BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion to actively promote the development of transmission infrastructure to provide access to renewable energy resources for California.	FILED PUBLIC UTILITIES COMMISSION MARCH 13, 2008 SAN FRANCISCO OFFICE INVESTIGATION 08-03-010
Order Instituting Rulemaking on the Commission's Own Motion to actively promote the development of transmission infrastructure to provide access to renewable energy resources for California.	FILED PUBLIC UTILITIES COMMISSION MARCH 13, 2008 SAN FRANCISCO OFFICE RULEMAKING 08-03-009

REPLY COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY REGARDING AMENDMENTS TO PUBLIC UTILITIES CODE SECTION 399.2.5

Paul A. Szymanski
Senior Attorney
San Diego Gas & Electric Co.
101 Ash Street, HQ 12
San Diego, CA 92101
Phone: 619/699-5078
Fax: 619/699-5027
pszymanski@semprautilities.com

December 20, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion to actively promote the development of transmission infrastructure to provide access to renewable energy resources for California.	FILED PUBLIC UTILITIES COMMISSION MARCH 13, 2008 SAN FRANCISCO OFFICE INVESTIGATION 08-03-010
Order Instituting Rulemaking on the Commission's Own Motion to actively promote the development of transmission infrastructure to provide access to renewable energy resources for California.	FILED PUBLIC UTILITIES COMMISSION MARCH 13, 2008 SAN FRANCISCO OFFICE RULEMAKING 08-03-009

REPLY COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY REGARDING AMENDMENTS TO PUBLIC UTILITIES CODE SECTION 399.2.5

INTRODUCTION

Pursuant to the November 9, 2010 Administrative Law Judge's Ruling Requesting Comments on Assembly Bill 1954 ("Ruling"), San Diego Gas & Electric Company ("SDG&E") submits these reply comments to certain parties' opening comments regarding the statutory amendments to Public Utilities Code § 399.2.5 that were approved through Assembly Bill ("AB") 1954 effective January 1, 2011.[1] The amendments clearly show that the legislature intends for the Commission to adopt *new, facilitating* measures that would change the status quo with respect to the implementation of Section 399.2.5. It should hardly come as a surprise that the legislature would direct such new steps, because other than the one unique and never-to-be-repeated instance in which Section 399.2.5 was applied, this statute has not been utilized despite

[1] SDG&E received opening comments from the Division of Ratepayer Advocates (DRA); the Large-Scale Solar Association (LSA); Pacific Gas & Electric Company (PG&E); and Southern California Edison Company (SCE).

the undeniable need for further, accelerated efforts to plan for and build new transmission facilities in California. Accordingly, the statutory amendments are a clear and pointed "nudge" by the legislature, to the Commission, to "facilitate" the implementation of the statute.

However, certain suggestions made in Opening Comments would undermine – not facilitate – the legislature's objectives. As discussed further below, these suggestions disregard the legislature's objectives to clarify and streamline the cost-backstopping mechanism and would make more difficult, if not impossible, a utility's Section 399.2.5 showing, contrary to the legislature's "facilitative" objective and provide less certainty that the Commission indeed will backstop prudently incurred costs that are later found not to be recoverable through rates set by the Federal Energy Regulatory Commission ("FERC").

Earlier this year, pursuant to the January 12, 2010 Scoping Memo and Ruling of Assigned Commissioner Peevey, SDG&E filed briefs in this proceeding that dealt with many of the issues now raised by the statutory amendments[2] and that certain parties have addressed in their opening comments. SDG&E requests that the Commission consider SDG&E's prior comments and act promptly to "actively promote" the new statutory amendments in a manner consistent with the legislature's directive to "facilitate" the State's RPS.

In the discussion below, SDG&E responds to the Ruling's questions (1) and (2) together, and questions (3) and (4) together.

[2] SDG&E incorporates by reference its February 17, 2010 and March 4, 2010 comments filed in response to the January 12, 2010 Ruling which advocated the broad use of advice letters to help facilitate and streamline the implementation of Section 399.2.5.

DISCUSSION

1. **What format should the Commission prescribe for a utility's certification in its advice letter "that it expects that the facility will be necessary to facilitate achievement of the renewables portfolio standard…?" Please provide proposed language and/or a sample format.**
2. **What showing should the Commission require a utility to make to support the utility's "expect[ation] that the facility will be necessary to facilitate achievement of the renewables portfolio standard…?"**

As SDG&E explained in its Opening Comments, the amendments direct the Commission to make a determination of "eligibility for cost recovery" for certain categories of transmission-related costs based simply on an electric utility's advice letter submission. In submitting the advice letter's request for an eligibility determination, the advice letter must indicate that the utility "expects that the facility will be necessary to facilitate achievement of the renewables portfolio standard" in California. Because the primary purpose of Section 399.2.5 continues to be "to facilitate achievement" of the State's Renewables Portfolio Standard (RPS) goals, the suggestions from parties that the Commission adopt additional or more onerous requirements are simply off-base and should be disregarded.

For example, DRA recommends, contrary to the statutory purpose, that the Commission adopt, "as a starting point," a showing requirement consisting of the so-called "three-prong" approach applied but once in the shallow history of the backstopping statute.[3] DRA's recommendation fails to reconcile the three-prong approach with the statutory mandate "to facilitate achievement of the RPS" or any other aspect of the statutory text. The three-prong approach would stand as insurmountable edifice that would continue to render Section 399.2.5 an inert statute because it would impose more requirements than the statute requires and would not streamline the backstop cost recovery of eligible transmission facilities. SDG&E has already

[3] DRA at 5.

submitted in this proceeding its opposition to the further use of this approach and reiterates that opposition here as inconsistent with the statutory amendments.[4]

Although DRA recommends the use of the three-prong approach "as an effective tool," despite the absence of any support that the "tool" would be effective, DRA also recommends certain substantial changes to each prong of the approach. Again, SDG&E's earlier comments are applicable to DRA's recommendation. For example, the "otherwise unavailable" or "otherwise deliverable" prong is not statutorily mandated and appears to impose a requirement that is separate from, or in addition to, the requirement that the utility explain how the proposed facilities are "necessary to facilitate" the RPS. Either the proposed verbiage reiterates the statutory requirement, in which case it is redundant, or it supplements the statute, which would obfuscate the statutory intent to "facilitate."

DRA wants to modify the "second prong" of the approach proposed earlier by the Commission. The Commission's proposed "second prong" is as follows: "That the area within the line's reach would play a critical role in meeting RPS goals." DRA would change the second prong to read "That the area within the line's reach is in a competitive renewable energy zone (CREZ) or area that has been RETI, or similarly stakeholder vetted." As noted above, SDG&E does not believe the Commission's proposed three-prong test is helpful in carrying out the intent of the legislature's "necessary to facilitate" language. DRA's requested modifications would depart even further from legislative intent and should not be considered. The Commission should review advice letters for consistency with the statutory requirements and approve those advice letters that meet the requirements. Intervenors may protest a Section 399.2.5 advice letter filing; however, the Commission's review does not entail convening or incorporating a separate

[4] See Opening Brief of San Diego Gas & Electric Company in Response to Assigned Commissioner's Scoping Memo and Ruling, dated February 17, 2010, at 5-6.

stakeholder process, as DRA suggests. Further, SDG&E does not believe it will always be the case that "stakeholder vatted" renewable resource development areas will be the only "area[s]" where attractive renewable resource development potential exists and therefore where transmission infrastructure additions would make sense. Finally, the term "RETI, or similarly stakeholder vetted" is ambiguous because (i) it is uncertain that RETI will continue to exist in the future, (ii) there is no clear definition of who a "stakeholder" is, and (iii) there is no clear way to determine if a renewable resource development area has been vetted by stakeholders in a manner that is "similar[]" to how RETI would have vetted the same renewable resource development area. As noted in SDG&E's Opening Comments, the Commission should require that the utility's advice letter contain sufficient information to satisfy the statutory text, no more and no less.

Some parties, including SDG&E, noted in their Opening Comments that contents of the advice letter will vary because the proposed transmission facilities and associated circumstances will vary among projects. The Commission should therefore not prescribe a "one-size-fits-all" format or prescribe specific text that would not allow for the flexibility needed to reflect the variety of circumstances under which a cost-backstopping eligibility determination may be sought. The Commission, following the receipt of parties' briefs, should prescribe a simple, straight-forward advice letter process that can be applied in these various circumstances. With a clear and consistently applied process, the review of Section 399.2.5 advice letters would not "become embroiled in the various State and federal transmission planning efforts or would be susceptible to an ad hoc assessment of 'need' and/or 'cost recovery' before the Commission acts

on a Section 399.2.5 request."[5] Rather, "[a] utility should be able to file a straight-forward Section 399.2.5 advice letter request, and the Commission should act upon it affirmatively if the utility shows the request is 'necessary to facilitate achievement' of State RPS goals."[6]

3. **What types of "costs incurred prior to permitting or certification" should be eligible for approval of cost recovery pursuant to § 399.2.5(c)(2)? What types of pre-permitting or pre-certification costs should not be eligible? Please be specific about the types of costs and the justification for concluding that each type should or should not be eligible for cost recovery pursuant to § 399.2.5(c)(2)?**
4. **Notwithstanding the prudency review required by § 399.2.5(c)(2), should the Commission place limits on the amount of "costs incurred prior to permitting or certification" that could be approved when presented by advice letter as authorized by § 399.2.5(c)(2)? If the Commission should impose limits on approval of pre-permitting or pre-certification costs, please propose a method for determining what the limits should be.**

In SDG&E's Opening Comments, SDG&E indicated that the statutory amendments do not dictate any limitations on either the types or amounts of costs identified in the statute. The fact that the statute has no such limitations makes sense because facilities that would further the statutory objective can vary greatly as would the pre-permitting and pre-construction costs for such facilities. SDG&E recommends that the Commission impose no such limitations in order to adhere closely to the statutory text and also so as not to preclude the backstopping of costs for eligible facilities.

Despite the legislative text, DRA recommends that:

> Costs eligible for cost recovery pursuant to § 399.2.5(c)(2) should be limited to direct, project-specific costs for items such as feasibility studies, legal and consulting services, and project engineering that are incurred prior to permitting or certification. No construction costs, whether capital or expense, should be

[5] Reply Brief of San Diego Gas & Electric Company in Response to Assigned Commissioner's Scoping Memo and Ruling, dated March 4, 2010, at 3-4.
[6] Id. at 4.

> eligible for recovery pursuant to § 399.2.5(c)(2), as these costs should be included in the cost estimate contained in the utility's application for a CPCN or Permit to Construct (PTC) for the project.[7]

DRA's recommendation is unsupported by the statute or any other rationale. The effect of the recommendation is to supplant the legislature's text with DRA's own opinions and recommendations. DRA's cost-limiting proposal runs counter to the directive to "facilitate" achievement of the RPS. The plain language of the statute provides that all costs for eligible facilities not otherwise recoverable through FERC-jurisdictional transmission rates, related to construction as well as pre-permitting and pre-construction activities, are eligible to be considered for recovery under Section 399.2.5.

DATED this 20th day of December 2010 at San Diego, California.

Respectfully submitted,

/s/ Paul A. Szymanski

Paul A. Szymanski
Senior Attorney
San Diego Gas & Electric Co.
101 Ash Street, HQ 12
San Diego, CA 92101
Phone: 619/699-5078
Fax: 619/699-5027
pszymanski@semprautilities.com

[7] DRA at 4.

CERTIFICATE OF SERVICE

I hereby certify that a copy of **REPLY COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY REGARDING AMENDMENTS TO PUBLIC UTILITIES CODE SECTION 399.2.5** has been electronically mailed to each party of record of the service list in I.08-03-010 and R.08-03-009. Any party on the service list who has not provided an electronic mail address was served by placing copies in properly addressed and sealed envelopes and by depositing such envelopes in the United States Mail with first-class postage prepaid.

Copies were also sent via Federal Express to the assigned Administrative Law Judges and Commissioner.

Executed this 20th day of December, 2010 at San Diego, California.

/s/ Jenny Norin

Jenny Norin