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**ADVICE LETTER 2091-E
(U 902-E)**

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SUBJECT: REQUEST FOR APPROVAL OF RENEWABLE POWER PURCHASE WITH PACIFICORP

I. INTRODUCTION

A. PURPOSE OF ADVICE LETTER

San Diego Gas & Electric Company ("SDG&E") seeks approval from the California Public Utilities Commission (the "Commission" or the "CPUC") for a short term Power Purchase Agreement ("PPA"), executed on May 26, 2009 with PacifiCorp. The proposed short term agreement involves up to four wind facilities in PacifiCorp's service territory and will result in SDG&E taking delivery of up to 200 MW in each hour of the delivery periods included in the PPA and up to a possible maximum of 442 GWh of power in 2009 and up to a possible maximum 437 GWh of power 2010. Exact delivery volumes in each delivery period depend on the California Energy Commission (CEC) certification of the facilities for out-of-state sales (that is, receipt of a LORS certification¹). The LORS certification requirement is outlined in the CEC Eligibility Guidebook, January 2008 (Third Edition) beginning on p. 37 (section III. C. 3.). Because one of the wind facilities included in the agreement has already received its LORS certification, the minimum firm volumes included in the agreement are approximately 44 GWh in both 2009 and 2010. The proposed agreement will result in new / incremental power deliveries into California and will aid SDG&E in meeting California's renewable portfolio standard ("RPS") statute requirement of reaching 20 percent eligible renewable procurement by 2010.

1. PROJECT NAME:

SDG&E's counterparty for the proposed agreement is PacifiCorp and the agreement includes energy and green attribute volumes associated with four wind facilities within PacifiCorp's service territory. Individual facility names are listed in confidential appendix D.

2. TECHNOLOGY (INCLUDING LEVEL OF MATURITY):

Wind (mature technology)

¹ LORS certification refers to Laws, Ordinances, Regulations and Standards. That is, the developer / owner must show and the CEC must certify that the operation of a plant located outside of California will not contribute to the violation of any California environmental standard.

3. GENERAL LOCATION AND INTERCONNECTION POINT:

The wind facilities included in the PPA are located in Idaho (one facility), Oregon (one facility) and Washington (two facilities). The point of interconnection for each facility is within the Western Electricity Coordinating Council (WECC).

4. HISTORY OF PROJECT:

The Proposed Agreement results from bilateral negotiations between SDG&E and PacifiCorp which commenced in early 2007. During the course of the negotiations, various deal structures were discussed and these discussions resulted in the execution of the proposed agreement on May 26, 2009.

5. RPS SOLICITATION (OR BILATERAL)

The proposed PPA resulted from bilateral negotiations between PacifiCorp and SDG&E.

6. OWNER(S) / DEVELOPER(S)²

1. **NAME(S)**: PacifiCorp
2. **TYPE OF ENTITY(IES)**: Corporation - Investor Owned Utility³
3. **BUSINESS RELATIONSHIP, IF APPLICABLE; E.G. PARTNERSHIP, ETC.:** Not Applicable

GENERAL PROJECT(S) DESCRIPTION

<u>OWNER / DEVELOPER</u>	PacifiCorp ⁴
<u>TECHNOLOGY</u>	Wind
<u>CAPACITY (MW)</u>	Up to 200MW. The delivery rate / capacity is dependent on the number of facilities included in the PPA that receive CEC LORS certification.
<u>NET CAPACITY FACTOR</u>	n/a; SDG&E is contracting for firm power and green attribute deliveries at Palo Verde (a CAISO delivery

² PacifiCorp is SDG&E's counterparty for the proposed agreement. PacifiCorp has full rights for the output of the wind facilities included in the agreement over the delivery period either through direct ownership or via a separate PPA between PacifiCorp and the facility owner.

³ PacifiCorp serves approximately 1.7 million customers in six western states. PacifiCorp was formed in 1984, when its electric utility, natural resource development and telecommunications businesses grew into full-fledged enterprises. In 1989, it merged with Utah Power & Light, and continued doing business as Pacific Power and Utah Power. The company was acquired by MidAmerican Energy Holdings Company in 2006. Today, PacifiCorp consists of three business units, aggregating up to PacifiCorp: **PacifiCorp Energy**, containing the electric generation, commercial and energy trading functions, and the coal-mining operations of the company, is headquartered in Salt Lake City, Utah; **Pacific Power**, which delivers electricity to customers in Oregon, Washington and California, is headquartered in Portland, Ore.; and **Rocky Mountain Power**, which delivers electricity to customers in Utah, Wyoming and Idaho, is headquartered in Salt Lake City, Utah. PacifiCorp is headquartered in Portland, Ore.

⁴ See note 3, above.

point).

EXPECTED GENERATION (MWH/YEAR) Firm deliveries depend on the LORS certification of the facilities associated with the proposed agreement; expected generation may be as little as 44,160 MWh in 2009 and 43,680 MWh in 2010 or as much as 441,600 MWh in 2009 / 436,800 MWh in 2010.

ONLINE DATE
(IF EXISTING, THE CONTRACT DELIVERY START DATE) Not applicable. The facilities included in the proposed agreement have already completed construction and are on-line. The initial delivery period begins on October 1, 2009.

CONTRACT TERM
(YEARS) Three separate quarterly delivery periods (Q4 2009, Q2 2010 and Q4 2010) over a 1 year, 3 month period (the initial delivery period begins 10/1/2009 and the final delivery period ends on 12/31/2010).

NEW OR EXISTING FACILITY Existing

LOCATION
(INCLUDE IN/OUT-OF-STATE) Idaho (one facility), Oregon (one facility) and Washington (two facilities).

CONTROL AREA
(E.G., CAISO, BPA) One facility is in the PacEast control area, two facilities are in the PacWest control area and one facility is in the BPA control area.

PRICE RELATIVE TO MPR
(I.E. ABOVE/BELOW) Below⁵

II. CONSISTENCY WITH CPUC DECISIONS

THE OVERALL PROCUREMENT PROCESS COMPLIES WITH RPS-RELATED DECISIONS.

A. RPS PROCUREMENT PLAN

1. THE CPUC DECISION THAT APPROVED SDG&E'S PLAN. SDG&E ADHERED TO CPUC GUIDELINES FOR FILING AND REVISIONS.

On August 1, 2007 SDG&E filed its initial 2008 RPS Plan with the Commission. On February 14, 2008, the CPUC issued D.08-02-008 conditionally approving SDG&E's 2008 Renewable Procurement Plan (the "2008 RPS Plan"). In compliance with the direction set forth in D.08-02-008, SDG&E filed a revised 2008 RPS Plan to roll in the conditions required by the Commission.

⁵ Based on a projection / calculation of a one year MPR. Further details on the pricing related to the proposed agreement are included in confidential appendix D.

On March 10, 2008, SDG&E received authorization from the Energy Division to issue its 2008 RFO and SDG&E issued the RFO on that same day.

2. SUMMARIZE THE PLAN'S ASSESSMENT OF PORTFOLIO NEEDS AND REQUESTED BID CHARACTERISTICS, INCLUDING REQUESTS FOR GENERATION OF EACH DELIVERABILITY CHARACTERISTIC, REQUIRED ONLINE DATES, LOCATIONAL PREFERENCES, ETC.

The 2008 RPS Plan expresses SDG&E's continued commitment to meet the mandate of delivering 20% of its retail sales from renewable resources by 2010. SDG&E's goal is to develop and maintain a diversified renewable portfolio, selecting from offers using the Least-Cost, Best-Fit (LCBF) evaluation criteria. SDG&E's 2008 Renewable RFO (the "2008 RFO"), approved as part of the 2008 RPS Plan, sought offers from all technologies of renewable projects, from any allowable location, that meet the requirements for eligible facilities as specified in applicable statute and as established by the CEC. The 2008 RFO sought unit firm or as-available deliveries starting in 2009, 2010, 2011, or 2012 for terms ranging from spot market up to 20 years. The 2008 RPS Plan also states that to the extent an unsolicited bilateral offer complies with RPS program requirements, fits within SDG&E's resource needs, is competitive when compared against recent RFO offers and provides benefits to SDG&E customers, SDG&E will pursue such an agreement.

3. DESCRIBE HOW THE PROPOSED PROJECT MEETS PORTFOLIO NEEDS (E.G. CAPACITY, ELECTRICAL ENERGY, RESOURCE ADEQUACY, OTHER PRODUCT FROM THE PROJECT)

The proposed agreement conforms to SDG&E's most recent Commission-approved RPS procurement plan by delivering incremental power and Green Attributes that fill a portion of SDG&E's RPS net short position. Although the project was unsolicited, it complies with RPS program requirements, meets the portfolio needs outlined by the 2008 RPS Plan and is competitive when compared to the most recent RFO offers.

Of note, this short term agreement relates to existing facilities that are on-line and therefore avoids any development risk. The proposed short term agreement also serves to add renewable energy to SDG&E's RPS procurement portfolio in the very near term, bridging the gap until longer term resources are brought online.

B. RPS SOLICITATION

1. THE SOLICITATION WAS CONSISTENT WITH SDG&E'S CPUC-APPROVED RPS PROCUREMENT PLAN AND RFO BIDDING PROTOCOL

SDG&E submitted its 2008 Renewable RFO to the CPUC for review and approval on August 1, 2007, and February 29, 2008 as part of its 2008 RPS Plan. The 2008 Renewable RFO was issued on March 10, 2008 and responses were due on April 30, 2008. As specified by the 2008 RPS Plan, SDG&E solicited bids from all technologies of renewable projects that could interconnect anywhere in California, as well as outside of California provided that the renewable project located outside California met requirements set forth in Public Utilities Code Section 399.11 to 399.20 and CEC Eligibility Guidebook restrictions.

SDG&E sought proposals for peaking, baseload, dispatchable (unit firm) or as-available deliveries. Such proposals could include capacity and energy from:

- a) Re-powering of existing facilities;
- b) Incremental capacity upgrades of existing facilities;
- c) New facilities;

- d) Existing facilities that are scheduled to come online during the years specified in the RFO that have excess or uncontracted quantities of power for a short time frame;
- e) Existing facilities with expiring contracts; or
- f) Eligible resources currently under contract with SDG&E. SDG&E shall consider offers to extend terms of or expand contracted capacities for existing agreements.

SDG&E solicited three types of projects:

- a) Power purchase agreements for delivery terms of one to five, 10, 15 or 20-year deliveries commencing in 2009 through 2012.
- b) A power purchase agreement with an option price for SDG&E to acquire the facility along with all environmental attributes, land rights, permits and other licenses, thus enabling SDG&E to own and operate the facility at the end of the PPA term.
- c) Turnkey projects to develop, permit, and construct new, RPS-eligible generating facilities to be acquired by SDG&E.

SDG&E established an open, transparent and competitive playing field for the procurement effort. The following protocols were established within its solicitation:

- a) An RFO website was created, allowing respondents to download solicitation documents, participate in a Question and Answer forum and see updates or revisions associated with the process;
- b) Internet upload capabilities were available to accept electronic offers; and,
- c) SDG&E adhered to the following RFO schedule:

DATE	EVENT
March 10, 2008	RFO Issued
March 27, 2008	Pre-Bid Conference
April 30, 2008	Offers Due
May 15, 2008	Briefed PRG on all offers received
June 19, 2008	Briefed PRG on LCBF analysis and preliminary shortlist
June 27, 2008	Notified PRG of its preferred, final shortlist
July 14, 2008	Notified Energy Division of final shortlist after incorporating comments from the PRG.
July 29, 2008	Final LCBF Report to the CPUC
May 26, 2009	PacifiCorp PPA Executed

2. THE SOLICITATION WAS ROBUST.

SDG&E sent email notification containing information about the RFO to the Western Systems Power Pool member list, parties who had bid into prior renewable RFO's and any other parties who requested such notification. An article advertising the RFO was published in Megawatt Daily. SDG&E also held a pre-bid conference on March 27, 2008. Potential bidders were invited to submit any questions about the RFO process to SDG&E via email. SDG&E maintained an RFO website where interested parties could access all posted answers to questions received from all potential bidders.

Despite competition from concurrent renewable solicitations held by other California utilities within the same time frame, the amount of energy offered allowed SDG&E to select from a pool of

projects that far exceeded its need. Several of the proposals submitted would require the addition of new transmission infrastructure to deliver energy to San Diego customers.

3. THE BID CONFORMED TO RPS BIDDING PROTOCOL (E.G. RPS-ELIGIBLE, SUBMISSION OF NECESSARY FORMS, CONFIDENTIALITY AGREEMENTS, BID DEPOSIT, ETC.)

Although a bilateral, the proposed agreement conforms to minimum requirements of the RFO:

- a) The project is RPS Eligible. The project interconnects outside of California, and complies with CEC Eligibility Guidebook requirements for out-of-state resources,
- b) The project is consistent with the products being sought in the RFO,
- c) The net contract capacity is greater than 5 MW net of all auxiliary and station parasitic loads, and
- d) Green attributes are tendered to SDG&E.

THE PPA IS NOT FROM A SOLICITATION (I.E. A BILATERAL)

1. REASON/NEED TO PROCURE BILATERALLY AS OPPOSED TO AN RFO.

The bilateral discussions that resulted in the proposed agreement have been on-going for approximately two and one half years. The comparison evaluation of the contract's cost and value contained in Confidential Appendix D show that this proposed agreement compares favorably to other renewable alternatives. Additionally, the viability of the project, attractive pricing, and credibility (expertise and creditworthiness) of the counterparty provided a compelling case for SDG&E to enter into the proposed agreement outside of a solicitation.

2. COMPLIANCE WITH D.06-10-019, OR OTHER MORE RECENT CPUC DECISION(S).

In D.06-10-019, the Commission concluded that bilateral contracts used for RPS compliance must be submitted for approval via advice letter and, while not subject to the MPR, must contain pricing that is "reasonable." (D.06-10-019, *mimeo*, p. 31) The advice letter satisfies the first requirement and, as SDG&E demonstrates in Appendix D, the pricing contained in the proposed PPA is reasonable. Accordingly, the express requirements of D.06-10-019 are satisfied.

The proposed agreement will result in the delivery of a firm and shaped bundled power and green attribute product to Palo Verde that SDG&E will deliver into California. This commercial structure fully complies with the CEC's RPS eligibility requirements for firm and shaped deliveries of out-of-state power where deliveries occur at a different time and location than generation.⁶

D.06-10-019 also discusses firm/shaped transactions such as the one proposed here. It observes that "[t]he use of firming and shaping may be relevant to the eligibility of the energy for RPS purposes," and concludes that "[s]uch eligibility determinations are the province of the CEC." (*Id.* at p. 37). The proposed agreement is a permissible transaction involving firm/shaped out-of-state power that, after delivered into California by SDG&E, meets delivery requirements and is

⁶ Section II.D. (Eligibility Requirements / Delivery Requirements) of the January, 2008 CEC RPS Eligibility Guidebook (third edition) outlines the delivery requirements for out-of-state projects. In part this section states (at pg 23): "Electricity may be delivered into California at a different time than when the RPS-certified facility generated electricity, pursuant to Public Resources Code Section 25741, Subdivision (a). Further, the electricity delivered into California may be generated at a different location than that of the RPS-certified facility. In practical terms, out-of-state energy may be "firmed" or "shaped" within the calendar year."

deemed RPS-eligible under the California Energy Commission's *Renewables Portfolio Standard Eligibility Guidebook* (see, Guidebook, pp. 23-24).

C. LCBF METHODOLOGY AND EVALUATION

1. BID EVALUATION PROCESS

THE LCBF EVALUATION AND RANKING WAS FAIRLY ADMINISTERED AND CONSISTENT WITH CPUC DECISIONS ADDRESSING LCBF METHODOLOGY.

Upon conclusion of the bidding process, SDG&E performed an initial screening with its Independent Evaluator to determine if each bid met the minimum requirements of the RFO. SDG&E submitted clarifying questions to respondents to allow for accurate consideration of as many projects as possible. Once SDG&E had a list of conforming candidate projects, SDG&E began evaluation of these offers to narrow the field of bidders to a short list.

SDG&E evaluated all offers in accordance with the LCBF process outlined in D.03-06-071, D.04-07-029 and its approved RPS Procurement Plan. The Commission established in D.04-07-029 a process for evaluating "least-cost, best-fit" renewable resources for purposes of IOU compliance with RPS program requirements. SDG&E has adopted such a process in its renewable procurement plan. In D.06-05-039, the Commission observed that "the RPS project evaluation and selection process within the LCBF framework cannot ultimately be reduced to mathematical models and rules that totally eliminate the use of judgment."⁷ It determined, however, that each IOU should provide an explanation of its "evaluation and selection model, its process, and its decision rationale with respect to each bid, both selected and rejected," in the form of a report to be submitted with its short list of bids (the "LCBF Report").⁸

a. MODELING ASSUMPTIONS AND SELECTION CRITERIA

To incorporate a "best-fit" element into evaluation of offers, instead of simply comparing prices for all offers ("least-cost"), SDG&E calculated an "All-In Price" for each offer. Elements of the All-In Price are described below.

SDG&E compares bids by sorting all projects by the All-In Price, from lowest to highest. Those projects with the lowest All-In Price were short listed. SDG&E short listed a quantity of projects that would reasonably result in SDG&E achieving at 5% above its RPS requirement of 20% (that is, SDG&E is attempting, consistent with its procurement plan, to have approximately 25% of 2010 retail sales sourced from renewables rather than the RPS goal of 20%). In order to account for potential project failures, SDG&E shortlisted more than its calculated need.

The comparison of a short term agreement, such as the proposed agreement, with the long term offers included in SDG&E's short-list from the 2008 RPS RFO requires some special considerations which are discussed in more detail in confidential Appendix D. However, as that analysis shows, the all-in price of the proposed agreement compares favorably versus the all-in price of the bids received resulting from SDG&E's 2008 solicitation and fell within the shortlist range.

⁷ See D.06-05-039, *mimeo*, p. 42.

⁸ *Id.* at p. 43. The Commission required the IOUs to file a preliminary version of their respective LCBF Reports in advance of their short-list submission date. (See, Scoping Memo and Ruling of Assigned Commissioner, dated August 21, 2006, Attachment A, pp. 14-15). The LCBF report for SDG&E's 2008 shortlist was submitted to the Commission on July 29, 2008.

b. QUANTITATIVE EVALUATION

- i. Market valuation (the "All-In Price") – The following discussion describes how SDG&E calculates an all-in price that includes the factors listed. Included in confidential appendix D is a detailed description of how each of these factors applies to the PacifiCrop specific calculation of all-in price.
 - a. Capacity and energy prices. Both the offered capacity and energy prices were included in the All-In Price.
 - b. Time of delivery ("TOD") cost adjustment. SDG&E established a TOD cost adjustment factor ("Bid Adjustment Factor") to compensate for the differing values between peaking (or off peak) and baseload projects in its least cost ranking. SDG&E calculated the Bid Adjustment Factor by multiplying the bidders' expected TOD profile MWh's by SDG&E's published TOD factors and then dividing the result by the bidder's total annual MWh deliveries. Bid prices were then divided by the Bid Adjustment Factor resulting in prices equivalent to baseload prices.
 - c. Transmission Cost Adder. For new project offers or projects proposing to increase the size of existing facilities, SDG&E calculated costs for transmission network upgrades or additions, using information from Transmission Ranking Cost Reports or CAISO-approved System Impact Studies for respondents that completed such a study. SDG&E assigns a transmission cost adder of zero dollars (\$) to projects proposing to interconnect to the distribution system because all such costs are attributable to the developer and should be included in their offer price.

In the case of the proposed agreement, since the facilities are already fully interconnected and on-line, this adder is not applicable.

- d. Resource Adequacy ("RA"). All bids received a Resource Adequacy ("RA") adjustment to reflect the amount of additional RA capacity needed to equalize the RA value of the renewable offers which have an RA capacity that is less than 100% of nameplate capacity. SDG&E used a value that is comparable to the capacity prices in offers received in recent conventional RFO's, discounted by an allowance for ancillary service benefits. The size of the RA adjustment for each renewable offer was calculated in accordance with the methodology outlined by the CPUC for valuing the RA capacity for each resource type.

Due to the delivery periods included in the proposed agreement, an RA adjustment is included in the All-In Price as part of the LCBF analysis. Details of how the RA adjustment is calculated and the amount of the adjustment related to the proposed agreement are included in confidential appendix D.

- e. Congestion cost adders. Congestion costs were based on the difference between the hourly Locational Marginal Prices ("LMP") at each generator's injection point and the hourly LMP values for SDG&E's Load Aggregation Point ("LAP"). The LMP values in the LAP were weighted for all bus points within SDG&E's service territory using approved CAISO allocation factors. SDG&E subtracted the LMPs for each generator's injection point from the LMPs in SDG&E's LAP and multiplied the differences by the generator's hourly production profile (MWh).

Due to the delivery periods included in the proposed agreement, a congestion cost adder is included in the All-In Price as part of the LCBF analysis. Details of how the

adder is calculated and the amount of the adder for the proposed agreement are included in confidential appendix D.

f. Duration equalization adders (“Begin Effects” and “End Effects”). Originally, SDG&E planned to use Market Price Referent (“MPR”) proxies as market replacement costs to equalize bids of different starting periods and terms. As the IE report verifies (see Appendix C), doing so would create a false appearance that earlier starting projects are more expensive than later starting projects because the later starting projects would use the MPR as proxies in the early years. Creating such a disadvantage for projects with earlier start dates is at odds with SDG&E’s goal to achieve 20% as soon as possible. SDG&E also believes that because it shortlisted more than three times the amount it initially planned to shortlist, the effect of excluding duration equalization is negated.

The proposed agreement includes three delivery quarters over a fifteen month period and therefore the duration equalization adder becomes an important aspect of the analysis. Details regarding assumptions and the values of these adders are contained in confidential appendix D.

c. QUALITATIVE FACTORS

SDG&E differentiates offers of similar cost by reviewing, if applicable, qualitative factors including (in no particular order of preference):

- i. Location;
- ii. Benefits to minority and low income areas;
- iii. Resource diversity;
- iv. Promote stable electricity prices
- v. Protect public health
- vi. Improve environmental quality; offer environmental benefits
- vii. Stimulate sustainable economic development
- viii. Create new employment opportunities
- ix. Reduce reliance on imported fuels
- x. Ameliorate air quality problems
- xi. Improve public health by reducing the burning of fossil fuels
- xii. Environmental stewardship, which may include the environmental impacts of Respondent’ proposed facility on California’s water quality, use, and water resource management consistent with the CPUC’s Water Action Plan, adopted December 15, 2005.

SDG&E’s solicitation also stated that SDG&E may also differentiate long-term offers of similar cost by reviewing other factors including (in no particular order of preference):

- i. Delivery Reliability
- ii. Ability to advance schedule
- iii. Technology
- iv. Likelihood project will be able to develop and achieve Commercial Operation within established timeframes.
- v. Operational flexibility
- vi. Development risk
- vii. Financing plan
- viii. Corporate capabilities, credit, and proven experience
- ix. Repowering / Contract extension

In the case of the proposed agreement, the fact that all facilities included are on-line contributed to SDG&E's decision to execute a contract.

2. RESULTS / BID COMPARISON

DESCRIBE HOW THE PROPOSED CONTRACT(S) COMPARE(S) WITH OTHER BIDS RECEIVED IN THE SOLICITATION WITH REGARD TO EACH LCBF FACTOR AS WELL AS WHY THE SUBMITTED CONTRACT(S) RANKED HIGHER / LOWER (QUANTITATIVELY AND/OR QUALITATIVELY) THAN THE OTHER BIDS USING THE LCBF CRITERIA.

SDG&E included the proposed agreement in its LCBF analysis, with certain adjustments to account for the unique attributes of this transaction, and it shows that the cost of the proposed agreement compares favorably to SDG&E's 2008 RFO offers. Please see confidential appendix D, "Contract Price" section for details on how the proposed contract compares with other bids received in the solicitation with respect to each LCBF factor, as well as how the proposed agreement compares utilizing other price reasonableness measures (such as comparison to comparable offers).

3. PORTFOLIO FIT

DISCUSS / DEMONSTRATE BEST FIT BY INCLUDING AN EVALUATION OF THE BID'S COSTS AND BENEFITS IN THE CONTEXT OF THE IOUs PORTFOLIO NEEDS.

SDG&E's plan stated that SDG&E does not have a preference for a particular product or technology type and that SDG&E has latitude in the resources that it selects. However, as explained above, time of delivery factors, transmission cost, congestion costs and resource adequacy adjustment were evaluated to determine the impact to SDG&E's portfolio. Time of delivery factors and resource adequacy adjustments were included in the economic comparison of options in order to ensure the least-cost projects were also best-fit selections for the portfolio.

For details on the proposed agreement's costs and benefits in the context of SDG&E's portfolio needs, please see the section entitled "Contract Price" in the confidential appendix D.

4. TRANSMISSION ADDER

DISCUSS / DEMONSTRATE CONSISTENCY WITH CPUC DECISIONS ADDRESSING RPS TRANSMISSION RANKING COST METHODOLOGY AND IOU TRANSMISSION RANKING COST REPORT (TRCR) OR PROVIDE REASONING WHY THE TRCR WAS NOT USED.

Inclusion of transmission cost adders for the proposed agreement is inappropriate since the facilities are fully constructed and already on-line, however, congestion costs were considered and included in the analysis (see the "Contract Price" section of confidential appendix D for details).

5. APPLICATION OF TODS

DISCUSS HOW TODS WERE CONSISTENTLY USED THROUGHOUT THE PROCUREMENT PROCESS, E.G., RFO, BID EVALUATION, CALCULATION OF AMFS.

SDG&E utilized TOD factors in its LCBF evaluation via the aforementioned Bid Adjustment Factor. The average all-in bid price was adjusted to reflect the relative value of projected energy deliveries during peak, semi-peak and off-peak periods. The projected delivery profiles were provided by the respondents. Application of the TOD's to in the evaluation of the proposed agreement is explained in Confidential Appendix D.

The Bid Adjustment Factors were derived from the TOD factors shown below:

	<u>SUMMER</u>	<u>WINTER</u>
On-Peak	July 1 – October 31 Weekdays 11am – 7pm 1.6411	November 1 – June 30 Weekdays 1pm - 9pm 1.1916
Semi-Peak	Weekdays 6am – 11am; Weekdays 7pm - 10pm 1.0400	Weekdays 6am – 1pm; Weekdays 9pm – 10pm 1.0790
Off-Peak*	All other hours 0.8833	All other hours 0.7928

*All hours during NERC holidays are off-peak.

6. QUALITATIVE FACTORS

DISCUSS THE EXTENT TO WHICH THE BID’S QUALITATIVE FACTORS WERE USED IN THE EVALUATION OF THIS OFFER AND COMPARE TO OTHER BIDS IN SOLICITATION

As mentioned above, SDG&E uses qualitative factors as a tie breaker to differentiate offers with similar costs. However, qualitative analysis was not necessary for the proposed agreement since the offer was analyzed subsequent to the receipt of the RFO offers and therefore a tie breaker was unnecessary.

7. IMPACT OF DEBT EQUIVALENCE

DISCUSS HOW DEBT EQUIVALENCE AFFECTED THE RANKING OF THE PROJECT

Debt equivalence did not impact the ranking of this proposed contract. D.07-12-052 eliminated debt equivalence as a factor to be considered in the LCBF analysis of 2008 RFO bids.⁹ Since SDG&E compared the proposed agreement to its 2008 RFO bids, it would not have been appropriate to consider debt equivalence as a factor that could impact its rank.

D. PRG PARTICIPATION AND FEEDBACK

1. PRG MEMBERS (BY ORGANIZATION/COMPANY)

SDG&E’s PRG is comprised of over fifty representatives from the following organizations:

- a. California Department of Water Resources
- b. California Public Utilities Commission – Energy Division
- c. California Public Utilities Commission – Division of Ratepayers Advocate
- d. The Utility Reform Network
- e. Union of Concerned Scientists

⁹ D.07-12-052, *mimeo*, pp. 163-166. The Commission subsequently provided further guidance related to debt equivalence in D.08-11-008, in which the Commission authorizes the IOUs to recognize the effects of debt equivalence when comparing PPAs against PPAs in their bid evaluations. SDG&E intends to include debt equivalence in its evaluation of future PPAs.

2. INDICATE WHEN THE PRG WAS PROVIDED INFORMATION ON THE CONTRACT(S)

Discussions with SDG&E's Procurement Review Group (PRG) regarding a short term PPA between SDG&E and PacifiCorp occurred as early as the July 9, 2007 PRG meeting and the various iterations of the agreement were discussed during the September 17, 2007 meeting, the December 18, 2007 meeting, the April 17, 2008 meeting, the May 15, 2008 meeting, the October 16, 2008 meeting and the November 20, 2008 meeting. The proposed agreement, essentially in its final form, was presented at the March 19, 2009 PRG meeting and was again discussed during the May 21, 2009 meeting.

3. COMMENTS/CRITIQUES/QUESTIONS SDG&E RECEIVED FROM THE PRG

SDG&E does not keep transcripts of PRG meetings. Discussions can include exploration of positions that may or may not reflect parties' positions. Any objections to material presented to the PRG are ultimately made public through interventions in SDG&E's filings requesting approval before the Commission. Additionally, following this filing, parties will be allowed to comment and although numerous PRG members had comments on the proposed agreement over the lengthy span it was discussed in its various iterations, none voiced an objection to the arrangement.

E. RPS GOALS***DESCRIBING PROJECT'S CONSISTENCY WITH, AND CONTRIBUTION TOWARDS RPS GOALS (SEE P.2 OF R.08-08-009 SCOPING MEMO AND RULING FILED SEPTEMBER 26, 2008)***

The project is consistent with and contributes towards RPS goals, which require SDG&E to (1) annually increase its RPS procurement by approximately 1% of its retail sales and (2) it is one of a very few incremental opportunities that will contribute toward achieve an overall renewable procurement equaling 20% of its retail sales by next year (2010).

The proposed agreement conforms to SDG&E's Commission-approved 2008 RPS procurement plan. In the plan, SDG&E said, "SDG&E will avail itself of the flexibility mechanisms permitted under the RPS program, including: (1) the ability to sign bilateral agreements."

Firm quantities of energy deliveries associated with the proposed agreement depend on the number of facilities included in the PPA that receive CEC LORS certification. Output may be as little as 44,160 MWh in 2009 / 43,680 MWh in 2010 or as much as 441,600 MWh in 2009 / 436,800 MWh in 2010.

F. STANDARD TERMS AND CONDITIONS***STANDARD TERMS AND CONDITIONS TO BE INCORPORATED INTO RPS AGREEMENTS PURSUANT TO D.08-04-009.*****1. THE PROPOSED PPA DOES COMPLY WITH D.08-04-009.**

The PPA complies with D.08-04-009. The PPA contains standard terms and conditions as authorized by the Commission in D.04-06-014 issued on June 9, 2004 and R.06-02-012 issued on October 29, 2008. Commission decision D.04-06-014 originally adopted standard contract terms and conditions for use in the RPS and recently updated the requirements in D.08-04-009. The decision labeled some terms and conditions as being non-modifiable. All non-modifiable terms and conditions remain intact in the proposed agreement and are used in the appropriate context. A summary of major contract provisions is provided in confidential appendix D. Copies of the PPA and supporting documentation are also provided in confidential appendix D.

2. REQUESTED RELIEF, INCLUDING CPUC APPROVAL AS DEFINED IN D.08-04-009

With respect to standard terms and conditions, SDG&E is not requesting any special consideration or relief because all non-modifiable terms were included without modification. However, please see Section VI of this advice letter for an outline of requested Commission findings in its approval of this agreement.

G. MINIMUM QUANTITY**REQUIREMENTS FOR SHORT TERM RPS CONTRACTS PURSUANT TO PUBLIC UTILITY CODE § 399.14(B)****1. INDICATE WHETHER THE PROPOSED PPA IS: (A) A LONG-TERM AGREEMENT WITH AN EXISTING FACILITY OR A NEW FACILITY, (B) A SHORT-TERM WITH A NEW FACILITY, OR (C) A SHORT-TERM WITH AN EXISTING FACILITY**

The proposed agreement is a short-term agreement related to existing facilities (item C).

2. DISCUSS HOW THE CONTRACT(S) IS IN COMPLIANCE WITH D.07-05-028 IF THE TERM IS LESS THAN 10 YEARS.

D.07-05-028 states that in order to count deliveries from short term contracts for compliance, load serving entities (LSEs) must first enter into long-term agreements whose deliveries are equal to or greater than 0.25% of that LSE's prior year's retail sales.

SDG&E has met this requirement through its contract with Naturener RimRock, LLC executed on May 5, 2009 and filed for approval via SDG&E advice letter 2088-E on May 29, 2009.

3. DESCRIBE HOW SDG&E HAS SATISFIED THE MINIMUM QUANTITY REQUIREMENT.

As stated above, SDG&E has met the minimum quantity requirement through its contract with Naturener RimRock, LLC executed on May 5, 2009 and filed for approval via SDG&E advice letter 2088-E on May 29, 2009.

H. INTERIM EMISSIONS PERFORMANCE STANDARD**DISCUSS COMPLIANCE WITH PUBLIC UTILITY CODE § 8440-8341, WHICH ESTABLISHED A GREENHOUSE GAS EMISSIONS PERFORMANCE STANDARD (EPS)****1. DISCUSS HOW THE CONTRACT IS IN COMPLIANCE WITH D.07-01-039**

The proposed agreement involves four wind facilities that are non-emitting, has a term of less than five years and is therefore EPS compliant.¹⁰

2. DISCUSS HOW THE ENERGY USED TO FIRM/SHAPE MEETS EPS REQUIREMENTS (ONLY FOR PPAS OF 5 OR MORE YEARS AND WILL BE FIRMED/SHAPED WITH SPECIFIED BASELOAD GENERATION).

The proposed agreement is for a term of less than five years.

¹⁰ D.07-01-039, Attachment 7 at 4 (providing that wind facilities are pre-approved as EPS compliant).

3. CONFIRM THAT THE TOTAL ENERGY PURCHASES (RENEWABLE AND NON-RENEWABLE) WILL NOT EXCEED THE TOTAL EXPECTED OUTPUT FROM THE RENEWABLE ENERGY SOURCE OVER THE TERM OF THE CONTRACT (ONLY IF PPA IS FOR 5 OR MORE YEARS AND WILL BE FIRMED/SHAPED WITH UNSPECIFIED POWER).

The proposed agreement is for a term of less than five years.

4. IF UTILIZING SUBSTITUTE SYSTEM ENERGY FROM UNSPECIFIED SOURCES

a. DISCUSS UNSPECIFIED ENERGY USED ON A SHORT-TERM BASIS

The utilization of unspecified PacifiCorp system energy on a short-term basis for balancing of these intermittent wind resources on their system will allow PacifiCorp to deliver energy across control area boundaries (standard industry practice) and forms the means of “firming” and/or “shaping” the energy deliveries into well defined blocks. Green attribute specification and delivery will follow the delivery of the energy when PacifiCorp transfers the Western Renewable Energy Generation Information System (WREGIS) certificates associated with the energy quantity into SDG&E’s WREGIS account.

b. DISCUSS UNSPECIFIED ENERGY USED FOR OPERATIONAL OR EFFICIENCY REASONS

The proposed agreement does not contemplate the use of unspecified energy for operational or efficiency reasons other than those outlined above in section 4.a.

c. DISCUSS WHETHER OR NOT UNSPECIFIED ENERGY IS TO BE USED WHEN THE RENEWABLE ENERGY SOURCE IS UNAVAILABLE DUE TO A FORCED OUTAGE, SCHEDULED MAINTENANCE OR OTHER TEMPORARY UNAVAILABILITY FOR OPERATIONAL OR EFFICIENCY REASONS

The proposed agreement’s use of unspecified system energy is outlined above in section 4.a. Energy delivery volumes will be matched to renewable attribute volumes.

d. DISCUSS WHETHER OR NOT UNSPECIFIED ENERGY IS TO BE USED TO MEET OPERATING CONDITIONS REQUIRED UNDER THE CONTRACT, SUCH AS PROVISIONS FOR NUMBER OF START-UPS, RAMP RATES, AND MINIMUM NUMBER OF OPERATING HOURS.

Not applicable.

I. MPR AND AMFs

1. DISCUSS THE PROJECT’S ELIGIBILITY FOR AMFs (ONLY IF THE PROJECT IS ABOVE THE MPR)

Because the proposed agreement was reached through bi-lateral discussions (and not a solicitation), it is not eligible for AMFs.

2. DISCUSS SDG&E'S AMFs LIMIT

SB 1036 establishes five explicit criteria for the award of AMFs and states that once AMFs reach a cap that is equal to the maximum SEPs that would have been allotted to SDG&E, SDG&E is no longer required to procure renewable energy at above market prices. SDG&E's Commission approved contracts have exhausted SDG&E's AMFs and, therefore, SDG&E is no longer required to procure renewable energy at above market prices¹¹.

III. PROJECT DEVELOPMENT STATUS

DISCUSS THE STATUS OF THE PROJECT FACTORS OUTLINED BELOW AND THEIR IMPACT ON THE PROJECT'S VIABILITY.

The wind facilities included in the proposed agreement are fully constructed and on-line.

A. SITE CONTROL**a. SITE CONTROL TYPE (E.G. OWNERSHIP, LEASE, BLM, ETC.)**

Full site control was gained for each of the facilities in advance of construction start. The facilities associated with the proposed agreement are fully constructed and on-line.

b. LEVEL (%) OF SITE CONTROL ATTAINED

The wind facilities included in the proposed agreement are fully constructed and on-line; full site control was gained by the developers / owners prior to construction start.

B. RESOURCE AND/OR AVAILABILITY OF FUEL**a. RESOURCE STUDIES COMPLETED, IN PROGRESS, AND OUTSTANDING, AS WELL AS ANY RESULTS (FOR WIND, GEOTHERMAL, SOLAR AND OTHER PROJECTS)**

Not applicable. The wind resource at each of the facility sites is well documented and of sufficient quality to allow for economic operation of the facility. For purposes of the proposed agreement, however, this issue is not applicable, since flat blocks of power and the associated Green Attributes will be delivered which could be sourced in any ratio necessary from among the facilities in order reach the required firm quantity volumes. In effect, if any one facility has a below normal wind year, this could be made up by the other facilities included in the agreement. Additionally, the volumes included in the proposed agreement represent only a portion of the expected output of the facilities.

b. FUEL RESOURCE ANALYSIS FOR BIOMASS PROJECTS

Not applicable.

c. RIGHTS FOR WATER, FUEL(S), AND ANY OTHER REQUIRED INPUTS TO RUN THE FACILITY

The facilities associated with the proposed agreement are already on-line and have all required rights and inputs necessary for continued operation.

¹¹ On May 28th, 2009 SDG&E received a letter from the CPUC's Energy Division (Ms. Julie Fitch) stating that SDG&E's AMF balance is zero.

C. TRANSMISSION**a. STATUS OF INTERCONNECTION APPLICATION, INTERCONNECTION QUEUE, AND TRANSMISSION STUDIES COMPLETED AND/OR IN PROGRESS.**

The facilities associated with the proposed agreement are already interconnected and on-line.

b. STATUS OF THE INTERCONNECTION AGREEMENT

The facilities associated with the proposed agreement are already interconnected and on-line.

c. REQUIRED NETWORK AND GEN-TIE UPGRADES (E.G. BUILD 500 kV LINE, NEEDED SPS).

The facilities associated with the proposed agreement are already interconnected and on-line.

d. REQUIRED SUBSTATION UPGRADES OR CONSTRUCTION.

The facilities associated with the proposed agreement are already interconnected and on-line.

e. DISCUSS TIMING AND PROCESS FOR ALL UPGRADES, INCLUDING CONDITIONS AND PRECEDENTS. PLEASE INDICATE CRITICAL PATH ITEMS AND POTENTIAL CONTINGENCIES IF UPGRADE(S) IS (ARE) DELAYED.

The facilities associated with the proposed agreement are already interconnected and on-line.

f. EXPLAIN ANY ISSUES RELATING TO OTHER GENERATING FACILITY PROJECTS IN THE TRANSMISSION QUEUE AS THEY MAY AFFECT THIS PROJECT.

The facilities associated with the proposed agreement are already interconnected and on-line.

g. DESCRIBE HOW CONGESTION IS FACTORED INTO THE LCBF BID ANALYSIS (IF THE PRODUCT IS LESS THAN 100% DELIVERABLE FOR AT LEAST SEVERAL YEARS)

SDG&E has factored potential congestion into the LCBF analysis by including a cost adder. Details are included in confidential appendix D.

h. WHAT ALTERNATIVE TRANSMISSION ARRANGEMENTS WERE CONSIDERED (E.G. CURTAILMENT, PAYMENT OF CONGESTION COSTS, ETC)

In order to satisfy the CEC delivery requirements¹² Pacificorp is responsible for delivery of power to the delivery point (Palo Verde) and SDG&E will schedule all power associated with the proposed agreement into California to complete delivery. SDG&E is responsible for any congestion associated with importing the power into the CAISO and from that point to its load. SDG&E intends to seek CRRs to mitigate this risk / cost.

¹² The CEC Eligibility Guidebook, Third Edition of January 2008 (CEC-300-2007-006-ED3-CMF) in section II.D (Out of State, Delivery Requirements) states at page 23 that “For RPS compliance, electricity is deemed delivered if it is either generated at a location within the state or is scheduled for consumption by California end –use retail customers.”

D. TECHNOLOGY TYPE AND LEVEL OF TECHNOLOGY MATURITY**a. TYPE AND STAGE OF TECHNOLOGY (E.G. CONCEPT STATE, TESTING STAGE, UTILITY-SCALE PRODUCTION, AMPLE HISTORY OF PRODUCTION)**

The proposed agreement involves four wind facilities that are fully constructed and on-line. This technology has ample history of production at a utility-scale.

b. PLANS TO HAVE A DEMONSTRATION PROJECT (FOR TECHNOLOGIES NOT COMMERICALLY DEMONSTRATED)

Not applicable.

c. CONFIGURATION AND POTENTIAL ISSUES AND/OR BENEFITS OF HYBRID TECHNOLOGY

Not applicable.

E. PERMITTING

The facilities associated with the proposed agreement have already received all permits, been constructed and are on-line.

F. DEVELOPER EXPERIENCE

SDG&E provides information regarding PacifiCorp's experience below, but notes that this category is somewhat 'not applicable' for the proposed agreement since the wind facilities associated with the proposed agreement are already fully constructed and on-line.

a. SUCCESSFUL PROJECTS THE DEVELOPER HAS OWNED, CONSTRUCTED, AND/OR OPERATED.

PacifiCorp was the developer for three of the four wind facilities associated with the proposed agreement and is one of the West's leading utilities, serving approximately 1.7 million customers in six Western states. PacifiCorp is based in Portland, Ore and its generating plants have a net capacity of 9,286 megawatts. PacifiCorp consists of three business units, aggregating up to PacifiCorp: PacifiCorp Energy, containing the electric generation, commercial and energy trading functions and the coal-mining operations of the company, is headquartered in Salt Lake City; Pacific Power, which delivers electricity to customers in Oregon, Washington and California, is headquartered in Portland; and Rocky Mountain Power, which delivers electricity to customers in Utah, Wyoming and Idaho, is headquartered in Salt Lake City.

PacifiCorp has approximately 15,700 miles of transmission line, 61,085 miles of distribution line, more than 900 substations and 68 generating plants across the West. PacifiCorp is committed to renewable power as a viable, economic and environmentally prudent means of generating electricity. The company plans to acquire 2,000 megawatts of cost-effective renewable resources by 2013 and already is one of the largest utility owners of wind generation in the western United States. While several projects are under development, PacifiCorp has approximately 600 MW in (or very near) commercial operation today.

See: <http://www.pacificorp.com/File/File86028.pdf>

b. **NUMBER OF YEARS THE DEVELOPER AND / OR THE PRINCIPALS HAVE BEEN IN THE DEVELOPMENT SIDE OF THE ELECTRIC INDUSTRY**

As a large investor owned utility that operates, in part, under the jurisdiction of the Commission, SDG&E is confident that its history in the electric industry is well known.

To summarize, PacifiCorp was formed in 1984, when its electric utility, natural resource development and telecommunications businesses grew into full-fledged enterprises. In 1989, it merged with Utah Power & Light, and continued doing business as Pacific Power and Utah Power. The company was acquired by MidAmerican Energy Holdings Company in 2006.

See: <http://www.pacificorp.com/Navigation/Navigation3877.html>

G. FINANCING PLAN

a. **MANNER OF FINANCING (E.G. PROJECT FINANCING, BALANCE SHEET FINANCING, ETC.)**

Not applicable. The facilities associated with the proposed agreement are fully constructed and on-line.

b. **FINANCING PLAN AND STATUS.**

Not applicable. The facilities associated with the proposed agreement are fully constructed and on-line.

c. **FIRM COMMITMENTS FROM FINANCERS (BOTH DEBT AND EQUITY), AND HOW MUCH FINANCING IS EXPECTED TO BE NEEDED TO BRING THE PROJECT ONLINE**

Not applicable. The facilities associated with the proposed agreement are fully constructed and on-line.

d. **CREDITWORTHINESS OF ALL RELEVANT FINANCIERS.**

Not applicable. The facilities associated with the proposed agreement are fully constructed and on-line.

e. **DEVELOPER'S HISTORY OF ABILITY TO PROCURE FINANCING.**

Not applicable. The facilities associated with the proposed agreement are fully constructed and on-line.

f. **PLANS FOR OBTAINING SUBSIDIES, GRANTS, OR ANY OTHER THIRD PARTY MONETARY AWARDS (OTHER THAN PRODUCTION TAX CREDITS AND INVESTMENT TAX CREDITS) AND HOW THE LACK OF ANY OF THIS FUNDING WILL AFFECT THE PROJECT.**

Not applicable. The facilities associated with the proposed agreement are fully constructed and on-line.

H. PRODUCTION TAX CREDIT / INVESTMENT TAX CREDIT**a. PROJECT ELIGIBILITY FOR PTCs/ITCs**

All tax implications are already included in the financials related to the ownership and operation of these existing wind generation plants.

b. DEVELOPER INTENTIONS TO SEEK AND PLANS FOR OBTAINING PTCs/ITCs

Not applicable (existing facilities).

c. RISK BEARER IF PTCs/ITCs ARE NOT OBTAINED/EXPIRED?

Not applicable (existing facilities).

I. EQUIPMENT PROCUREMENT**a. DEVELOPER'S STAGE OF PROCUREMENT WITH RESPECT TO MAJOR EQUIPMENT (E.G. EQUIPMENT IN-HAND, CONTRACTS EXECUTED AND EQUIPMENT IN DELIVERY, NEGOTIATING CONTRACTS WITH SUPPLIER(S), ETC.). FOR EQUIPMENT NOT YET PROCURED, CONTINGENCIES AND OVERALL TIMING.**

Not applicable. The facilities associated with the proposed agreement are fully constructed and on-line.

b. DEVELOPER'S HISTORY OF ABILITY TO PROCURE EQUIPMENT.

All equipment has already been procured. The facilities associated with the proposed agreement are fully constructed and on-line.

c. EQUIPMENT PROCUREMENT ISSUES (E.G. LEAD TIME, EFFECT ON PROJECT ONLINE DATE)

Not applicable. The facilities associated with the proposed agreement are fully constructed and on-line.

IV. CONTINGENCIES AND MILESTONES**A. MAJOR PERFORMANCE CRITERIA AND GUARANTEED MILESTONES.**

As stated above, firm annual energy and Green Attribute deliveries depend on the number of facilities included in the PPA that receive CEC LORS certification. As of the date of this filing, one facility of the four is fully LORS certified resulting in minimum deliveries associated with the contract being approximately 44 GWh in both 2009 and 2010¹³. However, deliveries may be as much as 441,600 MWh in 2009 / 436,800 MWh in 2010 depending on the status of this certification.

Performance criteria and milestones related to plant construction are unnecessary since the wind facilities related to the proposed agreement are already on-line. Contractual power and green attribute delivery requirements are detailed in confidential appendix D.

¹³ LORS certification applications have been filed by PacifiCorp with the CEC for the other facilities associated with the proposed agreements.

**B. OTHER CONTINGENCIES AND MILESTONES
(I.E. 500 KV LINE, INTERCONNECTION COSTS, GENERATOR FINANCING, PERMITTING)**

The proposed agreement is contingent on receiving final, non-appealable approval from the CPUC no later than October 1, 2009.

V. REGULATORY PROCESS

**A. FINAL OR PRE-RPS-ELIGIBILITY CERTIFICATION FROM THE CEC.
QUESTION TO THE PROJECT'S ELIGIBILITY.**

The wind facilities included in the proposed agreement have all received their CEC RPS certification, however, not all of them have received a LORS certification (necessary for the sale of power from an out-of-state facility into California). As of the execution date of the proposed agreement, however, all necessary application materials have been provided to the CEC by PacifiCorp and certification is expected in the coming weeks.

B. PROVIDE A JUSTIFICATION FOR THE REQUESTED EFFECTIVE DATE.

SDG&E respectfully requests that the Commission review *on an expedited basis* and approve the subject Power Purchase Agreement ("PPA") no later than August 20, 2009. This timing is necessary due to the contract contingency discussed above and the initial delivery period start date of October 1, 2009.

**C. CONTRACTUAL OBLIGATIONS THAT WILL IMPACT THE SCHEDULE FOR CPUC APPROVAL
(TERMINATION CLAUSES, ETC.)**

Yes, there are contractual obligations that impact the schedule for CPUC approval. The proposed agreement would terminate on October 1, 2009 if final, non-appealable CPUC approval is not granted as of that date.

**D. DESCRIBE HOW THIS CONTRACT COMPLIES WITH THE EARMARKING REQUIREMENTS FOR THE
RELEVANT SOLICITATION.**

Under current Commission rules, bilateral contracts are not eligible for earmarking and therefore as a bi-lateral agreement, the proposed agreement is not eligible at this time.

E. CONFIDENTIAL TREATMENT OF SPECIFIC MATERIAL

This Advice Letter contains confidential information and is protected from disclosure, as detailed in the concurrently-filed declaration.

The confidentiality of information included in this Advice Letter is described below.

Confidential Appendices:

Confidential Appendix A: 2008 Solicitation Overview

Confidential Appendix B: 2008 Bid Evaluations

Confidential Appendix C: Final Independent Evaluator Report

Confidential Appendix D: Contract Summary including Pricing

Confidential Appendix E: Project Viability: PacifiCorp

Confidential Appendix F: Project's Contribution Toward RPS Goals

Confidential Appendix G: Copy of Executed PPA / Proposed Agreement

VI. Requested Relief

SDG&E respectfully requests that the Commission review ***on an expedited basis*** and approve the proposed agreement as defined in D.04-06-014 through the issuance of a resolution no later than August 20, 2009. This three month review period is critical to ensuring that the proposed agreement remains effective and will result in deliveries as contemplated on October 1, 2009.

The proposed agreement is consistent with SDG&E's CPUC-approved RPS Plan and procurement from the proposed agreement will contribute towards SDG&E's APT starting in 2009.¹⁴ As detailed in this Advice Letter, SDG&E's entry into the proposed agreement and the terms of such agreement are reasonable; therefore, all costs of the purchase associated with capacity, energy, and green attributes included in the proposed agreement should be fully recoverable in rates.

The proposed agreement is conditioned upon "CPUC Approval." SDG&E therefore requests the following Commission findings in its approval of the agreement:

1. Approval of the proposed agreement in its entirety, including approval of the full cost recovery in rates through the Energy Resource Recovery Account (ERRA) mechanism of all payments to be made by SDG&E in association with this contract subject to Commission review of SDG&E's administration of the Proposed Agreement¹⁵.
2. Issuance of a finding that any generation procured pursuant to the proposed agreement constitutes generation from an eligible renewable energy resource for purposes of determining SDG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard program (Public Utilities Code §§ 399.11, et seq. or other applicable law) and relevant Commission decisions.
3. Recovery of any costs that should accrue to SDG&E should any part of this structure be classified as a derivative subject to mark-to-market treatment under FASB Statement 133; and
4. Issuance of a finding that the PPA does not constitute a Tradeable Renewable Energy Credit (TREC).
5. Issuance of a finding that any energy and green attribute deliveries made prior to final CPUC approval will count fully toward SDG&E's RPS goals.

VII. Protest

Anyone may protest this advice letter to the California Public Utilities Commission. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. The protest must be made in writing and received within 20 days of the date this advice letter was filed with the Commission. There is no restriction on who may file a protest. The address for mailing or delivering a protest to the Commission is:

CPUC Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102

Copies should also be sent via e-mail to the attention of Honesto Gatchallian (jnj@cpuc.ca.gov) and Maria Salinas (mas@cpuc.ca.gov) of the Energy Division. It is also requested that a copy of the protest

¹⁴ If SDG&E, by way of output from other RPS-eligible resources, already meets its APT, SDG&E will bank all output from the Proposed Agreements for use in future years.

¹⁵ *Id.* R. 06-02-012, at p.

be sent via electronic mail and facsimile to SDG&E on the same date it is mailed or delivered to the Commission (at the addresses shown below).

Attn: Megan Caulson
Regulatory Tariff Manager
8330 Century Park Court, Room 32C
San Diego, CA 92123-1548
Facsimile No. 858-654-1788
E-Mail: MCaulson@semprautilities.com

VIII. Effective Date

SDG&E believes that this Advice Letter is subject to Energy Division disposition and should be classified as Tier 3 (effective after Commission approval) pursuant to GO 96-B. SDG&E respectfully requests that the Commission issue a resolution approving this advice letter on or before August 20, 2009.

IX. Notice

In accordance with Section III.G of General Order No. 96-A, a copy of this filing has been served on the utilities and interested parties shown on the attached list, including interested parties in R.06-05-027, by either providing them a copy electronically or by mailing them a copy hereof, properly stamped and addressed.

Address changes should be directed to SDG&E Tariffs by facsimile at (858) 654-1788 or by e-mail to SDG&ETariffs@semprautilities.com.

RON VAN DER LEEDEN
Director – Rates, Revenues and Tariffs

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **SAN DIEGO GAS & ELECTRIC (U 902)**

Utility type:

ELC

GAS

PLC

HEAT

WATER

Contact Person: Aurora Carrillo

Phone #: (858) 654-1542

E-mail: acarrillo@semprautilities.com

EXPLANATION OF UTILITY TYPE

ELC = Electric

GAS = Gas

PLC = Pipeline

HEAT = Heat

WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 2091-E

Subject of AL: REQUEST FOR APPROVAL OF RENEWABLE POWER PURCHASE WITH PACIFICORP

Keywords (choose from CPUC listing): Power Purchase Agreement, Procurement

AL filing type: Monthly Quarterly Annual One-Time Other

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #:

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL N/A

Summarize differences between the AL and the prior withdrawn or rejected AL¹: N/A

Does AL request confidential treatment? If so, provide explanation: The PPA Attachments are confidential per the IOU matrix attached to D.06-06-066

Resolution Required? Yes No

Tier Designation: 1 2 3

Requested effective date: 08/20/2009

No. of tariff sheets: 0

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: N/A

Service affected and changes proposed¹: N/A

Pending advice letters that revise the same tariff sheets: N/A

Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division

Attention: Tariff Unit

505 Van Ness Ave.,

San Francisco, CA 94102

mas@cpuc.ca.gov and jnj@cpuc.ca.gov

San Diego Gas & Electric

Attention: Megan Caulson

8330 Century Park Ct, Room 32C

San Diego, CA 92123

mcaulson@semprautilities.com

¹ Discuss in AL if more space is needed.

General Order No. 96-B
ADVICE LETTER FILING MAILING LIST

cc: (w/enclosures)

Public Utilities Commission

DRA

D. Appling
S. Cauchois
J. Greig
R. Pocta
W. Scott

Energy Division

P. Clanon
S. Gallagher
H. Gatchalian
D. Lafrenz
M. Salinas

CA. Energy Commission

F. DeLeon
R. Tavares

Alcantar & Kahl LLP

K. Harteloo

American Energy Institute

C. King

APS Energy Services

J. Schenk

BP Energy Company

J. Zaiontz

Barkovich & Yap, Inc.

B. Barkovich

Bartle Wells Associates

R. Schmidt

Braun & Blaising, P.C.

S. Blaising

California Energy Markets

S. O'Donnell
C. Sweet

California Farm Bureau Federation

K. Mills

California Wind Energy

N. Rader

CCSE

S. Freedman
J. Porter

Children's Hospital & Health Center

T. Jacoby

City of Chula Vista

M. Meacham
E. Hull

City of Poway

R. Willcox

City of San Diego

J. Cervantes
G. Lonergan
M. Valerio

Commerce Energy Group

V. Gan

Constellation New Energy

W. Chen

CP Kelco

A. Friedl

Davis Wright Tremaine, LLP

E. O'Neill
J. Pau

Dept. of General Services

H. Nanjo
M. Clark

Douglass & Liddell

D. Douglass
D. Liddell
G. Klatt

Duke Energy North America

M. Gillette

Dynegy, Inc.

J. Paul

Ellison Schneider & Harris LLP

E. Janssen

Energy Policy Initiatives Center (USD)

S. Anders

Energy Price Solutions

A. Scott

Energy Strategies, Inc.

K. Campbell
M. Scanlan

Goodin, MacBride, Squeri, Ritchie & Day

B. Cragg
J. Heather Patrick
J. Squeri

Goodrich Aerostructures Group

M. Harrington

Hanna and Morton LLP

N. Pedersen

Itsa-North America

L. Belew

J.B.S. Energy

J. Nahigian

Luce, Forward, Hamilton & Scripps LLP

J. Leslie

Manatt, Phelps & Phillips LLP

D. Huard
R. Keen

Matthew V. Brady & Associates

M. Brady

Modesto Irrigation District

C. Mayer

Morrison & Foerster LLP

P. Hanschen

MRW & Associates

D. Richardson

OnGrid Solar

Andy Black

Pacific Gas & Electric Co.

J. Clark
M. Huffman
S. Lawrie
E. Lucha

Pacific Utility Audit, Inc.

E. Kelly

R. W. Beck, Inc.

C. Elder

School Project for Utility Rate
Reduction

M. Rochman
Shute, Mihaly & Weinberger LLP

O. Armi

Solar Turbines

F. Chiang

Sutherland Asbill & Brennan LLP

K. McCrea

Southern California Edison Co.

M. Alexander
K. Cini
K. Gansecki
H. Romero

TransCanada

R. Hunter

D. White

TURN

M. Florio
M. Hawiger

UCAN

M. Shames

U.S. Dept. of the Navy

K. Davoodi
N. Furuta
L. DeLacruz

Utility Specialists, Southwest, Inc.

D. Koser

Western Manufactured Housing

Communities Association

S. Dey

White & Case LLP

L. Cottle

Interested Parties In:

06-05-027

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

**DECLARATION OF PATRICK K. CHARLES
REGARDING CONFIDENTIALITY OF CERTAIN DATA**

I, Patrick K. Charles, do declare as follows:

1. I am an Energy Contract Originator within the Electric and Gas Procurement department at San Diego Gas & Electric Company (“SDG&E”). I have reviewed Advice Letter 2091-E, requesting approval of the Renewable Power Purchase with PacifiCorp, (with attached confidential and public appendices, including Power Purchase Agreement with PacifiCorp), dated June 5, 2009 (“Advice Letter”). I am personally familiar with the facts and representations in this Declaration and, if called upon to testify, I could and would testify to the following based upon my personal knowledge and/or belief.

2. I hereby provide this Declaration in accordance with D.08-04-023 to demonstrate that the confidential information (“Protected Information”) provided in the concurrently-filed testimony, falls within the scope of data provided confidential treatment in the IOU Matrix adopted in D.06-06-066, *et seq.* (the “IOU Matrix”). To the extent information matches a Matrix category, it is entitled to the protection the Matrix provides for that category of information.^{1/} In addition, the Commission has made clear that information must be protected where “it matches a Matrix category exactly . . . or consists of information from which that information may be easily derived.”^{2/}

^{1/} D.06-06-066, as amended by D.07-05-032, *mimeo*, p. 81, Ordering Paragraph 2.

^{2/} *See, Administrative Law Judge’s Ruling on San Diego Gas & Electric Company’s April 3, 2007 Motion to File Data Under Seal*, issued May 4, 2007 in R.06-05-027, p. 2 (emphasis added).

3. In order to claim the protection afforded by the relevant Matrix, the party seeking confidential treatment must establish:

- That the material it is submitting constitutes a particular type of data listed in the Matrix,
- Which category or categories in the Matrix the data correspond to,
- That it is complying with the limitations on confidentiality specified in the Matrix for that type of data,
- That the information is not already public, and
- That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.^{3/}

4. SDG&E’s Protected Information: As directed by the Commission, SDG&E demonstrates in table form below that the instant confidentiality request satisfies the requirements of D.06-06-066:^{4/}

Data at issue	D.06-06-066 Matrix Requirements	How moving party meets requirements
<p><i>Bid Information</i>⁵</p> <p><i>Locations:</i></p> <p><i>1. Appendix A –</i></p> <ul style="list-style-type: none"> ▪ <i>Narrative, pg 3-4</i> ▪ <i>Aggregated Solicitation Data table (last two columns), pg 5</i> ▪ <i>Fig 1A, pg 6</i> ▪ <i>Fib 1B, pg 7</i> ▪ <i>2007 and 2008 Columns from Tables on pg 8</i> ▪ <i>Fig 2A, pg 9</i> ▪ <i>Fig 2B, pg 10</i> 	<p>Demonstrate that the material submitted constitutes a particular type of data listed in the IOU Matrix</p>	<p>The data provided is non-public bid data from SDG&E’s Renewable RFOs.</p>
	<p>Identify the Matrix category or categories to which the data corresponds</p>	<p>This information is protected under IOU Matrix category VIII.A.</p>
	<p>Affirm that the IOU is complying with the limitations on confidentiality specified in the Matrix</p>	<p>In accordance with the limitations on confidentiality set forth in the IOU Matrix, SDG&E requests that</p>

^{3/} D.06-06-066, as amended by D.07-05-032, *mimeo*, p. 81, Ordering Paragraph 2.

^{4/} See, *Administrative Law Judge’s Ruling on San Diego Gas & Electric Company’s Motions to File Data Under Seal*, issued April 30 in R.06-05-027, p. 7, Ordering Paragraph 3 (“In all future filings, SDG&E shall include with any request for confidentiality a table that lists the five D.06-06-066 Matrix requirements, and explains how each item of data meets the matrix”).

⁵ The confidential information referenced has a **GREEN** font color / has a **green** box around it in the confidential appendices.

<ul style="list-style-type: none"> ▪ Fig 2C, pg 11 ▪ Fig 2D, pg 12 ▪ Fig 2E, pg 13 ▪ Fig 3A and 3B, pg 14 <p>2. Appendix B</p> <ul style="list-style-type: none"> ▪ RPS Solicitation Summary table, pg 3 <p>3. Appendix D -</p> <ul style="list-style-type: none"> ▪ Site information Table, pg 12 ▪ Site map, pg 12 <p>4. Appendix F -</p> <ul style="list-style-type: none"> ▪ PacifiCorp viability calculator (embedded excel file), pg 40 	for that type of data	this information be kept confidential until the final contracts from each of the RFOs have been submitted to the CPUC for approval.
	Affirm that the information is not already public	SDG&E has not publicly disclosed this information and is not aware that it has been disclosed by any other party.
	Affirm that the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.	SDG&E cannot summarize or aggregate the bid data while still providing project-specific details. SDG&E cannot provide redacted or masked versions of these data points while maintaining the format requested by the CPUC.
<p>Quantitative Bid Analysis / Specific Quantitative Analysis⁶</p> <p>Location:</p> <p>1. Appendix B –</p> <ul style="list-style-type: none"> ▪ IOU LCBF Ranking Matrix (embedded excel file), pg 2 ▪ Viability of 2008 Bids by Technology graph, pg 4 ▪ Viability of 2008 Shortlisted vs Rejected Bids graph, pg 5 ▪ Viability of 2008 Shortlisted vs Rejected Bids - Wind graph, pg 6 ▪ RPS Solicitation Summary Table, 2008 Rejected Bids, pg 7-9 <p>2. Appendix B</p> <ul style="list-style-type: none"> ▪ RPS Solicitation Summary table, pg 3 	Demonstrate that the material submitted constitutes a particular type of data listed in the IOU Matrix	This data is SDG&E’s specific quantitative analysis involved in scoring and evaluating renewable bids. Some of the data also involves analysis/evaluation of proposed RPS projects.
	Identify the Matrix category or categories to which the data corresponds	This information is protected under IOU Matrix categories VII.G and/or VIII.B.
	Affirm that the IOU is complying with the limitations on confidentiality specified in the Matrix for that type of data	In accordance with the limitations on confidentiality set forth in the IOU Matrix, SDG&E requests that this information be kept confidential for three years.
	Affirm that the information is not	SDG&E has not publicly disclosed this

⁶ The confidential information referenced has a **BLUE** font color / has a blue box around it in the confidential appendices

<p>3. Appendix D –</p> <ul style="list-style-type: none"> ▪ <i>Contract Summary section, paragraph B, narrative and table, pg 13</i> ▪ <i>Transmission section, paragraph B narrative pg 15</i> ▪ <i>Least Cost, Best Fit Ranking section, paragraphs A, B, C, D, E and F narrative, pg 34-35</i> ▪ <i>PacifiCorp LCBF Summary table, pg 36</i> ▪ <i>Contract Price section, paragraph B, Comparable bids for REC Products narrative and table, pg 37 and additional narrative pg 38</i> ▪ <i>Contract Price section, paragraphs C, D and E narrative and table, pg 38</i> ▪ <i>Contract Price section, paragraphs G, H and I narrative and table, pg 39</i> <p>4. Appendix F –</p> <ul style="list-style-type: none"> ▪ <i>Project’s Contribution Toward RPS Goals table, % of Retail Sales column and footnote 3 narrative, pg 42</i> 	<p>already public</p>	<p>information and is not aware that it has been disclosed by any other party.</p>
	<p>Affirm that the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.</p>	<p>SDG&E cannot summarize or aggregate the evaluation data while still providing project-specific details. SDG&E cannot provide redacted or masked versions of these data points while maintaining the format requested by the CPUC.</p>
<p>Contract Terms⁷</p> <p>Locations:</p> <p>1. Appendix D –</p> <ul style="list-style-type: none"> ▪ <i>Contract Summary section, paragraphs B and C narrative, pg 13 – 14</i> ▪ <i>Contract Summary section, paragraph D 1 narrative, pg 14</i> ▪ <i>Terms and Conditions of Delivery section,</i> 	<p>Demonstrate that the material submitted constitutes a particular type of data listed in the IOU Matrix</p>	<p>This data includes specific contract terms.</p>
	<p>Identify the Matrix category or categories to which the data corresponds</p>	<p>This information is protected under IOU Matrix category VII.G.</p>
	<p>Affirm that the IOU is complying with the limitations on</p>	<p>In accordance with the limitations on confidentiality set forth</p>

⁷ The confidential information referenced has a **RED** font color / has a red box around it in the confidential appendices

<p><i>paragraphs A and B narrative pg 16 – 17</i></p> <ul style="list-style-type: none"> ▪ <i>Modification to Standard Terms and Conditions section, paragraph B table, pg 18 – 29</i> ▪ <i>Major Contract Provisions section, paragraph A table pg 30 – 33</i> ▪ <i>Contract Price section, narrative, pg 34</i> ▪ <i>Contract Price section, paragraph A table and paragraph B narrative pg 37</i> <p>2. Appendix F –</p> <ul style="list-style-type: none"> ▪ <i>Project’s Contribution to RPS Goals table, \$/MWH column, pg 42</i> <p>3. Appendix G -</p> <ul style="list-style-type: none"> ▪ <i>PacifiCorp Cvr Sheet, PacifiCorp Confirm, embedded PDF files, pg 43</i> 	<p>confidentiality specified in the Matrix for that type of data</p>	<p>in the IOU Matrix, SDG&E requests that this information be kept confidential for three years.</p>
	<p>Affirm that the information is not already public</p>	<p>SDG&E has not publicly disclosed this information and is not aware that it has been disclosed by any other party.</p>
	<p>Affirm that the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.</p>	<p>In order to include as much detail as possible, SDG&E has provided specific contract terms instead of summaries. SDG&E has provided summaries of certain contract terms in public portions of the testimony.</p>
<p>Actual Procurement Percentage⁸</p> <p>Location:</p> <p>1. Appendix F –</p> <ul style="list-style-type: none"> ▪ <i>Project’s Contribution to RPS Goals table, % of 2010 Retail Sales column, Current Progress Toward Goal % on delivered basis, % including other signed contracts rows, pg 42</i> 	<p>Demonstrate that the material submitted constitutes a particular type of data listed in the IOU Matrix</p>	<p>The Commission has concluded that Actual Procurement Percentage data must be protected in order to avoid disclosing SDG&E’s Bundled Retail Sales data.^{9/}</p>
	<p>Identify the Matrix category or categories to which the data corresponds</p>	<p>This information is protected under IOU Matrix category V.C.</p>
	<p>Affirm that the IOU is complying with the limitations on confidentiality specified in the Matrix for that type of data</p>	<p>In accordance with the limitations on confidentiality set forth in the IOU Matrix, SDG&E requests that the “front three years” of this information be kept</p>

⁸ The confidential information referenced has a **BURGUNDY/BROWN** font color / has a burgundy/brown box around it in the confidential appendices

^{9/} *Id.*

		confidential.
	Affirm that the information is not already public	SDG&E has not publicly disclosed this information and is not aware that it has been disclosed by any other party.
	Affirm that the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.	It is not possible to provide this data point in an aggregated, redacted, summarized or masked fashion.

5. As an alternative basis for requesting confidential treatment, SDG&E submits that the pricing and timing of development, including value and milestone information provided in the PacifiCorp Power Purchase Agreement enclosed in the Advice Letter is material, market sensitive, electric procurement-related information protected under §§ 454.5(g) and 583, as well as trade secret information protected under Govt. Code § 6254(k), and that the disclosure of this information would place SDG&E at an unfair business disadvantage, thus triggering the protection of G.O. 66-C.^{10/}

6. Public Utilities Code § 454.5(g) provides:

The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation’s proposed procurement plan or resulting from or related to its approved procurement plan,

^{10/} This argument is offered in the alternative, not as a supplement to the claim that the data is protected under the IOU Matrix. California law supports the offering of arguments in the alternative. *See, Brandolino v. Lindsay*, 269 Cal. App. 2d 319, 324 (1969) (concluding that a plaintiff may plead inconsistent, mutually exclusive remedies, such as breach of contract and specific performance, in the same complaint); *Tanforan v. Tanforan*, 173 Cal. 270, 274 (1916) (“Since . . . inconsistent causes of action may be pleaded, it is not proper for the judge to force upon the plaintiff an election between those causes which he has a right to plead.”)

including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.

7. General Order 66-C protects “[r]eports, records and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage.”

8. Under the Public Records Act, Govt. Code § 6254(k), records subject to the privileges established in the Evidence Code are not required to be disclosed.^{11/} Evidence Code § 1060 provides a privilege for trade secrets, which Civil Code § 3426.1 defines, in pertinent part, as information that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure.

9. Public Utilities Code § 583 establishes a right to confidential treatment of information otherwise protected by law.^{12/}

10. If disclosed, the Protected Information could provide parties, with whom SDG&E is currently negotiating, insight into SDG&E’s procurement needs, which would unfairly undermine SDG&E’s negotiation position and could ultimately result in increased cost to ratepayers. In addition, if developers mistakenly perceive that SDG&E is not committed to assisting their projects, disclosure of the Protected Information could

^{11/} See also Govt. Code § 6254.7(d).

^{12/} See, D.06-06-066, *mimeo*, pp. 26-28.

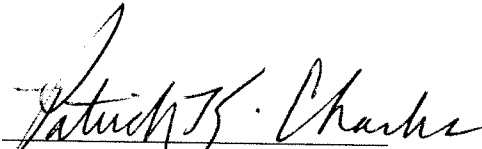
act as a disincentive to developers. Accordingly, pursuant to P.U. Code § 583, SDG&E seeks confidential treatment of this data, which falls within the scope of P.U. Code § 454.5(g), Evidence Code § 1060 and General Order 66-C.

11. Developers' Protected Information: The Protected Information also constitutes confidential trade secret information of the developer listed therein. SDG&E is required pursuant to the terms of its Power Purchase Agreement to protect non-public information. Some of the Protected Information in the Power Purchase Agreement and my supporting declaration (including confidential exhibits), relates directly to viability of the respective projects. Disclosure of this extremely sensitive information could harm the developers' ability to negotiate necessary contracts and/or could invite interference with project development by competitors.

12. In accordance with its obligations under its Power Purchase Agreement and pursuant to the relevant statutory provisions described herein, SDG&E hereby requests that the Protected Information be protected from public disclosure.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 5th day of June, 2009, at San Diego, California.


Patrick K. Charles
Energy Contract Originator
Electric and Gas Procurement

SDG&E ADVICE LETTER 2091-E

CONFIDENTIAL APPENDIX C

**INDEPENDENT EVALUATOR 2008 RPS
SOLICITATION REPORT**

PUBLIC VERSION

San Diego Gas & Electric Company

Preliminary Report of the Independent
Evaluator on the 2008 Request for Offers
from Eligible Renewable Resources (2008
Renewable RFO)

December 15, 2008



San Diego Gas & Electric Company

Preliminary Report of the Independent
Evaluator on the 2008 Request for Offers
from Eligible Renewable Resources (2008
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December 15, 2008

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Version: 1.1

FOREWORD

This is a reformatted version of PA Consulting Group's Preliminary Report (denoted Version 1.1). It addresses the conduct and evaluation of San Diego Gas & Electric Company's 2008 Renewables RFO through the selection of its preliminary short list.

This report contains confidential and/or privileged materials. Review and access are restricted subject to PUC Sections 454.5(g), 583, D.06-06-066, GO 66-C and the Confidentiality Agreement with the CPUC.

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1. INTRODUCTION

PA Consulting Group, Inc. (PA) has served as the Independent Evaluator (IE) of San Diego Gas & Electric Co.'s (SDG&E's) 2008 Request for Offers from Eligible Renewable Resources (2008 Renewable RFO). This Report provides PA's evaluation of the fairness of the solicitation, up to and including the identification of a "short list" of bidders with whom SDG&E may pursue contract negotiations.

PA originally submitted its IE report on July 28, 2008. That report conformed to a template issued on May 8, 2008 in a Ruling by ALJ Carol Brown in California Public Utilities Commission (CPUC) Proceeding R. 06-02-013¹. R. 06-02-013 is the docket in which the CPUC establishes and oversees general power procurement processes. Renewables procurement plans are filed and RPS-related procurement overseen in docket R. 06-05-027.²

The CPUC Energy Division had actually requested that IE reports follow a somewhat different template. The use of the incorrect template was PA's oversight, not SDG&E's. PA has reformatted the July 28 report according to the Energy Division's template. This document is the reformatted IE report, denoted Version 1.1. It does not address any contract negotiations or discussions subsequent to July 28. At the head of each section, PA has included the template language describing the desired contents of that section.

¹ R. 06-02-013 is entitled "Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement Plans."

² R. 06-05-027 is entitled "Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program."

2. ROLE OF THE INDEPENDENT EVALUATOR (IE)

Template language: "Cite CPUC decisions requiring IE participation in RPS solicitations: D.04-12-048 (Findings of Fact 94-95, Ordering Paragraph 28) and D.06-05-039 (Finding of Fact 20, Conclusion of Law 3, Ordering Paragraph 8)."

Regulatory requirements for an IE of resource procurement can be traced to the Federal Energy Regulatory Commission's (FERC's) "Opinion and Order ... Announcing New Guidelines for Evaluating Section 203 Affiliate Transactions" (108 FERC ¶ 61,081 (2004)). That decision addressed ways to demonstrate that a utility's procurement of power from an affiliate was not abusive or unfair, under the standards of the *Edgar* decision (55 FERC ¶ 61,382 (1991)). FERC provided a set of guidelines, which presumably would be sufficient to demonstrate that the utility had not unfairly favored its affiliate. One of those guidelines was that "an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection." FERC proposed not just independent evaluation but independent conduct of all aspects of the solicitation (except, presumably, the need determination).

The California Public Utilities Commission (CPUC) referenced those guidelines in its December 2004 decision on long-term resource procurement.³ The CPUC stated that although it had not previously required the use of an IE for resource procurement, it would "require the use of an IE in resource solicitations where there are affiliates, IOU-built, or IOU-turnkey bidders" from that point forward.⁴ The CPUC's intention was clearly that the IE should ensure that the utility did not favor itself, its affiliates or its shareholders (shareholders would earn a return on "ownership projects" – IOU-built or turnkey – but not on independent PPAs). The CPUC stated explicitly that it would not require the IE to conduct or administer the solicitation, nor would it "allow the IEs to make binding decisions on behalf of the utilities." Under this decision the role of the IE is to provide advice to the utility in "the design, administration, and evaluation aspects of the RFO" and to observe the utility's procurement and evaluation process in order to provide a fairness opinion.

D. 04-12-048 did not require IEs for procurements in which there were no affiliate or ownership bids. But in its decision approving the utilities' plans for 2006 Renewable Portfolio Standard (RPS) solicitations, the CPUC determined that Independent Evaluators would be required for these and "all future solicitations" (it is unclear whether this means only all future RPS solicitations).⁵ The role of the IE is still not to conduct or administer the solicitation but to "separately evaluate and report on the IOU's entire solicitation, evaluation and selection process".⁶ The Decisions that approved the utility RPS solicitation plans for 2007 and 2008⁷ did not further elaborate on the IE role but took the participation of an IE as a given.

³ California Public Utilities Commission, Decision (D.) 04-12-048, May 26, 2006, p. 135f and Findings of Fact 94-95 on pp. 219-220.

⁴ D. 04-12-084, p. 135f and Ordering Paragraphs 26i and 28 on p. 245.

⁵ California Public Utilities Commission, Decision (D.) 06-05-039, May 26, 2006, p. 46, Finding of Fact 20b on p. 78, Conclusion of Law 3e(2) on p. 82 and Ordering Paragraph 8 on p. 88.

⁶ D. 06-05-039, p. 46.

2. Role of the Independent Evaluator (IE)

2.1 PA'S ROLE AS INDEPENDENT EVALUATOR

Template language: "Description of key IE roles: IEs provide an independent evaluation of the IOU's RPS bid evaluation and selection process and help CPUC and the PRG to be informed about the process by addressing the following questions:

"a. Did the IOU do adequate outreach to potential bidders, and did its outreach activities result in an adequately robust solicitation to promote competition?

"b. Is the IOU's methodology for RPS bid evaluation and selection designed fairly?

"c. Is the IOU's RPS bid evaluation and selection process, and the negotiation of specific contracts, being fairly administered?

"d. Did the IOU make reasonable and consistent choices regarding which bids were rejected, which were shortlisted and which were brought to CPUC for approval?"

In April 2006, SDG&E retained PA to be the Independent Evaluator for an All-Source Request for Offers (All-Source RFO). SDG&E anticipated that there might be affiliate bids in that RFO, as in fact there were. The CPUC Energy Division, as well as the rest of SDG&E's Procurement Review Group (PRG), participated in the decision to select PA. PA's contract was subsequently amended to include the independent evaluation of additional SDG&E procurement activities.

When PA was contracted as IE for the All-Source RFO, PA and SDG&E agreed on an interpretation of the IE role that would not include a complete LCBF evaluation or full replication of the utility's computations, although PA would spot-check them. PA's role would be that of an observer and an adviser as needed. PA subsequently served as Independent Evaluator for SDG&E's 2006 Renewable RFO and the Local Peaker RFO (conducted in 2006-7). In each case, PA and SDG&E used the above interpretation of the IE role, and it was adopted for the 2008 Renewables RFO.

PA's emphasis has been on issues of fairness and equity. PA reviews the reasonableness of SDG&E's evaluation criteria and algorithms and spot-checks the calculations but does not enforce a single standard of evaluation. While PA may have an opinion about the "best" way to value certain attributes or even to conduct a multi-attribute evaluation, its role as IE has not been to judge SDG&E's evaluation against a standard, but rather to determine that SDG&E's evaluation has not unfairly favored affiliates or ownership bids, or favored SDG&E and its shareholders in any other way⁸.

⁷ California Public Utilities Commission, Decision (D.) 07-02-011, Feb. 15, 2007 and Decision (D.) 08-02-008, Feb. 15, 2008. The decisions actually only conditionally approved the plans but the conditions were not connected with the use of IEs.

⁸ E.g., it would have been unfair for SDG&E to design an evaluation method that favored a category of bidders on whose behalf SDG&E would have to make extensive rate-based transmission or distribution investments.

2.2 PA'S OVERSIGHT ACTIVITIES

Template language: "Description of IE oversight activities (ie. attended negotiation meetings, reviewed Request for Proposals materials, attended pre-bid conference, evaluated proposals and/or reviewed evaluation process and results, etc.) and reporting/consultation with CPUC, PRG and others."

SDG&E first approached PA about serving as IE for the 2008 Renewables RFO in late February, and PA was tasked as the IE on February 25. SDG&E had filed its 2008 Renewable Procurement Plan, including the RFO document, with the CPUC in August, 2007, and the CPUC had issued D. 08-02-008 conditionally approving the plan on Feb. 15. PA reviewed the revised RFO for conformance with the decision and to determine if there were any significant changes. Since it had already been filed and conditionally approved before an IE was involved, PA was unable to provide extensive advice and input into the design of the RFO itself.

PA was provided access to all the SDG&E staff involved in the evaluation of the Renewables RFO. In general, the bid evaluation criteria were very similar to those that had been used in past RFOs, except that the category of Short-Term Offers was new to this RFO. PA met with SDG&E to review the evaluation criteria, with particular emphasis on the criteria to be applied to short-term offers and on certain non-quantitative criteria, especially locational concentration risk. PA also contacted Mike Katz of Van Horn Consulting to review issues that had arisen in the evaluation of bids for the 2007 Renewables RFO, in order to ensure that areas of interest in 2007 continued to receive attention in 2008 despite the change in Independent Evaluator.

PA was present at the bidder conference in San Diego on March 27. PA was provided all questions submitted by bidders either at the bidder conference or later in writing, as well as SDG&E's answers. PA's representative was present in San Diego on the day bids were due. PA was provided a copy of all bids.

PA was in regular contact with the SDG&E evaluation team. PA was provided all the data in the evaluation process. PA validated SDG&E's cost computations and advised SDG&E on several issues that arose during the evaluation period. PA participated in Procurement Review Group (PRG) meetings during the evaluation period. SDG&E discussed the short list with PA as well as with the PRG.

Most important, SDG&E in no way prevented PA from observing its process and analyzing its methods. PA believes that SDG&E attempted to be totally cooperative with PA but was at times unable to respond promptly.

2.3 CONFIDENTIALITY

Template language: "Discussion of what information in the report is confidential and why."

It is PA's understanding that confidential treatment of the information in an IE report is obtained through procedures defined in CPUC Rulemaking (R.) 05-06-040.⁹ Under that

⁹ "Administrative Law Judge's Ruling Clarifying Interim Procedures for Complying with Decision 06-06-066", August 22, 2006.

2. Role of the Independent Evaluator (IE)

Ruling a person or party that serves testimony, supplies data or files an advice letter requests confidential treatment of some data within that submittal and must accompany the data by a declaration under penalty of perjury that justifies the claim of confidentiality.

PA delivers its IE report to SDG&E and SDG&E in turn submits it to the CPUC. It is PA's understanding that each utility separately submits its IE's report and requests confidential treatment for parts of that report. Because it is the utility that identifies confidential data and provides the associated declaration, PA believes that it is the utility's right to determine which data in the report is confidential and the utility's responsibility to defend that determination. SDG&E's view of confidentiality may be more or less expansive than PA's. While PA has provided recommendations to SDG&E about which parts of its IE reports should be held confidential, in general PA takes a "minimal redaction" (redaction only of information about identifiable bids) view. SDG&E always makes the ultimate determination of data to redact.

2.4 RECOMMENDATION FOR FUTURE EVALUATIONS

Template language: "Any other relevant information."

PA has concluded from its experience with the 2008 Renewables RFO that while the results of this evaluation were fair and equitable, the evaluation could be improved by somewhat expanding the IE role for future RFOs whether that role is to be filled by PA or another consultant.¹⁰ The evaluation of qualitative attributes such as viability and locational concentration could not proceed until the conclusion of the quantitative evaluation, because SDG&E's Evaluation Team was precluded from seeing any information that might identify affiliate bidders while it was performing the quantitative evaluation. This drastically limited the time available for the qualitative evaluation. Once the evaluation criteria and process have been specified, conducting the quantitative evaluation should be straightforward while qualitative evaluation will include many judgments that can subtly affect utility and ratepayer finances and which the utility must make or participate in. PA therefore suggests that in the future the quantitative evaluation should be delegated to the IE. This will permit SDG&E to begin the qualitative evaluation sooner.

¹⁰ See California Public Utilities Commission, Decision (D.) 07-12-052, Dec. 21, 2007, pp. 136-139 and 300-301. Ordering Paragraph 10 on p. 300 says a utility should "rotate through [its pool of] IEs" but note 174 on p. 137 says "successive rotation through the IE pool will not be required [emphasis added]."

3. FAIRNESS OF THE DESIGN OF SDG&E'S METHODOLOGY FOR BID EVALUATION AND SELECTION

3.1 PRINCIPLES USED TO EVALUATE METHODOLOGY

Template language: "Principles proposed by Jonathan Jacobs, IE for SDG&E:

- *"The procurement target should be large enough to ensure that the utility has a reasonable chance of meeting its 20% target (taking into account contract failures).*
- *"The IOU bid evaluation should only be based on those criteria requested in the response form. There should be no consideration of any information that might indicate whether the bidder is an affiliate.*
- *"The methodology should identify how quantitative measures will be considered and be consistent with an overall metric.*
- *"There should be no differences in the evaluation method for different technologies that cannot be explained in a technology-neutral manner.*
- *"The methodology does not have to be the one that the IE would independently have selected but it needs to be 'reasonable'."*

PA agrees with the basic principles enumerated in the Energy Division's template and these are the principles that PA uses to guide its evaluation.

3.2 SDG&E'S LCBF METHODOLOGY

Template language: "Describe IOU LCBF methodology (or alternatively include IOU's own description)."

SDG&E ranked bids using a spreadsheet. The following quantitative values went into the ranking:

- Adjusted, levelized offer price
- Estimated costs of transmission network upgrades or additions
- Estimated congestion costs
- Estimated cost of RA relative to the same volume of firm capacity

Debt equivalence was not considered, per CPUC D. 07-12-052. The next four subsections describe the four bullet items above. The fifth subsection addresses a specific change to one of the details of the LCBF calculation relative to previous renewable RFOs. PA's opinion of the use of LCBF methodology is included in section 4.9.

3.2.1 Adjusted, levelized offer price

SDG&E's bid evaluation method does not directly compare costs and benefits of individual contracts; rather it creates an "adjusted price" metric for each contract, and compares

3. Fairness of the design of SDG&E's methodology for bid evaluation and selection

contracts based on that metric rather than on a measure of net benefits or net costs. This means that SDG&E does not compute an "avoided cost" or "market price" by hour or subperiod to be compared with contract costs. Such a computation would be appropriate if the source of contract value was energy value (avoided energy purchases). But RPS-qualified energy is not interchangeable or fungible with spot energy, because spot energy is not guaranteed to be RPS-qualified.

The benefit or value of RPS-qualified energy is in its renewability. In that sense every MWh from a renewable resource has equal benefit regardless of the contract or the time of delivery. But SDG&E also recognized that RPS-qualified energy has both "renewability value" and "energy value", and that the energy value depends on time of delivery (TOD). To recognize this, SDG&E uses as its measure of contract cost the average of the projected contract payments in different TOD periods weighted by the product of volume and a TOD weighting factor. The weighting factors have been approved by the CPUC and PA did not investigate their source.

For each year, the adjusted or "benefit-weighted" price is the average payment, divided by a MWh-weighted average TOD factor. For contracts with TOD pricing (where in each period the payment per MWh equals the contract price times the TOD factor) it is the same as the contract price. The offer price term is the levelization of the adjusted price: for each year, the adjusted price in \$/MWh is multiplied by projected deliveries in MWh to get a stream of revenues, and the offer price term is the constant price in \$/MWh that would yield a stream of energy revenues having the same net present value.

3.2.2 Estimated costs of transmission network upgrades or additions

For offers for new projects or projects proposing to increase the size of existing facilities, SDG&E calculated costs for transmission network upgrades or additions, using the information provided through the TRCRs or a CAISO-approved, completed System Impact Study. Projects outside of the California ISO were expected to have internalized the cost of transmission to the ISO, as well as the cost of required transmission upgrades outside the ISO, into their bid price; they could still be assigned additional upgrade costs within California based on the TRCRs.

3.2.3 Estimated congestion costs

Congestion impacts from the proposed point of delivery to SDG&E's load aggregation point were determined by a study conducted by ABB Inc. The methodology for that study was developed by PA and SDG&E prior to the 2007 Renewables RFO. In previous years, ABB computed two separate congestion costs, one for the period before the Sunrise Power Link was expected to come into service and one for the period after. For this RFO, since the Sunrise Power Link is expected in service in 2011 (in the CAISO transmission plan) and the earliest bids could come on line would be 2009 with most coming on line in 2011 or later,

3.2.4 Estimated cost of RA relative to the same volume of firm capacity

Renewable projects under contract to SDG&E would provide varying amounts of resource adequacy (RA) credit. In the 2006 RPS RFO for which PA served as IE, SDG&E had represented RA as a credit but in the 2008 RFO SDG&E represented RA as a cost rather than a credit. To do so, SDG&E determined how much RA credit a bid would get if it were

3. Fairness of the design of SDG&E's methodology for bid evaluation and selection

baseload (full RA credit), how much it would be expected to receive based on the resource type (which should be less) and assigned the difference as a cost. Resource adequacy value is based on capacity, not energy, and so all these calculations are based on proposed project capacity. The result is an annual RA cost in \$/year (a unit cost in \$/kW-yr multiplied by capacity in kW). The cost is converted to levelized \$/MWh, similar to the levelization of the offer price term.

3.2.5 Duration equalization

In the 2006 and 2007 Renewables RFOs, SDG&E used a "duration equalization" approach to handle start and end effects. All contracts were put on an equal term basis by using an early start date (in principle, the earliest start date over all bids) and a late end date (in principle, the latest end date over all bids). The pricing for each contract prior to its start date and after its end date was based on an MPR proxy, that is, a value computed using the CPUC's MPR methodology applied to contemporary cost assumptions. As described in the "Least Cost Best Fit (LCBF) Evaluation and Selection Process" document,

SDG&E will use Market Price Referent ("MPR") proxies as market replacement costs to equalize bids of different starting periods and terms. SDG&E will calculate a 2008 MPR based on updated information (i.e. fuel costs, inflation rates) for a 10-year contract starting in January 2008. The levelized price will be de-escalated using an average rate of inflation. The de-escalated prices will be applied to all years prior to the beginning of each bid term for the Begin Effects. SDG&E will escalate the de-escalated prices to the end of the evaluation period and apply the values for each year after the bid terms for the End Effects. SDG&E will assume the same level of generation for each project as replacement energy during the Begin and End Effects.¹¹

In fact, SDG&E did not use duration equalization for the 2008 RFO. The use of an MPR computation as a proxy price was appropriate in 2006, when renewables' bids clustered around the MPR. As PA explains in section 4.5, the relationship between the MPR proxy and the actual bids was such that using the MPR as a standard could have unfairly biased the evaluation. PA conducted a sensitivity analysis to check the impact of the lack of duration equalization and based on that analysis PA believes that, had SDG&E used the duration equalization methodology, it would not have short listed any bids not already short listed and actually may have removed one of the bids from the current shortlist.

3.3 EVALUATION OF THE STRENGTHS AND WEAKNESSES OF SDG&E'S LCBF METHODOLOGY IN THIS SOLICITATION

Overall, PA believes that the SDG&E methodology is reasonable. This judgment is within the context of the principles set forth in 3.1, especially the last: "The methodology does not have to be the one that the IE would independently have selected but it needs to be 'reasonable'." The Renewable Portfolio Standard is based on raw renewable MWh, with no time differentiation. Furthermore, the quantitative LCBF analysis is but part of a process that includes consideration of bidders' track records and viability and extensive negotiation – another IE has characterized the process as more like a "competitive negotiation" rather than

¹¹ San Diego Gas & Electric Co., op. cit., Appendix C, p. 4.

3. Fairness of the design of SDG&E's methodology for bid evaluation and selection

a sealed-bid auction.¹² SDG&E's LCBF computation bears a similar relation to a more complex time-differentiated analysis as a "screening curve" analysis does to an optimal capacity expansion model; yet as a part of a larger process the screening curve analysis is often quite adequate.

PA believes it is important to address SDG&E's need determination in more detail. Following that discussion, PA will address – in most cases briefly – other specific questions the Energy Division has listed in its template.

3.3.1 Need determination

One of the most important aspects of the Renewables RFO is the need determination. Under the Renewable Portfolio Standard, utilities seek to obtain at least 20% of their 2010 retail deliveries from renewable sources. There is a "least cost / best fit" standard but it is applied only within the universe of renewables; it is not a true "least cost" standard because cheaper non-renewable sources cannot displace renewable supplies. There is a weak cost standard based on the Market Price Referent (MPR); it is weak because the MPR does not function as an absolute cap on costs but rather the total amount by which executed contracts can exceed the MPR is limited by available Above-MPR Funds. The primary goal of RPS procurement is a total renewable volume. For an individual Renewable RFO, this translates to a "need" target.

To compute its need, SDG&E began with a total of "committed MWh". That total included the energy expected to be produced in 2010 by all contracts already signed, plus the "discounted" energy from contracts currently in negotiation. The "discounted" energy from a contract is the energy the plant would produce in 2010 multiplied by a success probability (which PA believes to be the probability of successful contracting). Therefore the committed MWh equals the expected MWh to be produced in 2010 by all plants under contract and in negotiations, conditional on all contracted plants being successfully developed.

Second, SDG&E set a target for contracted 2010 renewables which is somewhat more than 20% of the 2010 load forecast, saying it "plans to procure in excess of its 2010 requirement and contract for deliveries equal to 24%-26% in 2010 in order to provide a margin of safety in the event contracted resources do not achieve commercial operation by 2010."¹³ SDG&E subtracted the committed MWh from that target; the difference could be called the "raw need"; SDG&E doubled the raw need to get its need target for the Renewables RFO.

PA believes these calculations are reasonable. The cushion by which the target exceeds 20% allows for the failure of signed contracts to lead to actual deliveries, and the doubling of the raw need allows for a 50% probability of successful negotiation with short listed bidders. Some judgment is involved with the parameters (the "cushion" and the 50% probability that leads to doubling the raw need). A target of 24-26% of deliveries would imply a cushion of 4-6% and SDG&E originally planned to use a 4% cushion for the 2008 RFO. PA believed that 4% was too small – SDG&E used a 5% cushion in 2007 – and SDG&E agreed to use a 5% value. PA recommended a 40% success probability (which would have meant multiplying the

¹² Private conversation.

¹³ Ibid., p. 11.

3. Fairness of the design of SDG&E's methodology for bid evaluation and selection

raw need by 2.5 rather than 2) but acceded to SDG&E's doubling. This resulted in a need equal to approximately [REDACTED] of 2010 deliveries.

3.3.2 Comparison to other states

Template language: "i. How does the IOU methodology compare to LCBF methodologies used in other states, to the best of the IE's knowledge?"

The most significant difference between SDG&E's methodology and other methodologies that PA has seen is that SDG&E's methodology does not use either market price forecasts or simulation models to place a value on the energy provided by bidders. Effectively SDG&E's methodology treats renewable power as "must-take energy" regardless of the value of the energy it displaces (whether from the market or other SDG&E plants). That approach reflects a view that renewable energy has a regulatory preference over non-renewable energy, at all times.

SDG&E does make some allowance for the time dependence of energy value through its use of TOU factors to adjust energy costs, but not use a more detailed forecasting or simulation technique to refine those costs. Of course, by not forecasting prices SDG&E also avoids forecasting error.

Further discussion of SDG&E's approach may be found in section 3.2.1.

This is a case where PA might independently select a different methodology but SDG&E's is justified in exercising its own judgment here. After all, any cost impacts of SDG&E's choice will show up in the cost of residual non-renewable generation and will still be subject to Commission scrutiny.

3.3.3 Technology bias

Template language: "ii. Does the methodology have a bias against any technology (eg. wind vs. geothermal vs. biomass) or operating characteristic (baseload vs. peaking)?"

PA did not detect any technology bias. One may consider there to be a "bias" related to capacity factor but those are unavoidable when capacity-based costs (such as transmission capacity or RA) must be converted to an energy basis. This is not a "bias" in the sense of an unfair prejudice.

3.3.4 Time-differentiated cost analysis

Template language: "iii. Discuss the role of "portfolio fit" in LCBF, i.e. the extent "to which time-differentiated cost analysis already represents fit."

Time-differentiated costs are discussed in section 3.3.2. Since SDG&E is part of the CAISO spot energy market, time-differentiated costs really describe how a resource's delivery patterns related to statewide load, not just the utility portfolio.

"Portfolio fit" should refer to the extent to which a resource meets specific needs in a utility portfolio. In this case the identified need is for renewable energy (cf. section 3.3.1), and all renewable MWh equally address that need.

3. Fairness of the design of SDG&E's methodology for bid evaluation and selection

3.3.5 Project and Transmission COD

Template language: "iv. Discuss the relationship between Project Commercial Online Date (COD) and Transmission COD, i.e., take into account locational and temporal fit."

This was not addressed in SDG&E's evaluation.

3.3.6 Transmission costs

Template language: "v. Discuss any issues of transmission cost analysis regarding appropriate use of TRCRs or other transmission-related cost estimates. What procedures did the utility have in place for acquiring all appropriate transmissions information, subject to constraints imposed by FERC's Standards of Conduct?"

See section 3.2.2. To PA's knowledge, SDG&E's Evaluation Team relied only on documents and did not communicate with SDG&E's Transmission function.

3.3.7 Weighting

Template language: "vi. Are the evaluation criteria (ie. cost, project viability) weighted appropriately? Discuss in particular the relationship between the IOU's bid ranking, price and project viability."

All quantitative criteria were on a dollar basis. SDG&E made no attempt to quantify or score qualitative factors such as viability.

3.3.8 Future improvements

Template language: "g. What future LCBF improvements would you recommend?"

To eliminate the need to "mask" affiliate bids, PA recommends that the quantitative LCBF evaluation conducted by the IE, after which the rankings would be reported to the utility (see 4.4.1).

3.4 ADDITIONAL COMMENT ON THE METHODOLOGY

Template language: "D. Any other relevant information."

PA has nothing else to add to this chapter.

4. PROCEDURAL FAIRNESS OF THE BID EVALUATION

4.1 PRINCIPLES USED TO DETERMINE FAIRNESS OF PROCESS

Template language: "Principles proposed by Jonathan Jacobs, IE for SDG&E:

- i. Were affiliate bids treated the same as non-affiliate?*
- ii. Were bidder questions answered fairly and consistently and the answers made available to all?*
- iii. Did the utility ask for "clarifications" that provided the bidder an advantage over others?*
- iv. Were bids given equal credibility in the economic evaluation?*
- v. Was there a reasonable justification for any fixed parameters that enter into the methodology (e.g., RMR values; debt equivalence parameters)?*
- vi. What qualitative and quantitative factors were used to evaluate bids?"*

PA agrees with the basic principles enumerated in the Energy Division's template and these are the principles that PA uses to guide its evaluation. Not all of them are addressed by the specific points in the Energy Division template so we have included additional sections in this Chapter addressing, e.g., issues of affiliate and UOG bids.

Three of the questions above, which are not addressed in the remainder of the template, can be answered here succinctly:

- Bidder questions were answered fairly and consistently.
- SDG&E did not ask for clarifications in such a way as to advantage any bidder.
- All bids were given equal credibility in the quantitative (LCBF) evaluation.

4.2 ADMINISTRATION AND BID PROCESSING

Template language: "Describe the IE methodology used to evaluate administration of IOU LCBF process."

A complete description of PA's activities is in section 2.2.

SDG&E defined a separate Processing Team (PT) and Evaluation Team (ET), so that the individuals responsible for evaluating the bids would not necessarily know the bidders' identity. This step would ensure that an affiliate bid would not receive preference. The Processing Team intended to mask the identity of affiliate bids by assigning them pseudonyms. This process is addressed in detail in section 4.4.1.

PA observed the procedures SDG&E used when bids were initially received and noted no improper contact between the PT and ET. Certain bids required clarification and correction during the evaluation process (for example, a bid for which all the prices were obviously off by a factor of 10). These communications were handled by the PT. PA was not on site at all

times to ensure the ET did not contact bidders but we have no reason to believe they did. The Processing Team maintained the confidentiality of the detailed proposal narratives, which contain much information that can identify bidders, until requested by PA to release it to the ET. Based on conversations with the ET and information the prepared for the PRG prior to the release to them of the detailed proposals, PA believes that confidentiality remained intact.

4.3 CONFORMANCE CHECK

Template language: “Did the IOU fairly identify nonconforming bids – fair both to the nonconforming bidders and to other conforming bidders? Did the utility identify, for each bid, the terms that deviate from the utility RFO, and were the quantitative assessments of the cost or value of those deviations reasonable?”

The Evaluation Team verified that each offer received conformed with the requirements of the RFO. Nonconforming bids were identified as such but not immediately discarded. As in previous renewables solicitation, the RFO stated that non-conformance “may disqualify [a] proposal from further consideration”. SDG&E interpreted this somewhat broadly and attempted to evaluate the nonconforming bids if possible. Specifically:

- [REDACTED] included options with non-conforming terms (over 20 years) as well as conforming terms and SDG&E evaluated the bids with non-conforming terms as well.
- [REDACTED] included options with non-conforming terms (over 20 years) as well as conforming terms but did not include pricing for the non-conforming options so SDG&E did not evaluate them.
- [REDACTED] included turnkey options (Alternative III) but did not specify ownership (operations & maintenance) costs so they were not evaluated (as noted in Section 4.4.2).
- [REDACTED] offered non-conforming terms without a conforming option. One of those modified its bid to a conforming term; the others were evaluated.
- [REDACTED] offered multiple specified sites on one or more other utilities’ distribution systems. The full set of sites would have supplied much if not all of SDG&E’s need, which would have introduced additional concentration risk. SDG&E therefore chose only the “most viable” sites and got the bidder to agree to reduce the size of its bid. SDG&E evaluated it with zero transmission upgrade costs because all sites would be on the distribution system.
- [REDACTED] offered multiple unspecified sites in SDG&E’s distribution system; SDG&E evaluated them with zero transmission upgrade costs because they would be on the distribution system.
- [REDACTED] did not provide complete or useful pricing, even after being contacted by the PT; SDG&E did not evaluate them.
- [REDACTED] offered options rather than PPA; SDG&E did not evaluate them.
- [REDACTED] was not actually for power but for the production of biogas which would then be trucked to an existing SDG&E plant. Not only was this bid nonconforming, it also involved a delivery mechanism that could impact the “renewability” of the power eventually produced. SDG&E did not evaluate this bid.

4. Procedural fairness of the bid evaluation

Although bids with terms longer than 20 years were evaluated, they were evaluated only for the first 20-year period. This was to avoid dealing with additional end effects relative to the conforming bids.

PA believes that SDG&E's treatment of non-conforming bids was fair and reasonable.

4.4 AFFILIATE BIDS AND UOG OWNERSHIP PROPOSALS

The treatment of affiliate bids has been a focus of PA throughout its tenure as Independent Evaluator for SDG&E. Although the Energy Division's template does not specifically call for discussion of the handling of affiliate bids and UOG ownership proposals, the CPUC and FERC have both expressed concern about the fair treatment of non-affiliate bids and therefore PA believes it is important to address the way affiliate and UOG ownership bids were handled. They required particular attention because SDG&E was conducting the evaluation itself, rather than having the IE do so as other utilities do.

4.4.1 Masking of affiliate bids

When PA's conducted its first Independent Evaluation of an SDG&E RFO, the All-Source RFO, PA proposed that SDG&E define separate Processing and Evaluation Teams, so that the individuals responsible for evaluating the bids would not necessarily know the bidders' identities. The Processing Team was responsible for redacting bids to remove identifying information. This "anonymization" turned out to be quite an onerous and time-consuming process, and several redacted bids had to be "recalled" to remove additional identifying information that had not been caught at first – for example, in page footers. SDG&E decided that for future RFOs the Processing Team would not redact all bids, but that if there was an affiliate bid the Processing Team would simply substitute an artificial name for the bidder.

In its report on the short list from the 2007 Renewable RFO, Van Horn Consulting stated that "Until after the short list was determined, it was intended that VHC would not know if an affiliate bid had been submitted and disguised, thus reducing the risk of VHC disclosing the identity of an affiliate bidder to the ET."¹⁴ Unlike VHC, PA is of the opinion that it is important for the IE to know whether any bids came from an affiliate, in order to judge whether the evaluation was consistent with an unbiased approach.

The Processing Team informed PA that there were [REDACTED] in the 2008 Renewable RFO from [REDACTED] and that it intended to disguise them by labeling them with the artificial name "Sega Gen". PA was concerned about this name because (a) it sounds like an artificial substitute, being the name of a video game company; (b) "Sega" is very close to [REDACTED]; and (c) the list of attendees at the bidder conference was published on SDG&E's website, and "Sega Gen" was not among them. The PT therefore decided to use the name of an attendee at the bidder conference who did not submit a bid.

This created a different set of problems. When SDG&E made its report to the May 15 PRG meeting about the bids received, members of the PRG questioned why company, of which

¹⁴ Van Horn Consulting, "Independent Evaluator's Report: SDG&E's Short-List Selection for Its March 2007 Request for Offers for Eligible Renewable Resources", July 30, 2007, public (redacted) version, p. 7.

4. Procedural fairness of the bid evaluation

many had not heard, was submitting so many bids. Although one of the SDG&E representatives at that meeting pointed out that this bidder name could be a disguise for ██████, that comment was ignored. There was a considerable amount of discussion of this bidder's viability, to the point where an SDG&E employee later sent an email describing what they had learned about that company (the one whose name had been used) from its website. PA became concerned about the remarks being made about the company whose name had been used lest they affect future perceptions of that company's proposals.

PA was provided with meeting materials several days before the June 19 PRG meeting. At that point the LCBF analysis had just been concluded and the PT had not yet provided the ET the bidders' names and detailed project narratives for the analysis of qualitative factors. PA contacted the PT and suggested that the information should be released to the ET for review prior to the PRG meeting, because PA felt there were significant viability issues with offers from several bidders. This would also allow the correct bidder names to be reported to the PRG. The information was released, and SDG&E made several changes to the short list to incorporate more viable bids. At the PRG meeting PA explained the confusion around bidder names and emphasized that these bids should correctly be attributed to ██████.

PA and SDG&E agreed that the "masking" process did not work well and caused potentially dangerous confusion. Part of the problem was the ██████. That issue could be addressed by using a different substitute bidder name for each bid. The core dilemma remains, though: using the name of an actual potential bidder can cause confusion and worse, if negative statements about the company are overheard, but artificial names can be detected especially if the attendee list at the bidder conference is made public. PA believes that the best solution would be to have the quantitative LCBF evaluation conducted by the IE, after which the rankings would be reported to the utility. We believe this is the practice of SCE and PG&E.

4.4.2 Utility ownership proposals

SDG&E provided three alternative forms for bids: PPA, PPA with buyout option, and turnkey. The latter two are utility ownership forms. No bidders submitted Alternative II (PPA with buyout) bids. ██████ submitted both Alternative I (PPA) and Alternative III (turnkey) pricing; however, the turnkey offers were incomplete in that they included "as-built" pricing for the turnkey plants but no operation and maintenance costs. SDG&E deemed these bids to be non-conforming and did not evaluate them. This is reasonable because it would be difficult and expensive to estimate proxy operation and maintenance costs for a technology (thin-film photovoltaic) with which SDG&E has little experience, and for only ██████ relatively small bids. However, ██████ been short listed and PA expects that SDG&E will seek further detail on the turnkey option during the project-specific negotiation.

4.5 PARAMETERS AND INPUTS FOR SDG&E'S ANALYSIS

Template language: "For those parts of the process conducted by the utility, were the parameters and inputs determined reasonably? What controls were in place?"

There are very few parameters required by SDG&E's analysis. Most of the analysis is based on information supplied by the bidders themselves. The key parameters are the RA price estimate, RA cost factors, the MPR proxy (for duration equalization), and TOU pricing factors.

4.5.1 RA price estimate

The first basic parameter to the RA computation is the assumed unit RA price. In 2007, SDG&E used a value of [REDACTED], escalated at [REDACTED], based on SDG&E’s local peaking capacity solicitation. Van Horn Consulting had questioned this figure, since market quotations for RA capacity prices are generally much lower. PA and SDG&E further discussed the matter and decided that a lower figure for the cost of capacity, based on a more generic resource than a peaker in San Diego, could be appropriate. For this solicitation, SDG&E used a figure of [REDACTED], levelized (in other words, the same value each year) based on the assumption that a long-term energy contract would be firmed with a long-term RA contract. PA believes this was a reasonable figure to use.

4.5.2 RA cost factors

The second parameter to the RA computation, or rather set of parameters, is the RA capacity credit that a renewable project is expected to receive. It is anticipated that renewable resources will not receive full RA credit due to their as-available nature; in other words, 1 MW of physical capacity will be credited with less than 1 MW of RA capacity. Resource adequacy credit is computed monthly by the California ISO based on actual capacity factor during the afternoon peak period, so it would be appropriate to use a measure of monthly capacity factor. Initially, SDG&E used the following figures:

Table 1. Original RA percentages

Technology	RA credit relative to baseload
Solar Thermal	[REDACTED]
Solar PV	[REDACTED]
Biomass	[REDACTED]
Geothermal	[REDACTED]
Wind	[REDACTED]
Biogas	[REDACTED]
Solar	[REDACTED]

These figures were apparently used in the 2007 Renewable RFO; according to the Independent Evaluator report from that solicitation, “SDG&E has derived its RA factors from the actual delivery patterns of various resource types in a way consistent with the CPUC-

¹⁵ This figure was provided by SDG&E in an extract from the 2007 Independent Evaluator report by Van Horn Consulting; we believe it was the confidential version of the report cited in note 14 above.

4. Procedural fairness of the bid evaluation

recommended methodology.”¹⁶ This differs from the approach used in the 2008 Renewables RFO, which was based on bidders’ own estimates of project delivery patterns.

Members of the PRG questioned these figures, especially the low credit for solar PV. PA asked SDG&E for documentation of those figures. PA also consulted California ISO Qualifying Capacity reports to determine the credits assigned to various current resources. Based on those reports and computations from bidders’ submissions, PA determined that the figures in Table 1 are a reasonable proxy to use for this evaluation, except that the figure for solar photovoltaic should have been the same as for solar thermal. In its Opinion on Resource Adequacy, based on a series of workshops held in 2004 and 2005, the CPUC stated:

The workshop report observes that benefits of differentiating resources by technology or by vintage would be small from a resource adequacy perspective. As also noted in the workshop report, our adoption of the three-year rolling average has the additional benefit of updating the sample by one-third each year. We think that this is an appropriate means of recognizing the addition of newer technologies for RAR, and that further consideration is not warranted at this time. As PG&E notes, qualifying capacity need not distinguish between technology types or vintage.¹⁷

In PA’s opinion, solar PV and solar thermal should be considered two different solar technology types, using the same energy source (fuel). PA therefore recommended that SDG&E use the same RA factor for solar photovoltaic bids as for solar thermal [REDACTED]. SDG&E took this recommendation. PA believes the cost factors ultimately used by SDG&E were reasonable.

4.5.3 MPR proxy for duration equalization

As noted in section 3.2.5, SDG&E intended to use an MPR proxy as a generic cost for duration equalization. The MPR proxy is based on the CPUC’s MPR methodology but with contemporary cost assumptions (at the time that bids are evaluated the CPUC would not have computed the MPR for the current RFO and the CPUC-computed MPR would be from the prior year). The MPR proxy was chosen precisely because it was the product of an independently determined methodology.

In fact, SDG&E did not use duration equalization for the 2008 RFO. The use of an MPR computation as a proxy price was appropriate in 2006, when renewables’ bids clustered around the MPR. In the 2007 Renewables RFO, and even more so in 2008, offer prices were significantly above the MPR. Therefore, blending the price with an MPR price would reduce the average price.

Furthermore, because the offer price term in the LCBF computation is based on discounted contract payments, the blending is much more significant as a begin effect than as an end effect. In other words, if two offers are comparably priced in real terms and have the same length but differ in their start dates, the use of duration equalization based on an MPR would

¹⁶ Van Horn Consulting, op. cit., p. 13.

¹⁷ California Public Utilities Commission, Decision (D.) 05-10-042, Oct. 27, 2005, p. 72.

make the offer that starts earlier appear more expensive than the one that starts later – because the later-starting offer would be evaluated using the MPR proxy in the first years of the complete period while the earlier-starting offer would use the MPR proxy in the last years.

Duration equalization would not create a bias in favor or against any technology type but it would create a bias in favor of offers with later start dates. That bias is contrary to the policy goal of achieving 20% renewables penetration as soon as possible. Therefore it was reasonable for SDG&E not to use duration equalization and was consistent with the spirit if not the letter of the “Least Cost Best Fit (LCBF) Evaluation and Selection Process” document. SDG&E has expressed to PA the desire to continue using duration equalization for future solicitations but to replace the MPR proxy by an estimate of the cost of renewable power.

4.5.4 TOU pricing factors

SDG&E uses these factors to “benefit-weight” the price of power based on its time of delivery. They were approved by the CPUC for another purpose several years ago. They are reasonable to use but probably could use updating.

4.6 PARAMETERS AND INPUTS FOR OUTSOURCED ANALYSIS

Template language: “For those parts of the process that were outsourced either to the IE or to a third party, what information/data did the utility communicate to that party and what controls did the utility exercise over the quality or specifics of the outsourced analysis?”

Congestion impacts from the proposed point of delivery to SDG&E’s load aggregation point were determined by a study conducted by ABB Inc. The methodology for that study was developed by PA and SDG&E prior to the 2007 Renewables RFO. In previous years, ABB computed two separate congestion costs, one for the period before the Sunrise Power Link was expected to come into service and one for the period after. For this RFO, since the Sunrise Power Link is expected in service in 2011 (in the CAISO transmission plan) and the earliest bids could come on line would be 2009 with most coming on line in 2011 or later, SDG&E decided that it was not worth the expense to do a pre-Sunrise case. SDG&E communicated to ABB the locations and general characteristics of a set of high-ranking bids for this analysis, and accepted ABB’s results.

4.7 TRANSMISSION ANALYSIS

Template language: “Did the utility follow its transmission analysis procedures and include in its evaluation and selection process all appropriate transmission information that it could reasonably develop or acquire, subject to the constraints imposed by FERC’s Standards of Conduct?”

For offers for new projects or projects proposing to increase the size of existing facilities, SDG&E calculated costs for transmission network upgrades or additions, using the information provided through the TRCRs or a CAISO-approved, completed System Impact Study. Projects outside of the California ISO were expected to have internalized the cost of transmission to the ISO, as well as the cost of required transmission upgrades outside the ISO, into their bid price; they could still be assigned additional upgrade costs within California based on the TRCRs.

4. Procedural fairness of the bid evaluation

4.8 QUALITATIVE EVALUATION

Template language: "Beyond any quantitative analysis, describe additional criteria or analysis used in creating its short list."

Following the quantitative evaluation, SDG&E intended to evaluate qualitative factors, specifically viability and locational concentration risk.

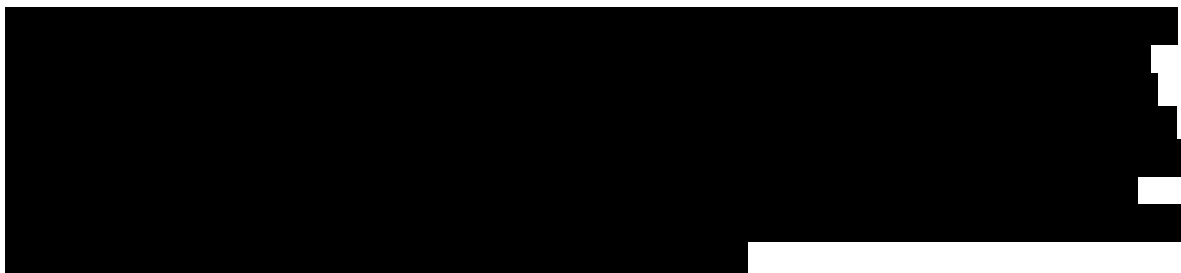
4.8.1 Viability

Developer and project viability have become a key concern in the Renewable RFO, because of the delays and contract failures that have affected several projects. SDG&E's intent was that after the quantitative evaluation it would eliminate bids that, while scoring high, did not appear viable and would replace them with "more viable" bids slightly further down in quantitative ranking. Unfortunately, the quantitative evaluation process took a long time and the ET did not receive the information it would need to assess viability until late June. A number of the most attractively priced bids raised questions as to their viability, for issues as diverse as biofuel supply security, lack of site control and technological maturity. Rather than eliminate them, SDG&E chose to give the bidders the opportunity to prove their viability; however, SDG&E added additional bids to the short list in case the aforementioned bids continued to be of questionable viability.

PA believes that SDG&E would have been justified in simply eliminating some of the questionable bids. Bidders were well aware that viability was an important consideration. It was emphasized at the bidder conference. Furthermore, one way to increase the fraction of bids and contracts that lead to successful projects would be to increase the amount of attention and assistance that utility staff can provide developers both during contract negotiations and during the development stage. That would argue for eliminated questionable bids promptly. The CPUC should consider encouraging the utilities to direct their limited resources efficiently which could mean signing fewer contracts but acting to ensure they are more viable and more likely to come to fruition – while of course retaining the utilities' obligation to meet the RPS targets.

SDG&E's argument for giving bidders additional opportunities to prove their viability is one of fairness to bidders. PA appreciates the desire to be fair to renewable bidders as evidenced both here and in SDG&E's efforts to evaluate non-conforming bids and to solicit corrected or more complete bids even after the bid deadline closes. However, these are actions taken not to be fair to bidders but to increase the size of the bid pool for SDG&E's and its ratepayers' benefit. Enforcing the terms of the RFO would not have been unfair.

4.8.2 Concentration risk





PA notes the following points about this short list:

- “Ranking price”, denominated in \$/MWh, is the result of the quantitative LCBF analysis; the values in the “%” column represent the fraction of 2010 deliveries expected to be provided by each project
- The total energy to be obtained from projects on the short list is about three times SDG&E’s identified need. After the quantitative evaluation, SDG&E had a much shorter preliminary short list, but SDG&E decided to add several other projects to its short list. The main reason for doing so was to add projects of greater perceived viability. After discussion with PRG, additional projects were added.
- The short list is dominated by solar thermal projects, including the four projects with the highest ranking prices on the short list. PA believes it would be appropriate for SDG&E to be particularly resistant to pricing changes for those projects during negotiations.
- On the other hand, the [redacted] project has the second lowest ranking price on the short list, but it involves a less proven [redacted]. Its low bid price may reflect excessive optimism.
- One affiliate bid, [redacted], is on the short list. Additional comments on this bid, and how it got on the short list, are below.

Template language: “i. Please identify instances where the IE and the IOU disagreed in the LCBF evaluation process.

- “• Discuss any problems and solutions
- “• Identify specific bids if appropriate
- “• Does the IE agree that IOU made reasonable and justifiable decisions to exclude, shortlist and or/ execute contracts with projects? If IE did their own separate bid ranking and selection process and it differed from the IOU’s in outcome, include all relevant information here
- “• What actions were taken by the IOU to rectify any deficiencies associated with rejected bids?
- “ ii. Was the overall evaluation fairly administered?”

In PA’s opinion, SDG&E conducted the RFO in fair and equitable manner.

- SDG&E did not apply any special treatment to affiliate bids. One affiliate bid was added to the short list at the instigation of a PRG participant, not SDG&E.

4. Procedural fairness of the bid evaluation

- No utility ownership bids were accepted; the only turnkey bids submitted were rejected as nonconforming.
- Questions were answered fairly and questions and answers posted to the website.
- SDG&E included a reasonable cushion for contract failure in its procurement target.
- Fixed parameters were all set at reasonable values.
- SDG&E evaluated bids fairly and equitably. PA spot-checked the LCBF computations and all issues noted by PA in that spot check, or in other aspects of the evaluation, were promptly addressed. There is extensive discussion in section 3.2.5 of a modification PA believes was made to the LCBF algorithm which improved the evaluation and removed a potential bias.

There were two notable areas of disagreement between PA and SDG&E.

- PA disagreed with the parameters originally used by SDG&E for valuing resource adequacy. As noted in 4.5.2, this was resolved to PA's satisfaction.
- PA believes that the short list was constructed fairly, and with significant input from the PRG; however, it is far in excess of need. SDG&E chose to short list several bids that may not be viable (cf. Section 4.8.1). Viability analysis could not begin until the bidder identities and project narratives had been released to the ET, which in turn could not occur until the quantitative LCBF evaluation had been concluded. This left only a short time to consider viability and other qualitative criteria before finalizing the short list.

4.9.1 Specific discussion of short-listed affiliate bid

One affiliate bid, [REDACTED], is on the short list reported in Section 4.9. SDG&E had wanted to short list [REDACTED] however, [REDACTED] declined the utility's offer to short list those plants. SDG&E had not intended to short list the [REDACTED] project, and only did so after the suggestion was made by TURN's representative on the PRG – before the other two projects had declined short listing. Although the suggestion was made after the PRG meeting at which the Sempra bids were “unmasked”, and the TURN representative had been present at that meeting, the suggestion was made in terms of the “masked” pseudonym, not [REDACTED]. It is possible that the TURN representative did not realize that the three projects in question were [REDACTED] projects.

There are several factors that would support short listing the [REDACTED] bid. Its ranking price is very close to that of the [REDACTED] bids; the differences may be insignificant relative the precision of the LCBF algorithm. In fact, the differences between the rankings of the [REDACTED] bids are almost entirely due to estimated transmission upgrade costs. [REDACTED] claim site control and propose parabolic trough technology (as opposed to other, less established solar thermal collector technologies) so that they all appear to be more “viable” than some projects with lower ranking prices.

SDG&E does not appear to have favored this affiliate bid, because it short listed the bid only in response to a suggestion from the PRG. However, because this is an [REDACTED] PA suggests that negotiations with [REDACTED]

4. Procedural fairness of the bid evaluation

Sempra be followed particularly closely. SDG&E has stated that they will invite the IE to all negotiation sessions with the affiliate (as opposed to just providing regular reports on the negotiations).

4.10 ADDITIONAL ISSUES

Template language: "I. Any other relevant information"

SDG&E sought PA's advice on two additional issues during the period between the release of the RFO and the definition of the short list.

4.10.1 Outreach further afield

Shortly after the RFO was released, SDG&E contacted PA and said that that one or more parties in a separate regulatory proceeding had suggested that SDG&E was not doing sufficient outreach to developers in Northern California and out-of-state. It should be noted that there are some developers outside Southern California to whom the RFO was sent, and the email list SDG&E used to distribute the RFO (Section 5.3) appears to include a list of addresses from the WSPP. Still, SDG&E asked "How would the IE view efforts by SDG&E to selectively contact certain developers and try to persuade them to offer into our solicitation?"

PA responded that it would not oppose such contact, and would not consider it unfair: "If you have done a reasonable amount of outreach otherwise, then contacting specific additional developers shouldn't be a problem, as long as you don't promise them any special consideration or penalize developers you haven't contacted." SDG&E was still concerned that contacting specific developers would be viewed as favoritism or "unleveling the playing field". To PA's knowledge SDG&E did not contact specific developers in Northern California and out-of-state.

PA believes that in the future SDG&E should be encouraged to do specific as well as general outreach. This would be equitable only if there is enough general outreach that one can reasonably assume that potentially interested developers are informed about and receive the RFO; PA notes in Section 5.1 that potential developers should already know about California RPS in general. The specific outreach would then only provide additional encouragement to developers SDG&E felt were particularly competent; however, specific outreach of any kind to an affiliate would be improper.

4.10.2 Request for early determination

Slightly over a month before SDG&E was supposed to notify short-listed bidders, ■■■ bidder notified SDG&E that a utility to which it had offered its power had offered to commence negotiations provided that the bidder remove itself from consideration in any other RFOs. SDG&E requested PA's opinion as to whether it should offer to short list that bidder. PA contacted the bidder, which confirmed that it had bid into another California utility's renewables RFO and that utility had offered to short list it (although none of the California utility RFO schedules envisioned short listing bidders for another month). Ironically, SDG&E has told PA that the Energy Division had specifically asked that the RFO scheduled be altered so that the bidder notification date would be more consistent with the other California utilities', in part to avoid gaming.

4. Procedural fairness of the bid evaluation

PA asked the bidder for some additional information, for example the history of congestion from its site (since SDG&E had not yet run its congestion analysis). Although the bidder promised a response, PA did not receive one. Still, the bid price was one of the lowest offers SDG&E had received, the bid would clearly be near the top of the quantitative LCBF evaluation, and the plant had been operational for several years (so it was clearly viable). PA notified SDG&E that its main concern was that SDG&E was being used as a strategic alternative in negotiations but would not object if SDG&E offered to short list the bidder. SDG&E did so, but the bidder accepted the other utility's offer.

5. ADEQUACY OF OUTREACH AND ROBUSTNESS OF THE SOLICITATION

5.1 CRITERIA OF ADEQUACY

Template language: "Identify principles used to determine whether IOU did adequate outreach (e.g., sufficient publicity, emails to expected interested firms)"

California's Renewable Procurement Standard and its utilities' attempts to meet that standard have been widely publicized. The investor-owned utilities have conducted annual RFOs for renewable resources for several years. Because of the publicity, it should not have been necessary for SDG&E to take on the responsibility of informing bidders that California has a renewables program or that utilities would be contracting with renewable suppliers. Furthermore, it was well-known in the California energy industry that at the time of the adoption of the RPS, SDG&E was the furthest of the three utilities from satisfying the RPS (least renewable energy relative to retail sales). It would have been adequate for SDG&E to advertise the RPS solicitation on its website and to a sizable email list.

5.2 CRITERIA OF ROBUSTNESS

Template language: "Identify principles used to determine adequate robustness of solicitation (e.g., number of proposals submitted, number of MWhs associated with submitted proposals)"

PA judges the robustness of the solicitation by the number of bids received.

5.3 ADEQUACY OF OUTREACH

Template language: "Did IOU do adequate outreach? If not, explain in what ways it was deficient."

In PA's opinion, SDG&E did adequate outreach. SDG&E provided PA with a list of [REDACTED] email addresses to which it sent the RFO. Some of those addresses are consultants probably not working with any particular bidder, and in some cases multiple email addresses are associated with the same organization, but these [REDACTED] addresses represented [REDACTED] separate domains, of which [REDACTED] were ".com" domains (including aol.com, which accounted for [REDACTED] addresses). [REDACTED] email addresses were from ".net" domains, which like aol.com tend to be email providers that could be used by multiple potential bidders.

5.4 SOLICITATION ROBUSTNESS

Template language: "Was solicitation adequately robust?"

In PA's opinion, the solicitation engendered a robust response. [REDACTED] separate organizations responded to the solicitation with a total of [REDACTED] project proposals.

5.5 FEEDBACK

Template language: "Did the IOUs seek adequate feedback about the bidding/bid evaluation process from all bidders after the solicitation was complete?"

SDG&E did not formally seek bidder feedback.

5. Adequacy of outreach and robustness of the solicitation

5.6 ADDITIONAL ISSUES

Template language: "Any other relevant information"

PA has nothing else to add to this chapter.

6. FAIRNESS OF PROJECT-SPECIFIC NEGOTIATIONS

This section will only be completed in the final IE report submitted with each contract Advice Letter.

6.1 PRINCIPLES OF EVALUATION

Template language: "Identify principles used to evaluate negotiations"

6.2 PROJECT-SPECIFIC NEGOTIATIONS

Template language: "Using the above principles, please evaluate fairness of project-specific negotiations"

"Was similar information/options made available to other bidders, ie. if a bidder was told to get its price down to \$X, was the same information made available to others?"

6.3 ADDITIONAL ISSUES

Template language: "Any other relevant information"

7. PROJECT-SPECIFIC RECOMMENDATION

This section will only be completed in the final IE report submitted with each contract Advice Letter.

Template language: "A. Provide narrative for each category and provide ranking (low / moderate / high):

- "i. Contract Price, including transmission cost adders*
- "ii. Portfolio Fit*
- "iii. Project Viability*
- "• Bidder Experience (financing, construction, operation)*
- "• Credit and collateral*
- "• Permitting, site control and other site-related matters*
- "• Fuel status*
- "• Transmission upgrades*
- "iv. Any other relevant factors*
- "v. Technology*

"B. Do you agree with the IOU that the contract merits CPUC approval? Explain.

"C. Any other relevant information?"

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

**DECLARATION OF UYEN NGUYEN
REGARDING CONFIDENTIALITY OF CERTAIN DATA**

I, Uyen Nguyen, do declare as follows:

I am a Senior Energy Administrator in the Electric & Gas Procurement Department for San Diego Gas & Electric Company ("SDG&E"). I have reviewed the Independent Evaluator's Report: San Diego Gas & Electric Company – Preliminary Report of the Independent Evaluator on the 2008 Request for Offers from Eligible Renewable Resources (2008 Renewable RFO) dated December 10, 2008 (the "IE Report"). I am personally familiar with the facts and representations in this Declaration and, if called upon to testify, I could and would testify to the following based upon my personal knowledge and/or belief.

1. I hereby provide this Declaration in accordance with the Administrative Law Judge's Ruling Clarifying Interim Procedures for Complying with Decision 06-06-066, dated August 22, 2006 (the "ALJ Ruling") to demonstrate that the confidential information highlighted in grey ("Protected Information") provided in the IE Report, falls within the scope of data provided confidential treatment in the IOU Matrix attached to the Commission's confidentiality decision, D.06-06-066 (the "IOU Matrix"). Pursuant to the procedures set forth in the ALJ Ruling, I hereby declare the following regarding the Protected Information described in Paragraph 3 hereof:

- The Protected Information constitutes a particular type of data listed in the IOU Matrix, as described in Paragraph 3;
- The Protected Information corresponds to the category or categories in the IOU Matrix set forth in Paragraph 3;

- SDG&E is complying with the limitations on confidentiality specified in the IOU Matrix for each type of data;
- The Protected Information is not already public; and,
- Because specific and detailed bid data must be provided in order to provide a complete submission, the Protected Information cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.

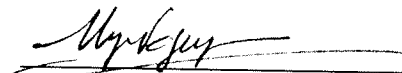
2. The Protected Information consists of competitive bid and procurement information protected under the IOU Matrix, as set forth in the chart below:

Page	Data Type	Matrix Category
3-2	Specific quantitative analysis involving scoring and evaluation of participating bids	VIII(B)
3-5	Utility bundled net open (long or short) position for Energy (MWh) by customer class	VII(D)
4-2, 4-3, 4-4	Bid Information	VIII(A)
4-5 4-6	Specific quantitative analysis involving scoring and evaluation of participating bids	VIII(B)
4-8 4-9 4-10 4-11	Bid Information; specific quantitative analysis involving scoring and evaluation of participating bids	VIII(A) VIII(B)
4-12 5-1	Bid Information	VIII(A)

As an alternative basis for requesting confidential treatment, SDG&E submits that the Protected Information constitutes material, market sensitive, electric procurement related information that is within the scope of Section 454.5(g) of the Public Utilities Code.¹ In addition, SDG&E submits that Protected Information is governed by Public Utilities Code Section 583 and General Order 66-C. Accordingly, SDG&E seeks confidential treatment of this data under those provisions, as applicable.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 23rd day of December, 2008, at San Diego, California.


Uyen Nguyen

¹ This argument is offered in the alternative, not as a supplement to the claim that the data is protected under the IOU Matrix. California law supports the offering of arguments in the alternative. *See Brandolino v. Lindsay*, 269 Cal. App. 2d 319, 324 (1969) (concluding that a plaintiff may plead inconsistent, mutually exclusive remedies, such as breach of contract and specific performance, in the same complaint); *Tanforan v. Tarforan*, 173 Cal. 270, 274 (1916) ("Since . . . inconsistent causes of action may be pleaded, it is not proper for the judge to force upon the plaintiff an election between those causes which he has a right to plead.")