June 29, 2011

Mr. Honesto Gatchalian
Ms. Maria Salinas
CPUC Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102

Re: Western Power Trading Forum Protest of SDG&E Advice Letter 2258-E

Dear Mr. Gatchalian and Ms. Salinas:

The Western Power Trading Forum ("WPTF")[1] respectfully submits the following protest to Advice Letter 2258-E, filed by San Diego Gas & Electric Company ("SDG&E") on June 9, 2011. This protest is therefore timely filed. The advice letter seeks approval from the California Public Utilities Commission ("Commission") to amend the existing *Master Power Purchase & Sale Agreement* (Bethel Solar 1 Facility) with MMR Power Solutions, LLC ("MMR") ("PPA"). This proposed amendment, the *Amended and Restated Fourth Amendment*, is between SDG&E, MMR, and USS Energy Star 2 LLC ("USS Energy Star") (the "Proposed Amendment").

As explained in greater detail below, this Advice Letter and the Proposed Amendment should be rejected for several reasons:

- The Bethel Solar 1 Facility has undergone technology and developer changes since it was originally bid in 2005 and is not the same project selected in the 2005 competitive solicitation. The project it purports to be, that was indeed awarded a contract in the 2005 competitive bid, no longer exists.
- Developers that are awarded an RPS contract should be required to live up to their contractual commitments. In contrast, MMR has missed its development milestones repeatedly.
- MMR proposed to change the technology for this project to PV. The PV market has experienced dramatic price reduction in the past two years. In the interest of consumers, the Commission should reject the Proposed Amendment with its stale pricing.

[1] WPTF is a California non-profit, mutual benefit corporation. It is a broadly based membership organization dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants.

- Given that the project's commercial operation date is not scheduled until September 2013, there is no reason that the existing contract cannot or should not be terminated and the project rebid into the RPS solicitation currently underway. This is especially true because the project is above the 2009 Market Price Referent. If this project is truly viable and cost competitive, it would fare well in that solicitation.

Discussion

It is widely acknowledged that project viability is a serious problem in both the California RPS and conventional markets. Time and again market participants have seen contracts awarded to projects with questionable viability. Low bidders in utility Requests for Offers ("RFOs") are awarded contracts but then some time later concede they are unable to comply with the terms of their original bids. This pattern of developers underbidding projects in competitive solicitations undermines the quality and validity of the competitive process. In turn, this works to the disadvantage of consumers who forfeit the benefit obtained from legitimate competition in the solicitation process.

The Advice Letter in fact concedes that the Proposed Amendment contains many of these objectionable features. It reveals that this project was originally submitted as part of the 2005 RPS solicitation as a concentrating solar thermal project, which was scheduled to begin commercial operations in June and December of 2008. Subsequently, many changes were made. First, the developer was changed, next the technology was changed to a biomass/CSP hybrid, and finally the COD was delayed to December of 2009.[2] Then on September 24, 2009, two more amendments were made. Now, three years after the original project was to come on-line, the advice letter proposes to change the developer, the technology, the size, and the COD, among other aspects. Furthermore, although SDG&E notes on page 1 that the price was not changed throughout this tangled web of project changes, it concedes on page 12 that the project is priced above the Market Price Referent.

For the integrity of the RPS procurement process, WPTF believes the Commission should reject a project that has failed to meet its contractual commitments. Contractually, the utilities are at or near the RPS standard. The lion's share of the RPS market for new contracts is essentially the projects that fail to meet their prior commitments. Given that the ISO received another 34,000 MW of interconnection requests in the March 2011 interconnection window, the RPS market in California is clearly competitive. There is no reason why a project that has failed to meet its contract commitment should not be terminated, allowing other developers to bid to compete to satisfy the RPS need. Consumer will benefit.

Also, a less lenient approach to contract failure will ultimately lead to a stronger RPS program. Given the status of California utilities in meeting the RPS targets, there is no project so special that it does not have to meet its contractual commitments and make the case that it is cost competitive. This is especially true given the dramatic price decreases in the PV market, in particular. In short, utilities can be selective and there is nothing in the advice letter that explains why this project is so special that it should not be terminated for failing to meet its commitments and allowed rebid to prove its price competitiveness. If this project is truly viable and cost

[2] Advice Letter, at p. 1.

competitive, its mature development should mean, among other advantages, that it has less risk than a completely grass-roots project. Indeed, this reduced risk should be a competitive advantage in an open solicitation, and its bid price in that solicitation should reflect that advantage.

In the view of WPTF, the Advice Letter epitomizes a major flaw with the current competitive solicitation process. Weak projects push out real ones in RFOs, only to get "bailed out" through contract amendments when they fail. Given that SDG&E has an RFO currently underway, there is no reason why this contract should be approved. Rather, the Commission should direct SDG&E that it should be terminated and (should the new sponsors so desire) rebid in the RFO. Such an action would send a proper message to the market that project viability matters and that if a developer makes a contractual commitment it should live up to that commitment or face termination.

WPTF thanks the Commission for its attention to these comments.

Respectfully submitted,

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