

WSGR ALERT

MAY 2011

CALIFORNIA INVESTOR-OWNED UTILITIES BEGIN 2011 RPS PLAN SOLICITATIONS

After nearly 18 months of uncertainty, the primary buyers in the nation's most promising renewable energy market are shopping once again. California's investor-owned utilities (IOUs)—Pacific Gas & Electric Company (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric Company (SDG&E)—have issued Requests for Offers (RFOs) for the sale of renewable electric power. By many accounts, this year's RFO process may constitute one of the most robust opportunities ever for renewable energy developers in the United States. The level of complexity, difficulty, and competition involved in securing a financeable deal, however, may also reach all-time highs and should not be underestimated.

California's Renewables Portfolio Standard (RPS) requires that the IOUs obtain increasing amounts of energy from renewable sources. California recently increased these RPS requirements to 20% of the total energy obtained by the end of 2013, 25% by the end of 2016, and 33% by the end of 2020 (see our April 21, 2011, WSGR Alert, "California Adopts Aggressive Renewables Portfolio Standard" at http://www.wsgr.com/WSGR/Display.aspx?SectionName=publications/PDFSearch/wsgralert_CA_Adopts_Renewables_Standard.htm). To ensure that they can meet these aggressive RPS standards, the IOUs are required to file RPS procurement plans with the California Public Utilities Commission (CPUC). After lengthy

proceedings at the CPUC addressing the use of Tradable Renewable Energy Certificates (TRECs), the Renewable Auction Mechanism, and other issues (see our February 7, 2011, WSGR Alert, "California Energy Regulatory Update" at http://www.wsgr.com/WSGR/Display.aspx?SectionName=publications/PDFSearch/wsgralert_california_energy_regulatory_update.htm), the IOUs filed their Final 2011 Procurement Plans on May 4. The highlights of each IOU's RFO protocol are summarized below.

Each IOU will begin its solicitation with a Bidder's Conference at which the utility will lay out its particular RPS Procurement Plan and the pro forma documents used as the

Summary of Key RFO Dates and Resources

	Bidder's Conference	Offer Submission Deadline	Submit Questions to	RFO Website
PG&E	May 19, 2011	June 15, 2011, Noon (Pacific)	RenewableRFO@pge.com	www.pge.com/rfo/ Click on "2011 Renewables RFO"
SCE	May 26, 2011	June 27, 2011, 1:00 p.m. (Pacific)	RenewableProposals@sce.com cc as Independent Evaluator: Alan.Taylor@sedwayconsulting.com	www.sce.com/renewRFP
SDG&E	June 2, 2011 (San Diego)* June 8, 2011 (El Centro) *	Online registration must be completed by July 5, 2011 Offer must be submitted by July 11, 2011, Noon (Pacific)	renewablerfo@semprautilities.com Questions must be submitted by July 1, 2011	www.sdge.com/rfo/renewable2011/

* NOTE: SDG&E Bidder's Conferences will be in-person only, with no dial-in capability. Register to attend by **May 27, 2011**.

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starting point for negotiations with renewable developers. They also will take questions from potential bidders. Attendance at one of these conferences is not mandatory, but it may provide useful clarification of certain aspects of each IOU's plan. Bidders with particular questions should use these opportunities to obtain quick, direct answers from the IOUs. Bidders who are unable to attend one of these conferences can obtain the conference materials and a recording at the RFO websites listed on the previous page.

The key pro forma document for each solicitation is the power purchase agreement (PPA) that will be negotiated between an IOU and shortlisted project developers. The number and scope of the changes to prior year pro forma PPAs vary for each IOU. These PPAs and related documents can be obtained via the websites listed above, but please note that the documents and the dates listed above are subject to change. **Potential bidders should check these websites frequently.** There are also links for bidders to sign up to receive RFO updates from each IOU.

Wind, solar (photovoltaic and thermal), and run-of-river hydro are the areas of primary emphasis, although any project of 1.5 megawatts AC or more that can be certified by the California Energy Commission (CEC) as an eligible renewable resource is of interest to the IOUs. For more information, read the fourth edition of CEC's RPS Eligibility Guidebook at <http://www.energy.ca.gov/2010publications/CEC-300-2010-007/CEC-300-2010-007-CMF.PDF>. Wilson Sonsini Goodrich & Rosati can provide assistance in determining whether your project is likely to be RPS-eligible.

Pacific Gas & Electric Company's Request for Offers

PG&E is soliciting offers for: (1) PPAs with renewable project developers for the sale of renewable electricity and related green attributes; (2) PPAs that feature an option for PG&E to purchase the project at a specified

date; (3) purchase and sale agreements for renewable energy generating facilities; (4) purchase of sites for the development of renewable energy projects; and (5) purchases and sales of TRECs unbundled from generated electricity. PG&E is also soliciting offers of RPS-eligible biogas that can be delivered to its pipelines.

Offers must be delivered by **noon Pacific time on June 15, 2011**, in both hard-copy and electronic form, consisting of two printed and bound copies and two flash drives, each containing a complete version of the following documents (available on the PG&E RFO website listed above):

- 1) Attachment D1 or D2 – Offer Form
- 2) Attachment F – FERC Waiver
- 3) Attachment I or J – Term Sheet (including the bidder's recommended modifications to the pro forma PPA or other agreement)
- 4) Attachment L – Supplier Diversity Questionnaire
- 5) Attachment M – CHP Facility Information (if applicable)

PG&E plans to notify shortlisted bidders by August 15, 2011. Shortlisted bidders must agree to exclusive binding negotiations with PG&E and pay a deposit of \$3.00 per kilowatt of the project's planned capacity.

PG&E allows each bidder to submit a maximum of 10 offers if the total capacity offered across projects does not exceed 200 megawatts. If this threshold is exceeded, bidders may submit up to five offers, each of which may have up to four variations (e.g., at the same site but for a different contract term). A change in technology would be considered a separate offer and not a variation. PG&E requires bidders to submit all-in pricing in terms of dollars per megawatt-hour; while this price may vary from year to year, indexed prices are not permitted.

Bidders must clearly mark information submitted to PG&E as "Confidential" in order

to get confidential treatment of the marked portions, to the extent confidential treatment is allowed under the RFO process.

Southern California Edison's Request for Proposals

SCE is soliciting offers to supply (1) bundled renewable energy and RECs (from projects interconnected to a California Balancing Authority or with an agreement to schedule energy into a California Balancing Authority); (2) "REC-only Bundled Energy Products" (projects that are not interconnected to a California Balancing Authority and do not have an agreement to schedule energy into one); and (3) TRECs from RPS-eligible Renewable Energy Resources. SCE prefers in-state proposals, and strongly prefers those that are or will be interconnected with the California ISO. See our California RPS WSGR Alert for more information on "bundled" renewable energy products, and our California Energy Regulatory Update WSGR Alert for more information on TRECs. SCE is not soliciting proposals for utility-ownership, buyout, or similar transactions with renewable project developers.

Offers must be submitted by **June 27, 2011, at 1:00 p.m. Pacific time** and consist of (a) the delivery of an "e-Binder" in the form prescribed in the RFP and (b) an email of the bidder's Proposal Structure Letter. The e-Binder must be physically delivered to SCE as an electronic volume (flash drive, CD, or DVD) containing the 15 documents that must be submitted in response to the RFP (all of which are available on the SCE RFO website listed above), including:

- 1) Appendix A-2 – Seller's Proposal Template and Calculator
- 2) Appendix A-3 – Seller's Outline of Contract Terms and Conditions (including the bidder's recommended modifications to the pro forma PPA or other agreement)
- 3) Documents in compliance with Appendix C, Form of Seller's Proposal

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SCE expects to notify bidders by August 19, 2011, whether they have been shortlisted. Shortlisted bidders must agree to exclusive binding negotiations with SCE and will have to submit a Short-List Deposit of \$3.00 per kilowatt of the project's planned capacity, up to a maximum of \$25,000.

Offer prices should be in dollars per megawatt-hour and may be indexed to commodities, equipment, cost of financing, etc. Note that the issue of economic curtailment—a project being ordered not to produce energy when the price for the energy it otherwise could produce is negative—was particularly contentious as addressed in SCE's 2010/2011 RPS Procurement Plan. As a result, SCE's final plan calls for some amount of unreimbursed curtailment. Bidders are expected to submit six contract prices, reflecting curtailment without payment capped at 50, 100, and 200 hours, with one price at each level including curtailment of On Peak hours and one without curtailment of On Peak hours.

Bidders will enter into a limited-duration non-disclosure agreement with SCE as part of their proposal.

San Diego Gas & Electric Company's Request for Offers

SDG&E is soliciting offers for (1) bundled energy and REC products or (2) TRECs. While all projects are subject to the 1.5 megawatt minimum size requirement, projects located outside of SDG&E's service area must be at least 5 megawatts AC (net of station and auxiliary load).

Bidders who wish to submit offers to SDG&E must register **in advance** and receive a username and password in order to upload electronic offers. This registration process must be completed by **July 5, 2011**.

Electronic offers must be submitted by **noon Pacific Time on July 11, 2011**; hard copies (one printed and one CD) must be delivered to

SDG&E by July 14, 2011. The following items, which are available on the SDG&E RFO website listed above, must be submitted to SDG&E:

- 1) Participation Summary Form
- 2) Project Description Form
- 3) Pricing Form – more than one may be submitted per project
- 4) Credit Application
- 5) Model PPA – bidders to populate the model and provide a redline
- 6) Project Viability Calculator
- 7) Consent Form – for projects that did not participate in TRCR but have a CAISO-approved system impact study (see below)

SDG&E expects to notify bidders by August 19, 2011, whether they have been shortlisted. Shortlisted bidders must agree to exclusive binding negotiations with SDG&E and submit Development Period Security of \$3.00 per kilowatt of the project's planned capacity, up to a maximum of \$100,000. Projects located in the Sunrise Powerlink region (described in the RFO solicitation) will have their Development Period Security waived.

SDG&E requires that each bidder's project(s) have already participated in the 2011 Transmission Ranking Cost Report (TRCR) study applicable to the project's point of interconnection to the transmission grid, or that they have a 2006 or later system impact study approved by the CAISO. Projects that cannot meet this standard will be evaluated on a case-by-case basis.

Bidders must clearly mark information submitted to SDG&E as "Proprietary and Confidential" in order to get confidential treatment of those sections to the extent confidential treatment is allowed under the RFO process.

Ongoing Regulatory Developments

On May 5, 2011, the CPUC opened a new rulemaking proceeding to implement and

administer the new 33% RPS statute. This proceeding will address a plethora of issues, including the end of the market price referent, the definition and limitation of categories of eligible renewable resources, a review of utility procurement plans and their implementation, a review of bid evaluation methodologies, the integration of TRECs contracts, analysis of the use of firm transmission transactions, revising standard terms and conditions for PPAs, and other issues. Wilson Sonsini Goodrich & Rosati monitors these and other California regulatory proceedings, and provides clients with in-depth analyses of how such regulations shape the RPS program rules and market opportunities.

Wilson Sonsini Goodrich & Rosati's Role

Our renewable energy projects team assists project developers in all aspects of reaching successful, financeable deals with the California IOUs. In the past four years, our attorneys have negotiated dozens of power purchase agreements with the IOUs—and we have been brought in on a number of other occasions to work out and amend existing but unfinanceable PPAs. Wilson Sonsini Goodrich & Rosati provides renewable energy developers with strategic and detailed advice for bid preparation and understanding the new form PPAs—the good, the bad, and the ugly. If necessary, we can help developers determine whether projects will be eligible for California's RPS based on current California law and regulations. After a bidder is shortlisted, our team represents that bidder in negotiating commercially oriented, financeable PPAs with the IOUs, and provides guidance and assistance with the ongoing development and financing of their renewable energy projects.

Wilson Sonsini Goodrich & Rosati takes a pragmatic approach to PPA negotiations by focusing on a limited set of issues critical to a financeable renewable energy project. This typically includes only key business and legal points, risks that need to be defined and

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clearly bounded, and burdens that need to be shifted or creatively addressed. This targeted negotiation strategy has successfully resulted in the execution of financeable PPAs with California IOUs.

Our knowledge of the California IOU PPA market gives us an understanding of what is realistic for developers to expect from the IOU and what is realistic for the IOU to ask of

the developer. In addition, our lender- and sponsor-side project finance work allows us to monitor the current risk sensitivities and risk tolerances of the project finance market, and to bring this information to bear during the negotiation and execution of a "market" PPA with terms that are financeable.

We have carefully reviewed each IOU RFO solicitation and PPA, and we are eager to

work with renewable energy project developers to develop financeable projects this RFO season. For further analysis of each IOU's RFO, including a discussion of issues particular to their respective PPAs and your particular project, please contact Todd Glass, Peter Mostow, Chris Groobey, Kendall Bodden, Scott Zimmermann, or Sheridan Pauker in Wilson Sonsini Goodrich & Rosati's energy and clean technology practice.



Wilson Sonsini Goodrich & Rosati
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This communication is provided for your information only and is not intended to constitute professional advice as to any particular situation. We would be pleased to provide you with specific advice about particular situations, if desired. Do not hesitate to contact us.

650 Page Mill Road
Palo Alto, CA 94304-1050
Tel: (650) 493-9300 Fax: (650) 493-6811
email: wsgr_resource@wsgr.com

www.wsgr.com

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