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Mr. Honesto Gatchalian
Ms. Maria Salinas
California Public Utilities Commission
Energy Division
505 Van Ness Avenue
San Francisco, CA 94102

RE: RESPONSE OF SAN DIEGO GAS & ELECTRIC (SDG&E) TO DIVISION OF RATEPAYER ADVOCATES AND BACKCOUNTRY AGAINST DUMPS PROTEST OF ADVICE LETTER 2270-E (REQUEST FOR APPROVAL OF RENEWABLE POWER PURCHASE WITH:

1. LanEast Solar Farm, LLC ("LanEast");
2. LanWest Solar Farm, LLC ("LanWest");
3. Desert Green Solar Farm, LLC ("Desert Green");
4. Rugged Solar LLC ("Rugged"); and,
5. Tierra Del Sol Solar Farm, LLC ("Teirra Del Sol").

INTRODUCTION

In accordance with Section 7.4.3 of General Order ("GO") 96-B, San Diego Gas & Electric Company ("SDG&E") hereby responds to the Confidential Protest of Advice Letter No. 2270-E ("AL 2270-E") filed by the Commission's Division of Ratepayer Advocates, and the additional protest submitted by Backcountry Against Dumps, The Protect Communities Foundation, and the East County Community Action Coalition (collectively, "BAD"). AL 2270-E requested Commission approval of proposed power purchase agreements ("PPAs") between SDG&E and LanEast, LanWest, Desert Green, Rugged, and Tierra del Sol ("Soitec") for the output of the five solar facilities of up to 155 MW of capacity to be constructed near Boulevard and Borrego Springs, CA and directly interconnected to the SDG&E transmission system (the "Projects").

As discussed further below, the DRA protest should be denied because it seeks to reject the PPAs which are the result of following the Commission-approved methodology, are competitively priced, and recommended by the Independent Evaluator.

Likewise, the BAD protest should be denied because it raises issues related solely to the Project that are outside the scope of the Commission's review of the proposed PPAs and have already been or will be addressed by agencies with proper jurisdiction over the subject matter – including this Commission.

RESPONSE TO DRA

DRA states at page 1 of its protest that the PPA price and the transmission upgrade costs are too high compared to market alternatives and, at Page 2, the Commission should reject the advice letter unless SDG&E negotiates lower prices.

DRA states: The PPA price and the transmission upgrade costs are too high compared to market alternatives.

The 5 proposed PPAs are each priced above the applicable Market Price Referent ("MPR"), which in this case is \$129.25/MWh. Given the growing maturity of the renewable market and the consistently lower prices of renewable contracts brought forth by the utilities in the past year, especially in response to the recently completed renewable Requests for Offers ("RFOs"), there is no reason to approve contracts priced above the MPR.

However, since San Diego Gas & Electric ("SDG&E") could bear up to the maximum upgrade costs allowable under the contracts, the highest possible all-in costs should be considered.

DRA's point that the proposed PPAs are each "priced above the Market Price Referent Price" is irrelevant. SDG&E points out that the majority of the RPS contracts that have been entered into by all of the California IOUs have been above the Market Price Referent ("MPR"), and that is not surprising. The MPR was developed as a tool by which to gauge the extent to which the cost of RPS energy exceeded the generic price of system power, and by which to measure the amount of available above market funds collected through ratepayer surcharges that could be refunded to ratepayers to offset the higher costs of renewable energy. The simple fact that a particular PPA is priced above the MPR has never been the basis for the Commission's rejection of it, particularly when the pricing is competitive with contemporaneous offers in a Commission-authorized solicitation.

DRA's comment on transmission costs fails to acknowledge that the transmission upgrade costs for all projects are unknown until the CAISO completes the interconnection and deliverability studies for such projects. SDG&E followed the established methodology, including the reliance on the TRCR, in its evaluation of the Soitec Projects. The TRCR adder that SDG&E uses as a proxy for actual costs was established by the Commission to provide an estimated value calculated for use in comparing projects in the least-cost best-fit analysis. The TRCR is not a part of the contract pricing. Transmission upgrade costs will be known only when the CAISO completes the interconnection and deliverability studies. The Commission established the TRCR - a short annual report - for the sole purpose of providing conceptual cost estimates to assist utilities in comparing generator bids and to give developers some idea what transmission might cost; the Commission has explicitly found that the TRCR is not appropriate to use for reliability planning or interconnection studies. Thus, it is simply an analytical tool that assumes that the interconnection cost for all projects in the TRCR cluster is equal on a per megawatt-hour basis. In contrast, the GIP requires detailed engineering studies to identify the facilities and cost of interconnecting a specific project.

The CAISO tariff, as amended from time-to-time and approved by the Federal Energy Regulatory Commission ("FERC."), governs interconnection of generation to California's grid. SDG&E (as the Participating Transmission Owner under the tariff) must reimburse

interconnection customers (such as generation developers) for the cost of network upgrades needed to ensure delivery of their full capacity to the grid. This practice is mandated by paragraph 12.3.2 of the GIP.

DRA states: The Commission should reject the Advice Letter unless SDG&E negotiates lower prices.

The Soitec PPAs were evaluated and selected using SDG&E's Commission-authorized methodology for its RPS solicitation. The Independent Evaluator accountable to the Commission for an independent analysis and recommendation concerning the proposed PPAs has found the terms to be competitive and recommends approval of the PPA. The Commission should concur.

For all of these reasons, DRA's protest should be denied.

BADS PROTEST HAS NO MERIT

BAD's Protest has nothing to do with the Commission's approval of the Advice Letter and the proposed PPAs with the Soitec Projects. It complains about a number of topics outside the scope of the Advice Letter approval process, and asks the Commission to conduct an environmental review of the projects themselves as part of its consideration of the pricing and terms of the PPAs. BAD's argument is flawed and should be rejected. The Commission specifically limits the scope to "approval of SDG&E's anticipated costs as reasonable." In approving SDG&E's PPA with Esmeralda Truckhaven Geothermal, the Center for Biological Diversity ("CBD") and the Sierra Club protested SDG&E's AL 1963-E and AL 1963-E-A, contending, among other things, that the Commission must conduct a CEQA review of the underlying power plant development. In Resolution E-4171, the Commission explained why CBD's protest was mistaken:

The second part of CBD's protest called for Commission approval to be conditioned upon CEQA review and approval of the project. Protestants' arguments regarding CEQA lack merit for several reasons. First, the scope of this resolution is confined only to approval of SDG&E's anticipated costs as reasonable and the Commission herein expresses no opinion about any issue other than SDG&E's anticipated costs. Second, approval of SDG&E's anticipated costs (not the development plans) is not an "approval" of a "project" within the meaning of CEQA. (Public Resources Code Section 21065; CEQA Guidelines, Cal. Code Regs., tit. 14, §§ 15352(a), 15378.) Lastly, approval of this contract is not an "essential step" which commits the Commission to any particular course of action. For these reasons, protestants' arguments lack merit.

Approval of this contract does not in any way limit the review of project alternatives should future environmental reviews of the development projects require such analysis. Further, by this resolution the Commission is granting no rights to develop property and is not binding itself or any other party to any particular development plan. The Commission merely finds that, should the contemplated development plans come to fruition, SDG&E may account for such deliverables as a renewable energy resource, may recover certain costs in rates, and may enter into contracts with various parties.

It should also be noted that, on the federal level, the project is located on BLM land. The BLM will undertake the necessary environmental review pursuant to the National Environmental Policy Act.

While this resolution is approving the contract between the two entities, not the development of the facility itself, any project, as defined by CEQA, is subject to all applicable environmental laws. As such, the project will not go forward without meeting the relevant environmental laws and thus the ratepayer will not be subject to purchasing generation if the project is not built. Thus, the Commission does not condition the approval of the PPA on CEQA. Emphasis added. Resolution E-4171 at 15-16.

Moreover, as the Commission has previously pointed out, PPA approval does not exempt the project that may sell electricity pursuant to the PPA from compliance with all applicable environmental laws. Here, the potential environmental impacts of the Soitec Projects are being analyzed by multiple agencies, including the Commission, to the extent required by law under both CEQA and the National Environmental Policy Act (“NEPA”) (and in certain circumstances the analysis extends beyond what CEQA and NEPA would otherwise require). BAD’s Protest is a misplaced attempt to expand the scope of the specific inquiry here.

Even assuming that approval of a PPA could be considered a “project,” which would be contrary to law, it would be exempt from CEQA review under 14 Cal. Code Regs. § 15273 as a step toward establishment of SDG&E’s rates and under 14 Cal. Code Regs. § 15061(b)(3) because there is no possibility that the approval of the PPA, in and of itself, will have a significant effect on the environment. Under Cal. Pub. Resources Code § 21080(b)(8), CEQA does not apply to the “establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of ... (B) purchasing or leasing supplies, equipment, or materials.” *Accord*, 14 Cal. Code Regs. § 15273. Through its PPAs with the Soitec Projects (like all other PPAs), SDG&E is seeking to obtain supplies of electricity for its customers. Moreover, under 14 Cal. Code Regs. § 15061(b)(3), the approval of a PPA falls within the general rule that “CEQA applies only to projects, which have the potential for causing a significant effect on the environment.” This “commonsense exemption” applies where there is no possibility that the activity in question will significantly impact the environment. The purpose of seeking Commission approval of PPAs is to obtain approval to include the costs incurred under the PPA in rates. This activity has no potential to impact the environment. Thus, even if approval of a PPA were a CEQA “project,” which it is not, it would be exempt under both of the foregoing exemptions.¹

CONCLUSION

The protests of DRA and BAD should be rejected. DRA’s concern that the PPA price and transmission upgrade costs are too high ignores the approved methodology for the selection of

¹ If the Commission were required to rely upon the exemption, which it need not do, then, under Cal. Pub. Resources Code § 21080(b)(8), the Commission would have to “incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.” In addition, the Commission may choose to file a Notice of Exemption. 14 Cal. Code Regs. §§ 15061(d), 15062(a).

such projects. DRA cites above-MPR PPA costs but this is common for renewable energy projects. DRA also cites potential transmission costs which weren't known at the time the PPAs were negotiated. However, exposure to high transmission upgrade costs is limited in the PPA. DRA's proposal to reject the AL on the basis of PPA prices that are within the range of other projects accepted by SDG&E and approved by the Commission could have a long-term chilling effect on the entire procurement process.

BAD's protest has little, if anything, to do with the proposed PPAs and the Commission should reject it. The "issues" raised by BAD are all outside the scope of the Commission's review of the proposed PPA and are not an appropriate basis for a protest.

The PPA is competitively priced and a good value for ratepayers. The Commission should deny the protests and approve the PPA as requested in AL 2270-E.

Respectfully submitted,

Clay Faber
Director – Regulatory Affairs

cc: President Michael Peevey
Commissioner Timothy Alan Simon
Commissioner Catherine J.K. Sandoval
Commissioner Michael Peter Florio
Commissioner Mark J. Ferron
General Counsel Frank Lindh
Chief ALJ Karen Clopton
Director of the ED Julie Fitch
Paul Douglas
Jason Simon
Cynthia Walker - DRA
Donna Tisdale - President, Backcountry Against Dumps
Service List in R.11-05-005