

137 FERC ¶ 61,232
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

San Diego Gas & Electric Company
NaturEner Rim Rock Wind Energy, LLC

Docket Nos. EC12-18-000
ER12-304-000

ORDER AUTHORIZING ACQUISITION OF SECURITIES AND GRANTING
AUTHORIZATION TO MAKE SALES

(Issued December 21, 2011)

1. On October 31, 2011, San Diego Gas & Electric Company (SDG&E) and NaturEner Rim Rock Wind Energy, LLC (Rim Rock Wind) (collectively, Applicants) filed an application under section 203(a)(1)(A) and (a)(1)(C) of the Federal Power Act (FPA).¹ Applicants request Commission authorization for SDG&E to acquire 100 percent of the Class B membership interests, as a tax equity investor, in NaturEner Rim Rock Project Holding Company, LLC (NaturEner Holdings) (Proposed Transaction). Applicants also request Commission authorization, to the extent required under section 35.39 of the Commission's regulations² and section 205 of the FPA,³ for Rim Rock Wind to sell to SDG&E power including Green Attributes⁴ (bundled power), and for SDG&E to immediately sell the power without such Green Attributes ("null" power) back to Rim Rock Wind, pursuant to a long-term contract (collectively, these sales comprise the Proposed Green Attributes Power Sale).

¹ 16 U.S.C. § 824b(a)(1)(A), (C) (2006).

² 18 C.F.R. § 35.39 (2011).

³ 16 U.S.C. § 824d.

⁴ "Green Attributes" are defined by the California Public Utilities Commission (CPUC), as any and all credits, benefits, emission reductions, offsets, and allowances, howsoever entitled, attributable to the generation from a project, and its avoided emission of pollutants. California Energy Commission, *Renewable Energy Program Overall Program Guidebook* at 23-24 (3rd ed. 2011).

2. The Commission has reviewed the Proposed Transaction under the Merger Policy Statement.⁵ As discussed below, we will authorize the Proposed Transaction as consistent with the public interest. Also, we grant Applicants' request for authorization for Rim Rock Wind to sell to SDG&E bundled power, and for SDG&E to immediately sell the "null" power back to Rim Rock Wind pursuant to the Proposed Green Attributes Power Sale. As discussed below, we find that the Commission's concerns regarding the potential for affiliate abuse are satisfied.

I. Background

A. Description of the Parties

1. SDG&E

3. Applicants state that SDG&E is a public utility with a franchised service territory engaged in the transmission, distribution, and sale of electricity with Commission authorization to sell wholesale power and ancillary services at market-based rates. SDG&E is a subsidiary of Enova Corporation, which, in turn, is a wholly-owned subsidiary of Sempra Energy (Sempra). Applicants state that through various subsidiaries and affiliates, Sempra provides a wide spectrum of electric, natural gas, and energy-related products and services to a diverse range of customers. Applicants state that SDG&E has a number of affiliates operating in the Western Electricity Coordinating Council (WECC) region with authority to sell energy, capacity, and/or ancillary services at market-based rates.

2. Rim Rock Wind

4. Applicants state that Rim Rock Wind is a Delaware limited liability company that is developing and will own and operate a 189 MW wind-powered generating facility in Kevin, Montana (the Rim Rock Project). Applicants add that the Rim Rock Project will

⁵ See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). See also *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement). See also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). See also *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

be interconnected with the transmission facilities of Montana Alberta Transmission Line LLP (MATL), with those portions of the line that are located within the United States being in the NorthWestern Energy balancing authority area in Montana (Northwestern balancing authority area).

5. Rim Rock Wind is a wholly owned subsidiary of NaturEner USA (NaturEner), a Delaware limited liability company and direct wholly owned subsidiary of Grupo NaturEner S.A (Grupo NaturEner), a renewable energy company based in Madrid, Spain. Grupo NaturEner is owned by Energías Limpias Invest, S.L. (indirectly through the Tharsis Group), Banca Cívica, and Caja Castilla La Mancha Corporación, S.A. Applicants state that at the Proposed Transaction's consummation, Rim Rock Wind will be a wholly owned subsidiary of NaturEner Holdings. NaturEner Holdings will be an indirect wholly owned subsidiary of NaturEner Rim Rock Financing (NaturEner Financing), which will, in turn, be an indirect wholly owned subsidiary of NaturEner. Applicants add that through NaturEner, Rim Rock Wind is affiliated with various entities engaged in the business of developing, owning, and operating wind-powered generating projects that the Commission has previously authorized to sell electricity into wholesale electric service markets at market-based rates.

B. Rim Rock Wind Settlement

6. Applicants state that finding a traditional tax equity investor for the Rim Rock Project proved difficult for NaturEner. Thus, according to Applicants, SDG&E decided to enter into negotiations to become a tax equity investor in the Rim Rock Project. Applicants state that SDG&E filed an application with the CPUC on July 15, 2010 requesting authorization to make a capital contribution to the Rim Rock Project of up to \$600 million or 79.99 percent of project costs and to change the terms of a previously approved agreement for Green Attributes between Applicants, including a Green Attributes price to be set pursuant to a defined cost-based formula and subject to a hard cap.

7. Applicants maintain that because the CPUC's Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN), a private consumer advocate organization, opposed significant aspects of SDG&E's application to the CPUC, the CPUC set for hearing before an administrative law judge all the issues related to the application. Subsequently, DRA, TURN, SDG&E, and NaturEner entered into a

settlement of all issues in the proceeding (the Settlement).⁶ The Settlement was conditionally approved by the CPUC on July 21, 2011.⁷

8. Under the terms of the Settlement, the parties agreed to reduce the project size from 309 to 189 MW and to reduce the maximum amount of the investment allocated to SDG&E ratepayers from up to \$600 million or 79.99 percent of the project costs to the lesser of \$250 million or 64.99 percent of the project costs.⁸ The Settlement retains the Green Attributes price cap in SDG&E's application and, according to Applicants, significantly reduces the amount of risk to ratepayers associated with the Proposed Transaction.⁹ Under the Settlement, SDG&E shall make a shareholder investment of no less than 10 percent of the project costs. For purposes of CPUC retail rate recovery, this portion of the investment will be treated as though it was invested at the shareholders' risk. In addition, SDG&E's shareholder investment will be subordinate to the recovery of its ratepayers' investment, and SDG&E's ratepayers will be repaid their investment prior to SDG&E shareholders being repaid their investment.¹⁰

9. The Settlement requires, among other things, that at least 75 percent of the Rim Rock Project's output be sold at a fixed price for 10 years in order to provide revenue stability to Rim Rock Wind. It also authorizes SDG&E to enter into hedging arrangements for up to 10 years to provide collateral support for such a long-term arrangement.¹¹

10. Moreover, the Settlement, according to Applicants, gives third-party consumer advocates an "important oversight function" with "respect to, among other things, the

⁶ Applicants include the Settlement Agreement as Attachment A to the Applicants' October 31, 2011 Filing (Application).

⁷ Application at 24; *Application of SDG&E to Amend Renewable Energy Power Purchase Agreement with NaturEner Rim Rock Wind Energy, LLC and for Authority to Make a Tax Equity Investment in the Project*, Decision No. 11-07-002 (July 21, 2011) (CPUC Decision Approving Settlement) (conditioned to require that should the parties to the Settlement negotiate an increase in SDG&E's rate of return under specified settlement provisions, they must seek the CPUC's approval).

⁸ Application at 19; Settlement Agreement at § 2(f)(i).

⁹ Application at 19.

¹⁰ Application at 19 (citing Settlement Agreement at § 2(g)).

¹¹ Application at 20.

calculation of the final Green Attributes price in accordance with the CPUC-approved formula.”¹² Applicants also state that on a going forward basis after the Rim Rock Project achieves commercial operations, the Settlement requires SDG&E to file annual reports with the CPUC to demonstrate that SDG&E’s tax equity investment “is predicted to achieve and in fact has achieved ‘Ratepayer Neutrality.’”¹³

C. The Proposed Transaction

11. The terms of the Proposed Transaction are set forth in the July 2010 Participation Agreement between SDG&E and NaturEner and the agreement’s attachments.¹⁴ SDG&E proposes to acquire, and NaturEner Financing proposes to dispose of, 100 percent of the Class B membership interests, jurisdictional securities under section 203(a)(1)(C) of the FPA, in NaturEner Holdings, the immediate upstream owner of Rim Rock Wind. Subject to satisfaction of all conditions precedent, closing will occur when the project achieves its commercial operation date.¹⁵ In Exhibit G of the Application, Applicants state that the jurisdictional facilities affected by the Proposed Transaction “will be the jurisdictional

¹² Application at 20-21.

¹³ Application at 21. “Ratepayer Neutrality,” as defined in the Settlement Agreement, means that:

at the end of the SDG&E Investment Period, the costs to SDG&E ratepayers of the rate-based investment over the SDG&E Investment Period less the stream of actual and expected remaining Project benefits received by SDG&E ratepayers during the SDG&E Investment Period, discounted in the revenue requirement model in effect as of the Construction Financial Closing date at 8.4% to the Contribution Closing Date, shall have no greater than a zero net present value.

Settlement Agreement at § 2(h). In other words, SDG&E’s ratepayer investment will equal the benefits, discounted at an agreed upon level, from the Rim Rock Project. These benefits that inure to the project company will be separated into individual components of cash, taxable income, production tax credits, and depreciation.

¹⁴ Applicants included these agreements as confidential exhibits to the Application.

¹⁵ Application at 23-24.

assets that will be owned by Rim Rock Wind, i.e., its planned limited interconnection facilities and its wholesale tariff and contracts.”¹⁶

12. Under this investment, SDG&E, as an investor, and NaturEner, the developer, will invest in a limited liability company, NaturEner Holdings, to own the Rim Rock Project. SDG&E will contribute a majority of the total capital costs and NaturEner will contribute the remainder.¹⁷ The benefits that inure to the project company will be separated into individual components of cash, taxable income, production tax credits, and depreciation. The Participation Agreement between SDG&E and NaturEner obligates SDG&E to execute an Equity Capital Contribution Agreement, which is an attachment to the Participation Agreement, upon obtaining construction financing of the Rim Rock Project and subject to conditions precedent. Once the Equity Capital Contribution Agreement’s conditions precedent have been satisfied, SDG&E must acquire Class B membership interests in NaturEner Holdings from NaturEner Financing. NaturEner Financing will hold 100 percent of the Class A membership interests in NaturEner Holdings. Applicants argue that the Class B membership interests are passive, and thus, SDG&E and Rim Rock Wind will not become affiliates. They claim, therefore, that the Proposed Transaction does not need approval under section 203(a)(1)(A) of the FPA because it will not result in a change of control in Rim Rock Wind.¹⁸

D. The Proposed Green Attributes Power Sale

13. Concurrent with the closing of the Proposed Transaction, SDG&E and Rim Rock Wind plan to enter into the Proposed Green Attributes Power Sale for a period of 20 years. Under the Proposed Green Attributes Power Sale, SDG&E will purchase from Rim Rock Wind energy equal to the Rim Rock Project’s output of electric energy, bundled with Green Attributes, and immediately resell power stripped of the Green Attributes (referred to as “null” power) back to Rim Rock Wind.¹⁹

¹⁶ Application at 56. We note that on October 31, 2011, Rim Rock Wind filed an initial application for market-based rate authority with the Commission in Docket No. ER12-295-000. An order on that application is being issued concurrently with this order.

¹⁷ The ultimate percentage of capital costs contributed by each party is subject to adjustments which are enumerated in the Equity Capital Contribution Agreement. Application at 16.

¹⁸ Application at 25.

¹⁹ Subject to a hard cap for the Green Attributes purchase price, the pricing for the Proposed Green Attributes Power Sale will be set pursuant to a cost-based formula, in

(continued...)

14. Applicants state that California's renewable portfolio standards (RPS) require retail sellers of energy, such as SDG&E, to increase their total procurement of energy from renewable resources. According to Applicants, the California Energy Commission, which is responsible for certifying generators as RPS-compliant, requires that the first sale of energy by an eligible renewable resource must include that energy's associated Green Attributes. They state that the Green Attributes may be unbundled from the energy after this initial sale and then rebundled with power from another source that is then delivered to California. Applicants state that the CPUC has repeatedly encouraged such utilities to find "innovative and creative" approaches in "vigorous" pursuit of meeting RPS goals.²⁰ According to Applicants, the Green Attributes, such as renewable energy credits, subject to the Proposed Green Attributes Power Sale, may be used by SDG&E to satisfy the RPS requirements.²¹

15. Applicants maintain that authorization to enter into the Proposed Green Attributes Power Sale should not be required because SDG&E's tax equity investment is passive, and thus, SDG&E and Rim Rock Wind should not be deemed to be affiliated. However, they maintain that if the Commission concludes that such authorization is required, the Commission should conclude that the Proposed Green Attributes Power Sale meets the Commission's standards for affiliate power sales. Applicants state that SDG&E's decisions to contract for Green Attributes did not result from a formal solicitation or in connection with a decision to make a tax equity investment in the Rim Rock Project. Rather, they contend that the contract's origin was as a bilateral arms-length agreement between non-affiliates. Applicants claim that NaturEner's inability to attract reasonably priced financing for the project caused SDG&E to consider investing in the Rim Rock Project.

16. Applicants state that while the Proposed Green Attributes Power Sale did not have its origins in a competitive solicitation, SDG&E has compared the price it pays for bundled power to prices reflected in third-party bids submitted in a renewables

accordance with the CPUC-approved Rim Rock Settlement, and set forth in the Participation Agreement. The price of SDG&E's purchase of bundled power from Rim Rock Wind will be the sum of the "null" power component price plus the formulaically-calculated Green Attributes price. The price of SDG&E's sale of "null" power to Rim Rock Wind will be at the same "null" power component. Application at 24.

²⁰ Application at 12 (citing D.06-05-039, 2006 Cal. PUC LEXIS 198 at *22 (CPUC 2006)).

²¹ Application, Attach. 2, Matt Burkhardt Aff. at P 2, 11 (Burkhardt Affidavit).

solicitation conducted by SDG&E in 2009 (2009 Renewables Solicitation).²² Applicants maintain that their current expectation is that the Green Attributes price will be within a range somewhat lower than the CPUC-approved price cap. However, they argue that, even if SDG&E's analysis assumes that the Green Attributes price was set at the cap, SDG&E's analysis demonstrates that the price of SDG&E's purchase of bundled power is extremely competitive with the prices offered to SDG&E in its 2009 Renewables Solicitation.²³

E. The Offtake and Offset Agreements

17. There are two additional agreements resulting from the Proposed Green Attributes Power Sale. As discussed above, the Settlement requires that at least 75 percent of the "null" power produced by the Rim Rock Project be sold to a third-party at a fixed price for a term of 10 years. Therefore, Rim Rock Wind has entered into a long-term power purchase agreement with a third-party market participant (the Offtaker) to sell 100 percent of the project's power to the Offtaker and receive wind integration services from the Offtaker (the Offtake Agreement).²⁴

18. According to Applicants, the Offtake Agreement gave rise to the need for Rim Rock Wind to provide collateral or other performance assurances to offset the Offtaker's financial risk associated with the long-term purchase of power from the Rim Rock Project. The parties agreed that SDG&E and the Offtaker would enter into a physical transaction to offset much of the Offtaker's credit risk, thus facilitating a 10-year long term power purchase agreement between SDG&E and the Offtaker (the Offset Agreement). Under the Offset Agreement, SDG&E will purchase from the Offtaker blocks of power, in two tranches, in roughly equal aggregate quantities and over a roughly equal term as those that the Offtaker will purchase from Rim Rock Wind. Applicants state that the power purchases associated with the Offset Agreement will take place at the CAISO Nevada-Oregon Border intertie and will include resource adequacy and import reserves attributes.²⁵ Applicants state that the CPUC authorized SDG&E to

²² Applicants claim that the 2009 Renewables Solicitation was conducted in accordance with *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 (2004) (*Allegheny*). However, because Rim Rock Wind was not a bidder in that solicitation, SDG&E's market showing depends not on the conduct of the 2009 Renewables Solicitation, but rather on the analysis of data accumulated from that solicitation.

²³ Application at 49.

²⁴ Application at 22-23.

²⁵ Application at 23.

modify its current long-term procurement plan to allow it to enter into a hedging arrangement for a period of up to 10 years to ensure price stability for the power sales associated with the Offtake Agreement.²⁶

19. Applicants state that before commencing in-depth negotiations with the Offtaker, and during such negotiations, SDG&E performed various analyses to assess whether a transaction at the Nevada-Oregon Border intertie could provide SDG&E with the same or similar benefits as could a transaction at the SP-15 trading hub where SDG&E typically transacts. Applicants state that SDG&E's goal in the negotiations was that the transaction would be a good deal for, and provide value, to SDG&E's customers on a stand-alone basis. They state that their analyses led SDG&E to conclude that the Offset Agreement provides SDG&E and its ratepayers with several benefits as a stand-alone power purchase agreement. First, they state that a firm power purchase at the Nevada-Oregon Border intertie would provide SDG&E with system resource adequacy, thereby reducing the amount of resource adequacy that SDG&E would otherwise have to acquire from other resources, such as from resource adequacy capacity-only contracts. Second, SDG&E would receive a credit from CAISO for importing power into CAISO at the Nevada-Oregon Border intertie with reserves behind it. Third, the Nevada-Oregon Border intertie would provide SDG&E with its only intertie location that allows it to receive power easily from the Pacific Northwest and, by taking delivery at the Nevada-Oregon Border intertie, SDG&E would be able to import power into CAISO and avoid one of the major transmission constraints for north to south power flow within the State of California. Finally, Applicants represent that they analyzed forward market prices at the SP-15 trading hub and determined the value of the power SDG&E will be purchasing under the Offset Agreement.²⁷ To determine the value of the power, Applicants accounted for losses and congestion at the Nevada-Oregon Border intertie, and valued the minimum resource adequacy import rights and the import reserve credit that SDG&E expects to receive as a result of the Offset Agreement.²⁸ Applicants state that they determined that the value of the power purchased under the Offset Agreement exceeds SDG&E's negotiated purchase price for that power under the Offset Agreement. Thus, they concluded that the Offset Agreement provides SDG&E and its ratepayers with long-

²⁶ Settlement Agreement at § 2(b).

²⁷ Application, Attach. 3, Vincent D. Bartolomucci Aff. at P 10-13 (Bartolomucci Affidavit).

²⁸ Bartolomucci Affidavit at P 25-30.

term physical power at a price that SDG&E claims offers an excellent value proposition for SDG&E and its ratepayers.²⁹

II. Notice of Filing and Responsive Pleadings

20. Notice of Applicants' October 31, 2011 filing was published in the *Federal Register*, 76 Fed. Reg. 69,263 (2011), with interventions and comments due on or before November 21, 2011. A timely motion to intervene was filed by Morgan Stanley Capital Group Inc. TURN filed a timely motion to intervene and comment in support of the requested authorizations. Powerex Corp. (Powerex) filed a timely motion to intervene and protest.

21. On November 23, 2011, Applicants filed an answer. On December 2, 2011, Cargill Power Markets, LLC (Cargill) filed a motion to intervene out-of-time and protest.

III. Discussion

A. Procedural Issues

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we will grant Cargill's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Applicants' answer because it has provided information that assisted us in our decision-making process.

B. Authorization of Proposed Transaction Under Section 203

1. Standard of Review Under Section 203

24. Section 203(a)(4) of the FPA requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest. The Commission's analysis of whether a transaction will be consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the

²⁹ Bartolomucci Affidavit at P 31.

effect on rates; and (3) the effect on regulation.³⁰ Section 203(a)(4) of the FPA also requires the Commission to find that the transaction “will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.”³¹ The Commission’s regulations establish verification and informational requirements for applicants that seek a determination that a transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.³²

25. We will consider Applicants’ request for approval under section 203 of the FPA without making a determination as to whether the Class B membership interests are passive.³³

a. Effect on Competition

i. Applicants’ Analysis

26. Applicants state that the Proposed Transaction will have no adverse effect on competition and that there is no need to submit horizontal or vertical market power analyses. With respect to horizontal competition, Applicants state that the Proposed Transaction involves the Rim Rock Project, which is located in the Northwestern balancing authority area geographic market and interconnected to the MATL line. The MATL line will interconnect with the transmission systems of the Alberta Electric System Operator on the northeastern end and with the Northwestern balancing authority area on the southern end. Applicants assert that SDG&E and its affiliates do not own or control generation in the Northwestern balancing authority area. Accordingly, they argue that there is no change in market concentrations.³⁴

27. Applicants state that the Proposed Transaction will not cause any vertical market power concerns because Rim Rock Wind will not own any transmission facilities other than the limited, discrete interconnection facilities that will deliver its generation project output to the transmission grid. Applicants state that the fact that SDG&E owns transmission facilities in the Southwest region does not raise any competitive concerns

³⁰ See Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

³¹ 16 U.S.C. § 824b(a)(4) (2006).

³² 18 C.F.R. § 33.2(j) (2011).

³³ See *Ocean State Power*, 47 FERC ¶ 61,321, at 62,130 (1989).

³⁴ Application at 29-30.

because SDG&E's transmission facilities are operated by CAISO pursuant to a Commission-approved Open Access Transmission Tariff.³⁵ Additionally, Applicants state that even though SDG&E and/or its affiliates own or control certain intrastate natural gas transmission, storage, and distribution facilities, none of these facilities are in the Northwestern balancing authority area. Consequently, Applicants assert that there is no concern about vertical market power with respect to natural gas. Additionally, Applicants affirmatively represent that they will not erect barriers to entry with regard to inputs to electric power production.³⁶ For these reasons, Applicants conclude that the Proposed Transaction will not result in any adverse horizontal or vertical market power impacts and that it does not require horizontal or vertical competitive screen analyses.³⁷

ii. Commission Determination

28. In analyzing whether a transaction will adversely affect competition, the Commission first examines the transaction's effects on concentration in generation markets or whether the transaction otherwise creates an incentive to engage in behavior harmful to competition, such as the withholding of generation. Based on a simplifying assumption that SDG&E and Rim Rock Wind can be deemed affiliates, we find that Applicants have a *de minimis* overlap of generating capacity in the relevant geographic market, the Northwestern balancing authority area. Therefore, we find that the Proposed Transaction will not adversely impact horizontal competition

29. Second, the Commission considers the vertical combination of upstream inputs, such as transmission or natural gas, with downstream generating capacity. We find that the Proposed Transaction will not have an adverse effect on vertical competition because it will not result in the combination of generation assets with either transmission facilities or inputs to electricity in the same relevant geographic market.

b. Effect on Rates

i. Applicants' Analysis

30. Applicants assert that the Proposed Transaction will not adversely affect wholesale rates or transmission rates. First, they point out that SDG&E is making the Proposed Transaction on behalf of its retail customers. Therefore, the investment costs and

³⁵ Application at 31.

³⁶ Application at 31.

³⁷ Application at 32.

investment earnings will be incorporated solely into SDG&E's retail rates under terms authorized by the CPUC. Second, Applicants state that the Proposed Transaction will not impact wholesale rates because SDG&E does not have any wholesale customers served under cost-based rates. Third, Applicants assert that the Proposed Transaction does not involve the transfer of any transmission facilities or service to any transmission customer of any of Applicants, and it will, therefore, not affect transmission rates.³⁸

31. Applicants contend that all rate impacts in connection with the Proposed Transaction, and all related arrangements, are limited to retail ratepayers. Moreover, Applicants assert that the Settlement and the CPUC's authority under the terms of the Settlement mitigate any rate impacts.

ii. Commission Determination

32. Because the Proposed Transaction is closely associated with the Proposed Green Attributes Power Sale, as well as the Offset Agreement, we will evaluate whether the Proposed Transaction and the long-term power sales will have an adverse effect on rates. We agree with Applicants that the Proposed Transaction will not impact any transmission rate. Additionally, we find that the Proposed Transaction will not impact any wholesale rate because the costs and the income associated with the Proposed Transaction will be incorporated into retail rates. Regarding the Proposed Green Attributes Power Sale, as explained in detail below, Applicants submitted evidence of prices a non-affiliated seller was willing to sell for power in the relevant market. Regarding the Offset Agreement, Applicants provided evidence of forward market prices at the SP-15 trading hub and determined the value of the power that SDG&E will be purchasing under the Offset Agreement. As explained in further detail below, because Applicants demonstrated that the prices they would pay under the Offset Agreement are comparable to the price Applicants would pay under arms-length agreements with third parties, we conclude that there will be no adverse effect on rates.

c. Effect on Regulation

i. Applicants' Analysis

33. Applicants state that the Proposed Transaction will not have an adverse impact on federal or state regulation. They state that the Proposed Transaction will not affect the ability of the Commission to regulate SDG&E or Rim Rock Wind with respect to their Commission-jurisdictional activities. Applicants also state that nothing about the Proposed Transaction will adversely affect the authority or ability of state regulators to

³⁸ Application at 32.

regulate the sale of power to retail customers. They point out that SDG&E required and has obtained the CPUC's authorization to enter into the Proposed Transaction and that SDG&E will continue to be subject to CPUC regulation after acquiring the Rim Rock Project.

ii. Commission Determination

34. Based on the facts presented in the Application, we find no evidence that the Proposed Transaction will adversely affect federal or state regulation. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap at the federal or state level.³⁹ We find that the Proposed Transaction will not create a regulatory gap at the federal level, because the Commission will retain its regulatory authority over the rates over the facilities after the Proposed Transaction. We also note that no party alleges that the Proposed Transaction will impair regulation, and no state commission has requested that the Commission address the issue of the effect of the Proposed Transaction on state regulation.

d. Cross-Subsidization

i. Applicants' Analysis

35. Applicants state that the Proposed Transaction will not cause inappropriate cross-subsidization. They note that the Commission's focus has been on preventing a transfer of benefits from a public utility's captive customers to shareholders of the public utility's holding company due to an intra-system transaction. Applicants state that such a transfer of benefits from ratepayers to shareholders could occur in affiliate transactions between a franchised utility (and its captive ratepayers) on one side of a transaction and a market-regulated affiliate (in which the utility's shareholders, directly or indirectly, hold ownership interests) on the other side of the transaction. According to Applicants, the potential divergence of economic interest between the franchised utility (and its captive ratepayers) on one side and the market-regulated affiliate (and the utility's shareholders) on the other side is not present in the case of SDG&E's tax equity investment in Rim Rock Wind because SDG&E (and its captive ratepayers) is on both sides of the tax equity transaction and SDG&E's shareholders are not on the market-regulated entity's side of the transaction.⁴⁰ Applicants state that assuming *arguendo* that an affiliate relationship could be presumed, it would arise because SDG&E (and its captive ratepayers) is a Rim Rock Wind shareholder; however, according to Applicants, the corporate structure

³⁹ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

⁴⁰ Application at 34.

precludes any diversion of benefits from SDG&E (and its captive ratepayers) to SDG&E shareholders. More specifically, they state that even assuming the potential that transactions between SDG&E and Rim Rock Wind might be at prices that could be above or below market, the benefits that would flow to Rim Rock Wind would be shared by SDG&E itself and by the other wholly-unrelated Rim Rock Wind shareholders.⁴¹

36. Additionally, Applicants assert that they satisfy the requirements of section 33.2(j)(1) of the Commission's regulations⁴² as well as the safe harbor in paragraph 18 of the Supplemental Policy Statement.⁴³ To advance their argument regarding section 33.2(j)(1) of the Commission's regulations,⁴⁴ Applicants state that the Proposed Transaction does not result in a transfer of any facilities or the issuance of securities by a traditional public utility (SDG&E) for the benefit of Rim Rock Wind. Additionally, Applicants clarify that while SDG&E could use the proceeds of debt securities issued in the ordinary course of business to fund a portion of its tax equity investment in NaturEner Holdings, the application of these proceeds for this purpose would be made in the ordinary course of maintaining SDG&E's capital structure; according to Applicants, it would not be for the benefit of Rim Rock Wind. Applicants state further that the Proposed Transaction will not result in any new pledge or encumbrance of assets by SDG&E for Rim Rock Wind's benefit.

37. With regard to the safe harbor argument, they assert that SDG&E's tax equity transaction, and each of its constituent agreements:

(1) were authorized by the CPUC, (2) were the subject of a settlement agreement in which the . . . DRA . . . and TURN . . . actively participated, (3) were made subject to and comply with carefully crafted ratepayer protection mechanisms supported by the ratepayer advocates, and (4) are subject to on-going monitoring of compliance with the ratepayer protection mechanisms by the ratepayer advocates and the CPUC.⁴⁵

38. Applicants also contend that the Commission should not view the Offset Agreement as an encumbrance to SDG&E on behalf of Rim Rock Wind. Applicants'

⁴¹ Application at n. 85.

⁴² 18 C.F.R. § 33.2(j)(1) (2011).

⁴³ Application at 36-42.

⁴⁴ 18 C.F.R. § 33.2(j)(1) (2011).

⁴⁵ Application at 38-39.

reasoning is that the Commission should view the Offset Agreement as a power supply arrangement that is attractively valued for SDG&E on a stand-alone basis, independent of any separate benefit that it may have for SDG&E's underlying tax equity investment in Rim Rock Wind. Applicants conclude that the Offset Agreement is, therefore, not an encumbrance. In addition to this argument, Applicants assert that the Offset Agreement serves the purpose of providing credit support for Rim Rock Wind, and, thereby, enhances Rim Rock Wind's risk profile compared to alternative credit support measures that Rim Rock Wind might have otherwise had to pursue. According to Applicants, such credit support directly benefits SDG&E and its ratepayers.

39. Applicants state that, other than the Proposed Green Attributes Power Sale, which may be subject to Commission review under sections 205 and 206 of the FPA, the Proposed Transaction does not result in a new contract between Rim Rock Wind and SDG&E. Applicants state that the Proposed Green Attributes Power Sale allows SDG&E to acquire Green Attributes; they argue, however, that the Commission has the authority to review this agreement under section 205 of the FPA and that the benefits of the Proposed Green Attributes Power Sale will accrue to SDG&E's retail ratepayers.⁴⁶

40. Applicants state that the Proposed Green Attributes Power Sale does not raise cross-subsidization concerns because even if SDG&E paid at the price cap for the Green Attributes, the price would be a competitive, fair market price for SDG&E and its ratepayers. Finally, Applicants maintain that the Offset Agreement does not raise cross-subsidization concerns because it provides SDG&E long-term physical power at a price and location on terms that SDG&E believes offer a compelling value proposition on a stand-alone basis. SDG&E agreed to the Offset Transaction after extensive negotiations with the Offtaker. In addition, they state that SDG&E sought offers from various market participants in the Pacific Northwest for "essentially the same terms" as the Offset Transaction and received only one offer of comparable price.⁴⁷ Applicants state that the Offset Transaction provides "an excellent value proposition for SDG&E and its ratepayers."⁴⁸ In support of this assertion, Applicants state that, in addition to the physical power delivered at a price and location on a stand-alone basis, the Offset Transaction provides value over the ten-year term by protecting ratepayers from upward price movements, reducing SDG&E's hedging volumes, and providing a hedge on the

⁴⁶ Application at Exhibit M.

⁴⁷ Bartolomucci Affidavit at P 14.

⁴⁸ Bartolomucci Affidavit at P 31.

price SDG&E would otherwise pay to purchase the same amount of system resource adequacy product.⁴⁹

ii. Comments

41. Powerex states that there are unresolved issues with the MATL line that could prevent the Rim Rock Project from attaining and/or maintaining commercial viability.⁵⁰ For instance, Powerex casts doubt as to whether there will be sufficient ongoing available transfer capability for the Rim Rock Project to deliver its energy on the MATL transmission line. To support its protest, Powerex points to ongoing proceedings pending before the Canadian National Energy Board as well as the Alberta Utilities Commission that involve uncertainties pertaining to the MATL line.⁵¹ Due to these circumstances, Powerex alleges that the transactions in this proceeding “cause there to be potential” transfers of risk between ratepayers and the other parties involved in the transaction, including affiliated shareholders. Powerex believes that until the resolution of the aforementioned uncertainties, approvals of agreements that commit ratepayer funds in the Rim Rock Project and commitments to fixed-price long-term agreements are premature and the Commission should not find the transactions involved here to be consistent with the public interest.⁵² Cargill states that it shares Powerex’s concerns and agrees with Powerex that the Commission should not approve the Application until the concerns raised by Powerex are addressed.

iii. Answer

42. Applicants assert that Powerex’s protest is unfounded and beyond the scope of this proceeding.⁵³ They argue that Powerex has provided no basis to reject or delay this Application and that Powerex has not questioned Applicants’ showing that they meet the standards for Commission authorization pursuant to sections 203 and 205 of the FPA. Instead, Applicants argue that “the crux of the Powerex protest” is that SDG&E and its ratepayers might not have sufficient protection from the possible outcomes of pending decisions before two Canadian regulatory agencies.⁵⁴ Applicants state that ratepayer

⁴⁹ Bartolomucci Affidavit at P 31-35.

⁵⁰ Powerex Protest at 6.

⁵¹ *Id.* at 8-9.

⁵² *Id.* at 13.

⁵³ Applicants November 23, 2011 Answer at 7.

⁵⁴ *Id.* at 4.

advocates support the proposed transactions in this proceeding, the transaction documents provide flexibility to the parties to work through issues as they arise, and that, at this time, it is “far too speculative for the Commission to prejudge the resolution of the Canadian transmission access issues, their potential impact on the Applicants, or the adequacy of the contractual protections that safeguard SDG&E and its ratepayers from transmission access risk.”⁵⁵

iv. Commission Determination

43. We note that section 203(a)(4) of the FPA is “not an absolute prohibition on the cross-subsidization of a non-utility associate accompany or the pledge or encumbrance of utility assets for the benefit of an associate company.”⁵⁶ Such a cross-subsidization, pledge, or encumbrance may be permitted if it “will be consistent with the public interest.”⁵⁷ Based on the specific facts presented in the Application, we find that, even assuming that the Proposed Transaction involves a transaction between affiliates, Applicants have shown that the structure of the Proposed Transaction includes sufficient protections for ratepayers and is consistent with the public interest.

44. In support of this finding, we note that Applicants have structured the Proposed Transaction so that ratepayers will have priority returns on their invested funds before the shareholders of SDG&E.⁵⁸ This is an important feature in assuring that shareholders are not unduly benefitting from the ratepayer investment if the Rim Rock Project does not meet its projected returns. Second, the Settlement includes a Ratepayer Neutrality mechanism, which, according to Applicants, is intended to assure rate neutrality for SDG&E’s ratepayers “over the life of SDG&E’s tax equity investment.”⁵⁹ This mechanism allows ratepayers to be compensated for the time value of their invested funds.⁶⁰ Furthermore, Applicants, the DRA, and TURN, a ratepayer advocate group, all agreed to the terms of the Settlement, which settled all issues in the CPUC tax equity

⁵⁵ *Id.* at 2, 4-6.

⁵⁶ *Blanket Authorization Under FPA Section 203*, Order No. 708, 73 Fed. Reg. 11,003 (Feb. 29, 2008), FERC Stats. & Regs. ¶ 31,265, at n.4, *order on reh’g*, Order No. 708-A, 73 Fed. Reg. 43,066 (Jul. 24, 2008), FERC Stats. & Regs. ¶ 31,273 (2008).

⁵⁷ *Id.*

⁵⁸ Settlement Agreement at § 2(g)(v).

⁵⁹ Application at 40.

⁶⁰ *See* Settlement Agreement at § 2(h)(ii)-(v).

investment proceeding. Applicants state that the agreed upon Settlement was designed “[t]o reduce ratepayer risk” and to “impose[] real risk on SDG&E shareholders.”⁶¹ The Settlement and the underlying settlement negotiations provided an opportunity to examine the risks involved in the Proposed Transaction and provided ratepayers’ advocates with input as to how to best allocate that risk between ratepayers and shareholders.

45. As noted earlier, the Commission’s focus, as it pertains to cross-subsidization, has “been on preventing a transfer of benefits from a public utility’s captive customers to shareholders of the public utility’s holding company.”⁶² Because of the ratepayer protections agreed to in the settlement, shareholders will not benefit from the Proposed Transaction if there is no corresponding ratepayer benefit. For these reasons, we find that the Proposed Transaction is consistent with the public interest.

46. In addition, as discussed below, the Commission finds that, consistent with the standards for affiliate power sales laid out in *Boston Edison Company Re: Edgar Electric Energy Company (Edgar)*,⁶³ Applicants have provided reasonable assurance that no abuse of affiliate relationship is involved in the Proposed Green Attributes Power Sale, or in the Offset Agreement. Therefore, we find that these agreements are consistent with the public interest.

47. In addition, we find that Powerex and Cargill’s concerns regarding the MATL line are outside the scope of this proceeding. Although Powerex alleges that the Proposed Transaction “causes . . . the potential . . . for risk transfers between ratepayers and . . . affiliated shareholders,” it does not elaborate on that potential or explain how the alleged risk of the Proposed Transaction is likely to result in impermissible cross-subsidization.⁶⁴ Accordingly, we find that the issues raised by Powerex and Cargill are outside the scope of this proceeding because they are not relevant to our analysis under section 203 of the FPA.⁶⁵

⁶¹ *Id.* at 41 (citing CPUC Decision Approving Settlement).

⁶² Supplemental Policy Statement, FERC Stats. & Regs. ¶ 31,253 at P 13.

⁶³ 55 FERC ¶ 61,382 (1991).

⁶⁴ *See NSTAR*, 136 FERC ¶ 61,016, at n.76 (2011).

⁶⁵ *See Merger Policy Statement*, FERC Stats. & Regs. ¶ 31,044 at 30,127.

C. Section 205 Approval of the Proposed Green Attributes Power Sale

1. Applicants' Proposal

48. Applicants maintain that if the Commission concludes that authorization is required under section 205 of the FPA, the Commission should conclude that the Proposed Green Attributes Power Sale meets the Commission's standards for affiliate power sales under *Edgar*.⁶⁶ Applicants state that under the *Edgar* standard, "the Commission has stated that, in cases where affiliates are entering into market-based sales agreements, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted."⁶⁷ Applicants further state that to provide this assurance, the Commission requires a demonstration that the sale is reasonably priced compared to alternatives in the market, and has provided guidance regarding the showing that would be required to so demonstrate. Applicants maintain that under *Edgar*, evidence may take the form of: (1) direct, head-to-head competition with unaffiliated parties, either in a formal solicitation or an informal negotiating process; (2) a demonstration that the prices are similar to those non-affiliated parties would be willing to pay for similar services; or (3) a demonstration that the terms are comparable to prices, terms and conditions of sales made by non-affiliated sellers.⁶⁸

49. Applicants submit that the 2009 Renewables Solicitation is evidence that the Proposed Green Attributes Power Sale meets the Commission's standards for affiliate power sales. Applicants state that SDG&E compared the price SDG&E pays for bundled power under the Proposed Green Attributes Power Sale to third-party bids submitted in the 2009 Renewables Solicitation. Applicants maintain that even assuming that the price for Green Attributes was set at the cap authorized in the Settlement, the price for the bundled power under the Proposed Green Attributes Power Sale is extremely competitive with the prices offered to SDG&E in its 2009 Renewables Solicitation for bundled power.⁶⁹ Additionally, Applicants represent that SDG&E issued the 2009 Renewables Solicitation not long after SDG&E commenced its tax equity discussions with Rim Rock Wind.⁷⁰ Applicants note that the offers provide a broad base of pricing data for very

⁶⁶ 55 FERC ¶ 61,382.

⁶⁷ Application at 47 (citing *Allegheny*, 108 FERC ¶ 61,082 at P 18).

⁶⁸ Application at 47-48 (citing *Edgar*, 55 FERC at 62,169).

⁶⁹ Application at 49.

⁷⁰ Applicants explain that California utilities conduct formal solicitations each year pursuant to a framework proposed in their annual RPS Procurement Plan filings

(continued...)

long-term (e.g., 20 year) commitments for power generated by renewable generation projects located throughout the western United States. Thus, Applicants maintain, in the event that the price must be price justified, based on the best information available to SDG&E at the time, SDG&E believes that the price of its purchase from Rim Rock Wind is a fair market price for SDG&E and its ratepayers. Indeed, according to Applicants, SDG&E shortlisted and contracted with a number of parties submitting bids into the 2009 Renewables Solicitation, and the contract prices for bundled power in most cases are higher than the purchase price of bundled power from Rim Rock Wind.⁷¹

50. Applicants also state that in the event that the CPUC denied SDG&E authority to make the proposed tax equity investment, SDG&E alternately requested the CPUC to authorize the Proposed Green Attributes Power Sale on a stand-alone basis. They claim that had the CPUC approved the Proposed Green Attributes Power Sale without the tax equity transaction, SDG&E concluded that the price was beneficial to its ratepayers and proposed that the CPUC authorize this same Green Attributes price regardless of which approach was ultimately approved. Applicants claim that this fact provides further evidence that the price an unaffiliated buyer would be willing to pay under the Proposed Green Attributes Power Sale with Rim Rock Wind is comparable to the agreed-upon price.

51. Applicants maintain that even if the Commission were to conduct a separate evaluation of the price used for the resale of “null” power in isolation of the context of the Proposed Green Attributes Power Sale, the “null” power price is plainly not a below market price. Applicants argue that the price for the resale of “null” power back to Rim Rock Wind is higher than the price that Rim Rock Wind has negotiated to sell the same quantity of power to the Offtaker. Applicants thus argue that even if viewed in complete isolation from the context of the Proposed Green Attributes Power Sale, SDG&E’s sale of “null” power to Rim Rock Wind is at a sales price that is a good price for SDG&E and its ratepayers. Accordingly, they argue that the “null” power sale from SDG&E to Rim Rock Wind meets the Commission’s standards for permissible affiliate power sales transactions.⁷²

submitted to the CPUC. Due to delays in acting on California utilities’ filing, none of the California investor-owned utilities were able to hold renewables solicitations in 2010. Burkhart Affidavit at P 17, n.5.

⁷¹ Burkhart Affidavit at P 18.

⁷² Application at 50.

52. Additionally, Applicants contend that if the Commission views the Proposed Green Attributes Power Sale as the acquisition by SDG&E of “non-power goods or services” in the form of Green Attributes, subject to the pricing rules set forth in section 35.39(e) of the Commission’s regulations,⁷³ the Commission should conclude that the Proposed Green Attributes Power Sale is consistent with the Commission’s requirements. Applicants contend that applying the same type of *Edgar* analysis under section 35.39(e) of the Commission’s regulations to the price paid by SDG&E for Green Attributes, also demonstrates that there is no affiliate concern. Applicants note that at the time SDG&E and Rim Rock Wind were negotiating, there was little to no market for unbundled Green Attributes for California retail sellers.⁷⁴ Thus, to assess the competitiveness of the Green Attributes price, Applicants state that SDG&E derived a Green Attributes price by subtracting a proxy for their similar “null” power component from the prices offered for bundled power in the 2009 Renewables Solicitation.⁷⁵ Applicants state that the remainder provides the Green Attributes values impliedly embedded within the bundled power offers. Applicants compared the Green Attributes price under the Proposed Green Attributes Power Sale to the implied value of the Green Attributes embedded within the offers in the 2009 Renewables Solicitation and maintain that the price of the sale of Green Attributes from Rim Rock Wind to SDG&E is not “at a price above market.”⁷⁶

2. Commission Determination

53. Under the Commission’s regulations, no wholesale sale of electric energy may be made between a franchised public utility with captive customers and a market-regulated power sales affiliate without first receiving Commission authorization for the transaction under section 205 of the FPA.⁷⁷ The Commission has stated that in cases where affiliates

⁷³ Unless otherwise permitted by Commission rule or order, sales of any non-power goods or services by a market-regulated power sales affiliate to an affiliated franchised public utility with captive customers may not be at a price above market. 18 C.F.R. § 35.39(e) (2011).

⁷⁴ Burkhart Affidavit at P 25.

⁷⁵ Application at 51. The proxy used in the analysis for purposes of valuing the “null” power is discussed in the Burkhart affidavit.

⁷⁶ Application at 50-51; Burkhart Affidavit at P 22-29.

⁷⁷ 18 C.F.R. § 35.39(b) (2011). *See Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 467, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055,

(continued...)

are entering into sales agreements, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted.⁷⁸ In Order No. 697, the Commission adopted in its regulations affiliate restrictions intended to guard against behavior that could harm captive customers. We are not ruling on whether the Class B membership interests are passive, but will instead assume affiliation for purposes of the approvals granted under section 205 of the FPA.

54. In *Edgar*, the Commission explained that there may be several ways in which to demonstrate lack of affiliate abuse.⁷⁹ The Commission provided examples of ways to demonstrate lack of affiliate abuse, adding that it was not an all-inclusive list.⁸⁰ First, the utility may submit evidence of direct head-to-head competition between affiliated and non-affiliated suppliers either in a formal solicitation or in an informal negotiation process.⁸¹ Second, the utility may present evidence of the prices that non-affiliated buyers were willing to pay for similar services. This second type of evidence is credible only to the extent that the non-affiliated buyers are in the relevant market as the purchaser and are not subject to market power by the seller or its affiliates.⁸² Finally, the utility may provide “benchmark” evidence of the prices, terms and conditions of sales by non-affiliated sellers. This evidence can include purchases made by the utility itself or by other buyers in the relevant market. Two major considerations with respect to the credibility of benchmark evidence are whether the benchmark sales are contemporaneous and whether they are for similar services when compared to the transaction in question.⁸³

order on reh’g, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff’d sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011). In Order No. 697, the Commission stated that it will continue its approach for determining the types of affiliate transactions that are permissible and the criteria that should be used to make those decisions, including evaluation of the *Edgar* criteria. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 540.

⁷⁸ *Edgar*, 55 FERC at 62,167.

⁷⁹ *Id.* at 61,168.

⁸⁰ *Id.* See also Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 540.

⁸¹ *Edgar*, 55 FERC at 61,168.

⁸² *Id.* at 62,168-69.

⁸³ *Id.* at 62,169.

55. The Commission finds that the 2009 Renewables Solicitation allows Applicants to satisfy the third showing under *Edgar* and, thus meets the Commission's standards for affiliate power sales.⁸⁴ The analysis of bids resulting from the 2009 Renewables Solicitation provides evidence of prices a non-affiliated seller was willing to sell for bundled power in the relevant market. The offers provide a broad base of pricing data for long-term (e.g., 20 year) commitments for power generated by renewable generation projects located throughout the western United States, and Applicants assert that SDG&E issued the 2009 Renewables Solicitation not long after SDG&E commenced its tax equity discussions with Rim Rock Wind. Additionally, Applicants derived a Green Attributes price by subtracting a proxy for their similar "null" power component from the prices offered for bundled power in the 2009 Renewables Solicitation. The implied value of the "null" power embedded within the offers in the 2009 Renewables Solicitation, determined by subtracting Applicants' derived Green Attributes price, provides evidence of prices a non-affiliated seller was willing to sell for power in the relevant market.

56. The Commission finds that the submitted-evidence and representations of Applicants are sufficient to provide reasonable assurance that no abuse of affiliate relationship is involved in the Proposed Green Attributes Power Sale.⁸⁵ Thus, we authorize the sale of power including Green Attributes from Rim Rock Wind to SDG&E and the sale of the "null" power from SDG&E to Rim Rock Wind, pursuant to the Proposed Green Attributes Power Sale, effective as of the date of issuance of this order.

57. Further, with regard to the Offset Agreement, the Commission finds that the submitted-evidence is consistent with the third showing under *Edgar*. Applicants performed various analyses to assess whether a transaction at the Nevada-Oregon Border intertie could provide SDG&E with the same or similar benefits as could a transaction at the SP-15 trading hub where SDG&E typically transacts.⁸⁶ Applicants then determined the value of the power that SDG&E will be purchasing under the Offset Agreement by

⁸⁴ 18 C.F.R. § 35.39(b) (2011).

⁸⁵ The Commission finds it is unnecessary to consider the Proposed Green Attributes Power Sale as if it is simply a sale of Green Attributes from Rim Rock Wind to SDG&E. As discussed above, Applicants have demonstrated that the sale of bundled power and the sale of "null" power, pursuant to the Proposed Green Attributes Power Sale, satisfy the requirements of section 35.39(b) of the Commission's rules and regulations. The Commission has previously considered the component sales when evaluating such transactions and does so here. *See Idaho Wind Partners 1*, 134 FERC ¶ 61,217 (2011).

⁸⁶ Bartolomucci Affidavit at P 8-9.

taking into account expected losses and congestion costs as well as values for resource adequacy and import reserve credit and compared the value to SDG&E's negotiated purchase price under the Offset Agreement.⁸⁷

58. This order satisfies the requirement that Applicants first receive Commission authorization, pursuant to section 205 of the FPA, before engaging in power sales at market-based rates with a market-regulated power sales affiliate for the instant affiliate sales as described in the Application. However, Applicants must receive prior approval from the Commission under section 205 of the FPA for any other sales to affiliates with a franchised electric service territory and captive customers.

D. Other Considerations

59. Information and/or systems connected to the bulk power system involved in this transaction may be subject to reliability and cyber security standards approved by the Commission pursuant to section 215 of the FPA. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information databases, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cyber security standards. The Commission, the North American Electric Reliability Corporation or the relevant Regional Entity may audit compliance with reliability and cyber security standards.

The Commission orders:

(A) The Proposed Transaction is hereby authorized, as discussed in the body of this order.

(B) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of cost, or any other matter whatsoever now pending or which may become before the Commission.

(C) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

⁸⁷ Bartolomucci Affidavit at P 25-31

(D) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(E) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(F) Applicants must inform the Commission within 30 days of any material change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the Proposed Transaction.

(G) Applicants shall notify the Commission within 10 days of the date on which the Proposed Transaction is consummated.

(H) The application for authorization for Rim Rock Wind to make sales of bundled power to SDG&E, and for SDG&E to immediately sell “null” power back to Rim Rock Wind, pursuant to the Proposed Green Attributes Power Sale, is granted, effective as of the date of issuance of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.