

implement a forward capacity market but hopes the Commission, faced with the Sutter situation and apparently agreeing the situation presents circumstances calling for a solution, will reconsider its prior rulings. To do otherwise would be to ignore the underlying issues the Draft Resolution attempts to solve.

2. Comparative Merit of the Draft Resolution

Although the parties submitting comments on the Draft Resolution uniformly oppose its adoption, SDG&E takes a different approach. As made clear in the comments filed by the California ISO, the ISO is in agreement with the Draft Resolution that a regulatory intervention of some type is necessary to prevent Sutter from carrying out the looming threat to retire that generating facility prematurely. The California ISO has already taken the step of filing for a waiver of the eligibility provisions of its Capacity Procurement Mechanism tariffs with the Federal Energy Regulatory Commission.³ Under this waiver, the California ISO would pay Sutter a price considerably in excess of documented, prevailing California market prices for resource-adequacy capacity from July 1, 2012, through the end of the year. As the Draft Resolution discusses, the price the California ISO is willing to pay and pass through to ratepayers is several times the costs the Draft Resolution implies would be just and reasonable.

SDG&E generally agrees with the parties opposing the adoption of the Draft Resolution that regulatory interventions are poor solutions to market failures. As SDG&E acknowledged in its Opening Comments, its own strong predisposition is to oppose the adoption of the Draft Resolution. Nevertheless, SDG&E looked beyond its predisposition and agreed to negotiate with Sutter under the terms of the Draft Resolution, subject to certain clarifications and the cure of various omissions identified in our Opening Comments. (Most important among these clarifications was SDG&E's request that the Commission explicitly consider the effect of the so-called "Path 26 Counting Constraint". This current rule prevents SDG&E from procuring resources from northern California above a certain level – because SDG&E is substantially subscribed to that level for the 2012 compliance year, the Commission should either exempt SDG&E from the Draft Resolution's directions to negotiate a 2012 contract with the Sutter facility or waive the application of the rule so as to permit SDG&E to "count" any Sutter contract towards its 2012 resource-adequacy obligations.) What led SDG&E to these positions was our conclusion that some regulatory intervention would likely be imposed by some agency. Rather than leave it to the Federal Energy Regulatory Commission and the California ISO to waive the fundamental eligibility provisions of the ISO Capacity Procurement Mechanism and pay Sutter an administratively determined, and considerably higher,

³ See *Comments of the California ISO*, January 31, 2012, at p.1.

tariff price for Sutter's capacity during a period when the facility was not needed to meet the ISO's grid-reliability needs,⁴ SDG&E reached the conclusion a negotiated price over which it had at least some control represented a superior option to the alternative crafted by the ISO.⁵ SDG&E believes other parties have reached similar conclusions⁶ but could not bring themselves to support what essentially amounts to a lesser of two evils. SDG&E understands the attraction of this principled approach, but nonetheless reiterates its willingness to negotiate in good faith with Sutter under the terms of the Draft Resolution. A refusal to do otherwise will leave our ratepayers exposed to the proposal of the California ISO and the views of a distant federal agency possessed of its own "principles", all at a cost significantly higher than SDG&E would be willing to pay of its own volition under the market conditions known to SDG&E. At present, SDG&E supports the Draft Resolution over the California ISO tariff waiver simply because, in our view, it is worth a try.

Finally, SDG&E submits the Commission should update the relative costs of the California ISO-proposed procurement shown in the Draft Resolution. In the tariff-waiver filing referenced in its opening comments, the ISO has proposed granting Sutter a Capacity Procurement Mechanism designation for six months rather than the ten months noted by the Draft Resolution.⁷ The ISO also indicates Sutter must

⁴ The California ISO justifies its own market intervention based on its assessment of system needs for flexible, dispatchable generating capacity five to six years in the future due to various changes it expects in the California resource mix. SDG&E notes it is by no means a settled matter how much dispatchable generating capacity will be needed within the California ISO balancing authority area to accommodate expected increases in the amount of intermittent renewable generation nor is there much certainty as to the timing of these needs.

⁵ Although the California ISO expresses the belief its Sutter solution is a one-time event, SDG&E is even less certain of this assertion in the context of the ISO's proposed solution than we are in the context of the Draft Resolution. While the California ISO indicates it has no other pending requests for a tariff waiver and does not expect another, the ISO action is justified on the basis of a *circa* 2017-2018 reliability need several times greater than Sutter's capacity. Under these circumstances, SDG&E believes the California ISO would be hard-pressed to resist discrimination claims asserted by any other generator without a resource-adequacy contract until the full extent of the purported "need" was satisfied by similarly situated generating facilities and owners. Given the generous prices being offered by the California ISO to Sutter, there is, at minimum, considerable incentive for others to give it "the college try". In the case of the Draft Resolution, the Commission is acting under its discretionary authorities and limits claims of similarity, at least facially, to dynamically scheduled units delivering energy via pseudo-ties.

⁶ See *Comments of Southern California Edison Company*, January 31, 2012, at pp.3 to 4, noting that "a price below the suggested floor price [in the Draft Resolution] may well be appropriate", but eschewing this price on the apparent belief the California ISO's "proposal as filed will likely be unsuccessful at FERC"; also, *Comments of the Division of Ratepayer Advocates*, January 31, 2012, at p.2, where the Division indicates the utility-negotiated price "would be preferable to the possibility that Sutter might receive a [Capacity Procurement Mechanism] designation"; see also *Comments of the Coalition of California Utility Employees*, January 31, 2012, at p.3, and the *Comments of the California Large Energy Consumers Association*, January 31, 2012, at p.2, where those parties indicated the utilities could try to negotiate a lower price than offered by the California ISO to Sutter but, with the ISO price already on the table, the utilities may have been robbed of any negotiating leverage or will be unsuccessful because Sutter will simply hold out for the price the ISO is willing to pay.

⁷ Compare Draft Resolution at p.3, note 6, with *California ISO Petition for Waiver of Tariff Revisions and Request for Confidential Treatment*, FERC Docket No. ER12-897-000, January 25, 2012, at pp.4, and 36 to 37.

undergo certain maintenance that will render the unit unavailable until July 2012.⁸ The ISO estimates these factors will cap the 2012 costs of its proposal at \$17.4 million,⁹ rather than the \$29.5 million described in the Draft Resolution. Because the Draft Resolution adopts the monthly costs of the ISO proposal for a nine-month period as the upper bound of the contract costs the utilities should negotiate with Sutter, SDG&E submits the Draft Resolution should be modified to use the lower figure, *i.e.*, \$17.4 million, set forth in the California ISO tariff-waiver filing.

3. Ratemaking Flexibility

In its comments, PG&E requested, in lieu of the filing of a new, special nonbypassable charge by which the utilities would recover the costs of any contracts negotiated with Sutter, the utilities should be permitted to utilize existing ratemaking mechanisms and tariffs to recover the costs of any Sutter contracts.¹⁰ SDG&E agrees PG&E's proposal would expedite the preparation of the requisite advice letter and simplify the implementation of the Draft Resolution's orders. SDG&E also agrees with PG&E the costs of any Sutter contracts should be spread equally to all benefitting customers; SDG&E would, if permitted, propose ratemaking conventions to achieve these ends. Therefore, SDG&E joins with PG&E in its request for some latitude in developing utility-specific ratemaking proposals suited to each utility's existing rate tariffs.

Respectfully submitted,

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⁸ See *California ISO Petition for Waiver of Tariff Revisions and Request for Confidential Treatment*, FERC Docket No. ER12-897-000, January 25, 2012, at p.42.

⁹ *Ibid.*, at p.37.

¹⁰ See *Comments of PG&E*, January 31, 2012, at pp.4 to 5.