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February 27, 2012

VIA MESSENGER & E-MAIL

Honesto Gatchalian and Maria Salinas
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
jnj@cpuc.ca.gov; mas@cpuc.ca.gov

Re: Draft Resolution E-4467

Dear Mr. Gatchalian and Ms. Salinas:

We submit these comments on Draft Resolution E-4467 (the "DR") on behalf of The Utility Reform Network ("TURN"), the State Building and Construction Trades Council of California, the International Brotherhood of Electrical Workers Ninth District, and IBEW Local 569. The DR would approve a 20 year Power Purchase Agreement between SDG&E and its affiliate, Energía Sierra Juárez U.S., LLC ("ESJ") for a wind generating facility that would be constructed in northern Mexico.

The DR should be denied.

I. THE PROJECT FAILS THE LEAST COST BEST FIT REQUIREMENT

The Commission is keenly aware that prices for solar PV projects have dropped precipitously in 2011 and 2012. Thus, to justify approving a higher priced contract, particularly a higher priced contract with a utility affiliate, some offsetting benefits must be demonstrated. The Draft Resolution admits that the ESJ project exceeds the MPR,[1] [CONFIDENTIAL MATERIAL REDACTED], but justifies the excessive cost of this PPA for two reasons. First, the DR claims that the project fits the SDG&E RPS portfolio need. Second, the DR claims that the PPA is "reasonable

[1] DR, p. 24.

because its price and value is comparable to SDG&E's 2011 RPS solicitation."[2] Both claims are incorrect.

A. The Project Does Not Fit the SDG&E Portfolio Need

The DR states that "SDG&E's primary need for additional renewable generation is projected to be in Compliance Period 2011-2013 and Compliance Period 2017-2020."[3] In contrast, "SDG&E is forecasted to be ***over-contracted*** in Compliance Period 2014-2016…."[4] To attempt to justify the excessive cost of this PPA, the DR claims that the project "is to provide RPS-eligible energy during Compliance Period 2011-2013…,"[5] when SDG&E has additional need. SDG&E makes the same claim.[6] However, the facts are that the ESJ project will provide little or no energy during that first compliance period:

- The PPA does not require commercial operation of the ESJ project until the "later of 8/31/13 or 18 months after CPUC/FERC approval."[7] Neither the CPUC, nor FERC have yet granted the necessary approvals.

- The CPUC has yet to approve the new ECO Substation (the project's interconnection point). The proceeding was submitted, pursuant to Rule 13.14, on January 24, 2012. The Commission's final decision regarding the ECO Substation will not be issued before late spring or summer. SDG&E estimates that it would take two years to construct the substation.[8] If approved, and using SDG&E's estimated construction time, the ECO Substation would not be operational until the summer of 2014. Thus, the ESJ project could not begin delivering energy to SDG&E during 2013.

- The project would connect to the ECO Substation through a cross-border transmission line. That line requires a Presidential Permit. The Obama

[2] DR, p. 18.
[3] DR, p. 15.
[4] DR, pp. 15-16 (emphasis added).
[5] DR, p. 18.
[6] DR, p. 26.
[7] DR, p. 6.
[8] Final Environmental Impact Report/Environmental Impact Statement for the San Diego Gas & Electric East County Substation Project, pp. B-3-B-4, *available at* http://www.cpuc.ca.gov/environment/info/dudek/ECOSUB/ECO_Final_EIR-EIS.htm#VOLUMES%201%20and%202:%20Revised%20Draft%20EIR/EIS.

Administration has not yet adopted the environmental impact statement prepared by the Department of Energy pursuant to NEPA, nor has it issued the Presidential Permit for the cross-border transmission line. While the DR states that a draft EIS was issued in September 2010, a decision on Sempra's Presidential Permit application has once again been delayed by DOE and an expected decision date has not been announced.

- [CONFIDENTIAL MATERIAL REDACTED][9]

We raised these points in comments on the amended PPA. The DR dismisses them with a single sentence, saying we "did not provide any evidence indicating that they [the outstanding permits] will be ***rejected***."[10] The DR misses the point. The question is not whether the permits will be ***rejected***; the question is whether they will be granted ***in time*** to enable ESJ to deliver a substantial amount of renewable generation before the end of 2013. The only reasonable conclusion from the current evidence is that little, or more likely, zero energy will be delivered before the end of 2013.

Instead, the ESJ project will provide energy during Compliance Period 2014-2016, which the DR correctly states SDG&E does not need.

Only during Compliance Period 2017-2020 and later would the energy from the ESJ project be needed. Of course, this means that there is no basis for paying a premium for early deliveries from the project, no basis for paying anything during Compliance Period 2014-2016, and certainly no reason to pay a premium price for 20 years. The PPA should not be approved unless the price is just as good as projects that would not start delivery until the third compliance period. It is not.

B. The Price of the PPA is Too High

The Commission is now aware of the bids into the utilities' recent RFOs, and in particular, the prices of short listed solar PV projects. As the Commission said in its recent *Quarterly Report*, "bids from the 2011 RPS Solicitation … show significantly lower costs than bids in prior years."[11] While those projects are still negotiating detailed PPAs with the utilities, the sheer volume of bids at prices lower than the ESJ PPA demonstrate that the PPA price is too high.

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[9] SDG&E Procurement Review Group presentation material, February 17, 2012, p. 38.
[10] DR, p. 26 (emphasis added).
[11] *Renewables Portfolio Standard Quarterly Report*, 4th Quarter 2011, p. 10.

The DR carefully states that the contract price and value "compares favorably to ***bids*** from SDG&E's 2011 RPS solicitation and other comparable contracts."[12] Because there were so many bids over a wide range of prices, this statement means little. The DR also carefully avoids claiming that the price compares favorably to the short list bids. The DR does not make this statement because it would not be correct. The ESJ price is higher than the MPR [CONFIDENTIAL MATERIAL REDACTED]. The ESJ price also exceeds the [CONFIDENTIAL MATERIAL REDACTED].

SDG&E knows that the price for this project is too high, but justified its selection because, at one time, the project was expected to make a substantial contribution to SDG&E's obligations during Compliance Period 2011-2013. [CONFIDENTIAL MATERIAL REDACTED]. Because this attribute almost certainly will not be realized, the price of this project is no longer justified.

[CONFIDENTIAL MATERIAL REDACTED][13]

Paying too much for a project that will not be needed when it comes on line is enough reason to reject this PPA. But there are two additional reasons the Commission should be concerned about the price.

First, because the wind Production Tax Credit is due to expire at the end of this year, wind turbine prices have dropped substantially. We have heard reports of wind developers with turbines sitting in warehouses. It is a buyer's market now and has been for months. Given the timeline and the remaining uncertainty, it is highly unlikely that Sempra has made binding purchase commitments for turbines for this project.[14] Moreover, because this project is located in Mexico, it never planned to rely on the PTC, so losing the PTC does not change the internal economics of the project for Sempra. SDG&E should be able to benefit from the drop in wind turbine costs through a lower price so that ratepayers get the benefit of cheaper turbines rather than Sempra's shareholders.

Second, because this PPA is with SDG&E's affiliate, the Commission must apply a higher level of scrutiny to the price. There is no reason ratepayers should pay for a project that is not needed until 2017, costs more than current short listed

[12] DR, p. 24.
[13] IE Report, p. 7-4 (footnote omitted).
[14] [CONFIDENTIAL MATERIAL REDACTED].

bids, fails to take advantage of the drop in wind turbine prices, and sends all these windfall benefits to an affiliate of SDG&E.

II. CONCLUSION

The Commission should deny the DR.

Sincerely,

/s/

Marc D. Joseph

MDJ:vs
cc: President Peevey
Commissioner Ferron
Commission Florio
Commissioner Sandoval
Commissioner Simon
Ed Randolph, Director, Energy Division
Karen Clopton, Chief ALJ
Frank R. Lindh, General Counsel
Paul Douglas, Energy Division
Cheryl Lee, Energy Division
Service List: R.11-05-005

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