/73594.pdf](http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/73594.pdf)

Resolution E-4214: [http://docs.cpuc.ca.gov/Published/Final\\_resolution/95553.htm](http://docs.cpuc.ca.gov/Published/Final_resolution/95553.htm)

<sup>15</sup> [http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/60585.PDF](http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/60585.PDF)

than 10 years in duration) and bilateral contracts (procurement contracts that are negotiated outside of a competitive RPS solicitation).

- Resolutions E-4160<sup>16</sup> and E-4199<sup>17</sup> implemented SB 1036, which modified the RPS cost containment mechanism. The Commission established cost limitations for each investor-owned utility (IOU) and set forth guidelines for approving above-MPR RPS contracts negotiated through a competitive solicitation.
- In D.07-05-028, the Commission established a minimum quota for contracting with new facilities or executing long-term contracts for RPS-eligible generation. Specifically, in order for an LSE to count a short-term contract with an existing facility for RPS compliance, the LSE must enter into long-term contracts or contracts with new facilities for energy deliveries equivalent to at least 0.25% of that LSE's prior year's retail sales.<sup>18</sup>
- The Commission established guidelines for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process (D.03-06-071 and D.06-10-019). More recently, in D.09-06-050, this Commission determined that bilateral RPS contracts should be evaluated using the same methods and criteria that are used to review contracts that result from a competitive solicitation. This requires, for example, review by the utility's PRG and its Independent Evaluator. This also includes a comparison of the proposed agreement to RPS opportunities received in its annual solicitations and other RPS-eligible procurement options.
- D.09-06-050 established review and approval processes for short term contracts. The fast-track review process allows an RPS contract that is less than 10 years in duration to be submitted by tier 2, rather than tier 3, advice letter if the contract meets specified criteria. Short-term contracts that do not meet such criteria can still be filed by tier 3 advice letter. The Decision requires Energy Division staff to establish pricing criteria for short-term contracts that are submitted by tier 2 and tier 3 advice letters.

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<sup>16</sup> [http://docs.cpuc.ca.gov/WORD\\_PDF/FINAL\\_RESOLUTION/81476.PDF](http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/81476.PDF)

<sup>17</sup> [http://docs.cpuc.ca.gov/WORD\\_PDF/FINAL\\_RESOLUTION/98603.PDF](http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/98603.PDF)

<sup>18</sup> The term of a "short-term" contract is less than ten years. A "new" facility must have commenced commercial operations after January 1, 2005.

Before the criteria are adopted, short-term contracts can be reviewed on a case by case basis.

**Energy from RPS facilities located out-of-state must be delivered to California**

The California Energy Commission (CEC) is responsible for certifying the eligibility of renewable energy facilities for the RPS program, as well as verifying and tracking the generation and delivery of renewable energy claimed for compliance with the RPS program. If a renewable energy facility has its first point of interconnection to the transmission network outside of California, it must satisfy all of the following additional requirements:<sup>19</sup>

1. It is connected to the transmission network within the Western Electricity Coordinating Council (WECC) service territory.
2. It commences initial commercial operation after January 1, 2005.
3. Electricity produced by the facility is delivered to an in-state location.
4. It will not cause or contribute to any violation of a California environmental quality standard or requirement.
5. If the facility is outside of the United States, it is developed and operated in a manner that is as protective of the environment as a similar facility located in the state.
6. It participates in the Western Renewable Energy Generation Information System (WREGIS), the accounting system to verify compliance with the renewables portfolio standard by retail sellers

While facilities located in California or with their first point of interconnection in the state are automatically deemed "delivered", eligible renewable energy from out-of-state facilities must be "scheduled for consumption by California end-use retail customers" to be counted for compliance with the RPS program.<sup>20</sup> The RPS statute also allows "electricity generated by an eligible renewable energy resource [to] be considered 'delivered' regardless of whether the electricity is generated at a different time from consumption by a California end-use customer."<sup>21</sup>

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<sup>19</sup> Public Resources (PR) Code 25741(b)(2)(B)

<sup>20</sup> PR Code Section 25741(a)

<sup>21</sup> Id

The CEC's RPS Eligibility Guidebook<sup>22</sup> says that in practical terms, this means that out-of-state energy may be "firmed" and "shaped", or backed up or supplemented with delivery from another source, before it is delivered to California. The CEC's Guidebook provides three examples of eligible delivery structures, and essentially allows a generator, third party, or the IOU to firm and shape RPS contracts.<sup>23</sup>

For each advice letter requesting CPUC approval of a PPA with an out-of-state RPS facility, the CEC provides written documentation to the CPUC addressing whether a proposed RPS contract's delivery structure would be eligible pursuant to the guidelines in the CEC's Guidebook.

**Interim Greenhouse Gas Emissions Performance Standard (EPS) established emission rate limitations for long-term electricity procurement**

A greenhouse gas emissions performance standard (EPS) was established by Senate Bill 1368<sup>24</sup>, which requires that the Commission consider emissions costs associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers.

On January 25, 2007, the Commission approved D.07-01-039 which adopted an interim EPS that establishes an emission rate quota for obligated facilities to levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine powerplant.<sup>25</sup> The EPS applies to all energy contracts for baseload generation that are at least five years in duration.<sup>26</sup> Renewable energy contracts are deemed EPS compliant from the EPS except in cases where intermittent renewable energy is shaped and firmed with generation from non-renewable resources. If the renewable energy contract is shaped and firmed with a specified energy source that is considered baseload generation, then the energy source

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<sup>22</sup> <http://energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF>

<sup>23</sup> pg 23-24

<sup>24</sup> Chapter 464, Statutes of 2006 (SB 1368)

<sup>25</sup> D.07-01-039 adopted an emission rate of 1,100 pounds of carbon dioxide per megawatt-hour for the proxy CCGT (section 1.2, page 8)

[http://www.cpuc.ca.gov/WORD\\_PDF/FINAL\\_DECISION/64072.PDF](http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/64072.PDF)

<sup>26</sup> "Baseload generation" is electricity generation at a power plant "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." § 8340 (a)



must individually meet the EPS. If, however, the intermittent energy is firmed and shaped with an unspecified energy source (e.g. system power), then D.07-01-039 specifically defines the following eligibility condition:

*For specified contracts with intermittent renewable resources (defined as solar, wind and run-of-river hydroelectricity), the amount of substitute energy purchases from unspecified resources is limited such that total purchases under the contract (whether from the intermittent renewable resource or from substitute unspecified sources) do not exceed the total expected output of the specified renewable powerplant over the term of the contract.<sup>27</sup>*

### **SCE requests Commission approval of a renewable energy contract**

On July 1, 2009, SCE filed AL 2357-E, requesting Commission review and approval of a PPA with PacifiCorp. SCE filed supplemental AI 2357-E-A on September 30 to correct a few calculation errors in the confidential Appendices of AI 2356-E. The short-term PPA results from bilateral negotiations. The output from PacifiCorp's wind facilities will be firmed and shaped and delivered to SCE at the Palo Verde trading hub; SCE will deliver the energy to California. The PPA will contribute energy deliveries towards SCE's renewable procurement goal required by California's RPS statute.<sup>28</sup> SCE requests that the Commission issue a resolution no later than September 10, 2009, containing:

1. Approval of the PacifiCorp Contract in its entirety;
2. A finding that any electric energy sold or dedicated to SCE pursuant to the PacifiCorp Contract constitutes procurement by SCE from an eligible renewable energy resource ("ERR") for the purpose of determining SCE's compliance with any obligation that it may have to procure from ERRs pursuant to the RPS Legislation<sup>29</sup> or other applicable law concerning the procurement of electric energy from renewable energy resources;

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<sup>27</sup> D.07-01-039, Conclusion of Law 40. Note: These compliance rules specifically apply to IOUs, additional compliance rules may apply to other RPS-obligated load serving entities.

<sup>28</sup> The California Energy Commission is responsible for determining the RPS-eligibility of a renewable generator. See PU Code Section 399.12 and D.08-04-009, as modified by D.08-08-028.

<sup>29</sup> As defined by SCE, "'RPS Legislation' refers to the current State of California Renewable Portfolio Standard program statute, as codified at California Public Utilities Code Section 399.11 et seq."

3. A finding that all procurement under the PacifiCorp Contract counts, in full and without condition, towards any annual procurement target established by the RPS Legislation or the Commission which is applicable to SCE;
4. A finding that all procurement under the PacifiCorp Contract counts, in full and without condition, towards any incremental procurement target established by the RPS Legislation or the Commission which is applicable to SCE;
5. A finding that all procurement under the PacifiCorp Contract counts, in full and without condition, towards the requirement in the RPS Legislation that SCE procure 20% (or such other percentage as may be established by law) of its retail sales from ERRs by 2010 (or such other date as may be established by law);
6. A finding that the PacifiCorp Contract, and SCE's entry into the PacifiCorp Contract, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the PacifiCorp Contract, subject only to further review with respect to the reasonableness of SCE's administration of the PacifiCorp Contract; and
7. Any other and further relief as the Commission finds just and reasonable.

### **SCE's Procurement Review Group participated in review of the contracts**

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.

SCE's PRG was formed on or around September 10, 2002. Participants include representatives from the Commission's Energy and Legal Divisions, the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), the Natural Resources Defense Council, California Utility Employees, the Union of

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Concerned Scientists, Aglet Consumer Alliance and the California Department of Water Resources.

SCE says that they communicated with the PRG prior to the execution of the PacifiCorp contract.

Although Energy Division is a member of the PRG, it reserved its judgment on the contracts until the resolution process. Energy Division reviewed the transactions independent of the PRG, and allowed for a full protest period before concluding its analysis.

### **NOTICE**

Notice of AL 2357-E was made by publication in the Commission's Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

### **PROTESTS**

Advice Letters 2357-E and 2357-E-A were not protested.

### **DISCUSSION**

#### **Description of the project**

The following table summarizes the substantive features of the proposed PPA. See confidential Appendix A for a discussion of the contracts' confidential terms and conditions.

| Generating facilities  | Type                       | Term (Years) | Contract Capacity (MW) | Energy (GWh)   | Contract Start Date | Location   |
|--|----------------------------|--------------|------------------------|--|---------------------|--|
| 1) Wolverine Creek<br>2) Leaning Juniper<br>3) Marengo<br>4) Marengo II<br>5) Glenrock<br>6) Rolling Hills | Wind, online <sup>30</sup> | 3.25         | 50                     | 110 (2009)<br>328 (2010)<br>328 (2011)<br>329 (2012) | October 1, 2009     | Wind facilities located in ID, OR, WA, WY. PacifiCorp will deliver energy to SCE at Palo Verde |

The PacifiCorp contract is a bilateral contract for wind generation. Under this PPA, PacifiCorp will deliver 50 MW firm and an equivalent amount of green attributes to SCE at the Palo Verde trading hub. The green attributes may come from any of the six wind facilities listed above, as long as the facility has received its RPS eligibility certification from the CEC. SCE will either sell the energy and replace it at a later date with an equivalent amount of energy for import to California, or deliver the energy into California upon receipt. In either event, SCE's imports into California under the PPA shall be consistent with the CEC's RPS delivery guidelines. The PacifiCorp project is favorable relative to the bids in SCE's 2008 solicitation because it provides near-term energy deliveries at a reasonable cost.

This contract was evaluated on the following criteria:

- Consistency with SCE's 2008 Procurement Plan
- Compliance with relevant Commission decisions regarding bilateral contracting guidelines, standard terms and conditions and the Emissions Performance Standard
- Project is viable
- Price reasonableness
- Consistency with the RPS delivery rules, as set forth in the CEC's RPS Eligibility Guidebook

<sup>30</sup> Although the facilities are already operating, they were built after January 1, 2005 and are considered "new" pursuant to statutory rules.

### **PPA is consistent with SCE's 2008 RPS Procurement Plan**

The Commission must accept or reject proposed PPAs based on their consistency with the utility's approved renewable energy procurement plan (Plan).<sup>31</sup> SCE's 2008 Plan includes an assessment of supply and demand for renewable energy and bid solicitation materials, including a pro-forma agreement and bid evaluation methodology documents.

The Commission conditionally approved SCE's 2008 RPS procurement plan, including SCE's bid solicitation materials, in D.08-02-008.<sup>32</sup> As ordered by D.08-02-008, on February 29, 2008 SCE filed and served its amended 2008 Plan. The proposed PPA is consistent with SCE's Commission-approved 2008 RPS Plan.

### PPA fits with SCE's identified renewable resource needs

SCE'S 2008 RPS Plan states that SCE seeks to procure renewable resources to augment those under contract from prior solicitations and to ensure that SCE meets the overall goal of 20% renewables as soon as possible, and with a reasonable margin of safety.<sup>33</sup> Accordingly, SCE states that it needs both near-term and long-term renewable energy but its evaluation criteria will favor proposals for near-term deliveries. SCE's stated preference is to receive the RPS energy in SP-15, but SCE will consider proposals based upon any designated delivery point within California. SCE will seek resources both from generation facilities located in California and outside the state (but within the WECC), if the Seller complies with the requirements for "out-of-state facilities" in the California Energy Commission (CEC) Guidebook for RPS Eligibility.<sup>34</sup>

The PacifiCorp project meets SCE's resource needs because the facilities are operating, and thus, the energy is immediately available to deliver renewable energy and satisfy SCE's near-term RPS energy need. Also, the facilities are located in the WECC and the project has obtained CEC approval of its delivery structure (See Appendix B).

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<sup>31</sup> PU Code §399.14(d)

<sup>32</sup> [http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/78817.pdf](http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/78817.pdf)

<sup>33</sup> SCE reports that it intends to procure renewables based on its High Need Case scenario. SCE's Base Case assumes a 100% on-time delivery of all currently executed contracts, and its High Need Case assumes 70% delivery from executed, but not yet delivering, contracts.

<sup>34</sup> <http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF>

PacifiCorp contract compares favorably to 2008 RPS bids

Although the PacifiCorp contract was negotiated bilaterally, SCE conducted a least-cost best-fit (LCBF) bid evaluation of the project to compare it to SCE's 2008 solicitation bids and to determine whether the project would have been shortlisted.

SCE found that the PacifiCorp contract is attractive relative to proposals received in response to SCE's 2008 solicitation. Because the wind facilities are already operating, there are no viability concerns with the project. Also, PacifiCorp is an experienced developer that, SCE says, will be able to perform on its obligations under the contract.

**PPA is consistent with RPS bilateral contracting guidelines**

The PacifiCorp contract is consistent with the bilateral contracting guidelines in D.06-10-019:

1. The PPA will not be applied to SCE's cost limitation.<sup>35</sup>
2. Pursuant to D.06-10-019, the PPA was submitted by advice letter.<sup>36</sup>
3. The PPA is at least one month in duration.<sup>37</sup>
4. The PPA is reasonably priced.<sup>38</sup>

Also, in D.09-06-050, this Commission determined that bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation. Accordingly, the PacifiCorp contract was compared to SCE's other RPS opportunities received in its 2008 renewable RFP. (See Sections "PacifiCorp contract compares favorably to 2008 RPS bids" and "Contract price is reasonable".) Energy Division staff did not, however, require

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<sup>35</sup> The PPA is ineligible for the cost limitation because it did not result from a competitive solicitation and is a short-term contract. (PU Code §399.15[d][2])

<sup>36</sup> "For now, utilities' bilateral RPS contracts, of any length, must be submitted for approval by advice letter." (D.06-10-019, p.31)

<sup>37</sup> "All RPS-obligated LSEs are also free to enter into bilateral contracts of any length with RPS-eligible generators, as long as the contracts are at least one month in duration, to enable the CEC to verify RPS procurement claims." (D.06-10-019 p. 29)

<sup>38</sup> The contract price of bilaterals must be deemed reasonable by the Commission. (D.06-10-019, p. 31)

an Independent Evaluator report for the contract because PacifiCorp contract was executed before the Commission adopted D.09-06-050.

### **PPA is consistent with adopted standard terms and conditions**

The terms and conditions in the PacifiCorp contract<sup>39</sup> comply with the non-modifiable terms required in RPS contracts as set forth in D.08-04-009, and amended by D.08-08-028.

### **Contract is not subject to the EPS**

The EPS does not apply to a contract of less than five years. Because the PacifiCorp contract term is less than five years, the EPS is not triggered.

### **Project is viable**

SCE asserts that there are no viability concerns with the PacifiCorp project because the facilities are already operating.

### **Contract price is reasonable**

Pursuant to D.09-06-050, Energy Division staff must establish a price benchmark to evaluate the reasonableness of very-short term contracts. However, this benchmark has not yet been adopted; D.09-06-050 provides that short-term contracts can be reviewed on a case-by-case basis in the interim.

The Commission has considered the PacifiCorp contract's price relative to SCE's 2008 solicitation bids and SCE's other available RPS procurement options. While there were no very short-term contracts shortlisted in SCE's solicitation, SCE provided the Commission with a confidential analysis of how the contract price compares to its other 2008 offers.

SCE's analysis demonstrates that the PacifiCorp contract price is reasonable as compared to its 2008 shortlist. Further, the project provides value because of its high viability, commitment to delivering firm power and ability to satisfy SCE's need for near-term RPS deliveries.

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<sup>39</sup> The contract includes the Edison Electric Institute's (EEI) Master Agreement and Collateral Annex, Cover Sheet, Paragraph 10, and the Confirmation Letter.

**Proposed delivery structure complies with CEC's guidelines**

The CEC is responsible for determining whether out-of-state RPS projects satisfy the delivery requirements for the RPS program. Pursuant to the CEC's RPS Eligibility Guidebook, these requirements are automatically satisfied for projects that are located in California or that are located on the border of the state and have their first point of interconnection to the WECC transmission system within California. If, however, a facility is connected to the WECC not within California, the energy from the facility must be scheduled for consumption by California end-use retail customers. The guidelines for eligible delivery structures can be found in Section III(D) of the CEC's RPS Eligibility Guidebook. For each out-of-state project that the CPUC reviews, the CEC provides the CPUC with written documentation addressing whether the proposal satisfies the delivery requirements.

On August 4, 2009, the CEC provided the CPUC with a letter declaring that the proposed PacifiCorp delivery structure satisfies the RPS delivery requirements. This letter, which also includes a brief overview of PacifiCorp's delivery structure, can be found in Appendix B.

**COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived or reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

No comments were received.



**FINDINGS**

1. The RPS Program requires each utility, including SCE, to increase the amount of renewable energy in its portfolio to 20 percent by 2010, increasing by a minimum of one percent per year.
2. D.08-04-009, as modified by D.08-08-028, sets forth four non-modifiable and nine modifiable standard terms and conditions to be incorporated into RPS power purchase agreements.
3. D.03-06-071 allows for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process.
4. D.08-02-008 directed the utilities to issue their 2008 renewable RFOs, consistent with their renewable procurement plans.
5. 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.
6. SCE filed Advice Letter (AL) 2357-E on July 1, 2009, requesting Commission review and approval of a bilateral renewable energy contract with PacifiCorp.
7. SCE filed AL 2357-E-A on September 30, 2009 to correct errors in a few calculations in the confidential Appendices of AL 2357-E. The changes do not change the Commission's determination that the contract is reasonable.
8. The Commission has reviewed the proposed PacifiCorp contract and finds it to be consistent with SCE's approved 2008 renewable procurement plan and bilateral procurement rules.
9. The proposed contract price is reasonable.
10. The CEC provided the Commission with written confirmation that the proposed delivery structure for the PacifiCorp contract complies with the RPS Eligibility Guidebook.
11. Any electric energy sold or dedicated to SCE pursuant to the PacifiCorp contract, constitutes procurement by SCE from an ERR for the purpose of determining SCE's compliance with any obligation that it may have to procure from ERRs pursuant to the RPS Legislation or other applicable law concerning the procurement of electric energy from renewable energy resources.

12. All procurement under the PacifiCorp contract, counts, in full and without condition, towards any annual procurement target established by the RPS statute or the Commission which is applicable to SCE.
13. All procurement under the PacifiCorp contract counts, in full and without condition, towards any incremental procurement target established by the RPS statute or the Commission which is applicable to SCE.
14. All procurement under the PacifiCorp contract counts, in full and without condition, towards the requirement in the RPS Legislation that SCE procure 20 percent (or such other percentage as may be established by law) of its retail sales from ERRs by 2010 (or such other date as may be established by law).
15. The PacifiCorp contract is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the PacifiCorp contract subject only to further review with respect to the reasonableness of SCE's administration of the PacifiCorp contract.
16. Any indirect costs of renewables procurement identified in Section 399.15(a)(2) shall be recovered in rates.
17. The PacifiCorp contract proposed in AL 2357-E and AL 2357-E-A should be approved without modification.
18. 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 not be disclosed. Accordingly, the confidential appendices, marked "[REDACTED]" in the redacted copy, should not be made public upon Commission approval of this resolution.

**THEREFORE IT IS ORDERED THAT:**

1. The proposed renewable energy contract between Southern California Edison and PacifiCorp in Advice Letters 2357-E and 2357-E-A is approved without modification.
2. The costs of the contract between Southern California Edison and PacifiCorp are reasonable and in the public interest; accordingly, the payments to be made by Southern California Edison are fully recoverable in rates over the life of the project, subject to Commission review of Southern California Edison's administration of the contract.

3. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on October 15, 2009; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON  
PAUL CLANON  
Executive Director

MICHAEL R. PEEVEY  
PRESIDENT  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners

Confidential Appendix A

Contract price analysis and terms and conditions

[REDACTED]

Appendix B

CEC letter regarding contract delivery structure

CALIFORNIA ENERGY COMMISSION

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July 30, 2009

The California Energy Commission, through its staff, has reviewed the proposed contracting structure between PacifiCorp and Southern California Edison, as described in the excerpt from page 5 of Advice Letter #2357-E in "Attachment A," and shown in the schematic design titled, "Attachment B- PacifiCorp/Southern California Edison Delivery Structure."

The Energy Commission staff has determined that this structure would meet the RPS delivery requirements according to the *Renewables Portfolio Standard Eligibility Guidebook* (CEC-300-2007-006-ED3-CMF, January 2008).

A handwritten signature in black ink, appearing to read "Tony Gonçalves", written over a horizontal line.

Tony Gonçalves  
Manager, Renewable Energy Office  
California Energy Commission

Attachments