DRA

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California Public Utilities Commission

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CPUC, Energy Division
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Subject: Public Protest of the Division of Ratepayer Advocates (DRA) of San Diego Gas & Electric Company's (SDG&E) Advice Letter 2258-E-A (Supplement to Advice Letter Requesting Approval of an Amended Renewable Power Purchase & Sale Agreement (PPA) for the Mount Signal Solar Project)

INTRODUCTION

The Division of Ratepayer Advocates (DRA) advises the Commission reject Advice Letter (AL) 2258-E-A (Sixth PPA Amendment). Although the proposal is presented as a project amendment, this is the sixth instance of substantive changes to this agreement and the Sixth PPA Amendment effectively constitutes an entirely new project.

The existing agreement is being used as a shell for new projects. The proposed project, unamended, no longer exists as a possibility and the Commission is, in fact, reviewing a new renewable project. As such, the instant proposal is not competitive and would unfairly receive approval ahead of other PPAs simply due to its abuse of the amendment process. DRA urges the Commission not grant this project an unfair competitive advantage.

BACKGROUND

The project was initially submitted by Bethel Energy LLC into an SDG&E Request for Offers (RFO) in 2005 and a PPA was approved by the CPUC in March 2007. The PPA has been amended several times. The counterparty has changed from Bethel Energy LLC, to MMR Power Solutions, then to US Solar Holdings, [redacted]

The amendment previous to the instant amendment, AL 2258-E, filed on June 9, 2011 proposed to alter the following aspects of the PPA: 1) technology, 2) developer, 3) Conditions Precedent dates, 4) commercial operation deadline (COD), 5) megawatt size, and 6) interconnection. Notably, this AL 2258-E amendment proposed to change the technology from a concentrated solar power (CSP)/biomass hybrid to solar photovoltaic (PV), as well as change the developer and substantially extend the COD. The AL 2258-E amendment is currently pending before the Commission. Prior amendments before the pending AL 2258-E amendment have changed the technology, developer, pricing, Conditions Precedent, and COD. As a result, some of these PPA provisions have been altered multiple times.

On February 17, 2012, SDG&E submitted AL 2258-E-A, the instant Sixth Amendment[1] to the SDG&E PPA for a solar photovoltaic (PV) energy project, to have a maximum capacity of 139 megawatts (MW). Unchanged from previous amendments are the PPA's 20-year term and expected annual generation of approximately 300 gigawatt-hours (GWhs) of Renewable Portfolio Standard (RPS)-eligible energy. The facility is scheduled to come online in September 2013. [redacted] The current proposal would also change pricing and the title of the project from Mt. Signal Solar to Campo Verde.

It should be noted that the new 33% RPS program establishes three Compliance Periods (CPs): 2011-2013, 2014-2016, and 2017-2020. The utilities do not have an individual obligation in any one year but must instead comply with targets set for the multi-year period. Although SDG&E still potentially has some need in Compliance Period 1 (CP1), SDG&E is actually overprocured for Compliance Period 2 (CP2) and is itself attempting to limit further overprocurement in that period.

DISCUSSION

[1] Although the characterization of this amendment as the "sixth" is redacted from the Foreword of the Public Version of the Independent Evaluator Report (page i), it is not redacted from its title on the cover sheet of the Report.

[2] Confidential Appendix A to AL 2258-E-A, p.3.

The proposed Sixth PPA Amendment is not price competitive with other offers available to SDG&E, and represents an abuse of the amendment process that presents a serious procedural problem. Specifically, the Sixth PPA Amendment proposes to decrease the project's price, but the new proposed price is not competitive with today's marketplace. In fact, the proposed price is higher than [redacted] of the projects on SDG&E's 2011 RPS Request for Offers (RFO) Shortlist and considerably higher than [redacted] of the offers into SDG&E's Renewable Auction Mechanism (RAM) solicitation. SDG&E's Shortlist is shown below.

As demonstrated below, the Sixth PPA Amendment proposed price is not competitive with SDG&E's RPS RFO Shortlist in 2011[3]:

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[3] Reproduced from SDG&E's shortlist submitted in the instant AL as an excel spreadsheet entitled "SDGE 2011 RPS RFO LCBF List (Campo Verde)" on page 10 of "Part 2 – Confidential Appendices".

Figure 1 – SDG&E's 2011 RPS RFO Shortlist (CONFIDENTIAL)

Company Name	Project Name	PPA Term (yrs)	Tech	Contract Capacity (MW)	COD	Levelized MWh/yr	Levelized Contract Cost ($/MWh)	LCBF Ranking Price	Notes
[redacted]		[redacted]		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]		[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	

The only way the Sixth PPA Amendment price even appears competitive is by looking at SDG&E's Least-Cost Best-Fit (LCBF) ranking price rather than just the contract cost. The LCBF ranking price is intended to account for the value the contract provides, such as Resource Adequacy value, and the extra costs the contract may place upon ratepayers. However, SDG&E for the first time ever has included a significant and new adder for the 2011 solicitation: the Short-Term/Long-Term Adder. This adder is intended to favor contracts which deliver in CP1, the Period in which SDG&E has the most need. DRA is not on principle opposed to the idea of granting "extra credit" to facilities producing in CP1; however, this contract's contribution to CP1 will be minimal and does not justify the considerable price premium being requested.

SDG&E's target for CP1 is [redacted] GWh for the entirety of the Period.[4] Assuming no contract failure and no new execution of contracts, SDG&E is projecting to receive 11,379 GWh for the Period.[5] DRA acknowledges the need to hedge bets and assume some failure of contracts that are not yet online. The instant offer is an existing contract and is included in the 11,379 GWh projection above. However, this contract's contribution to CP1 is only [redacted] GWh because it will only generate for three months in that Compliance Period. If the instant offer's contribution to CP1 were substantial, its higher-than-market price could be better justified.

SDG&E's Shortlist with Short-Term/Long-Term (STLT) adder removed from the LCBF ranking price is reflected in Figure 2, below:

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[4] See SDG&E's March 1, 2012 Procurement Progress Report (Confidential), submitted to the Energy Division.

[5] See SDG&E's March 1, 2012 Procurement Progress Report (Public), submitted to the Energy Division.

Figure 2 – SDG&E's Shortlist without STLT Adder (CONFIDENTIAL)

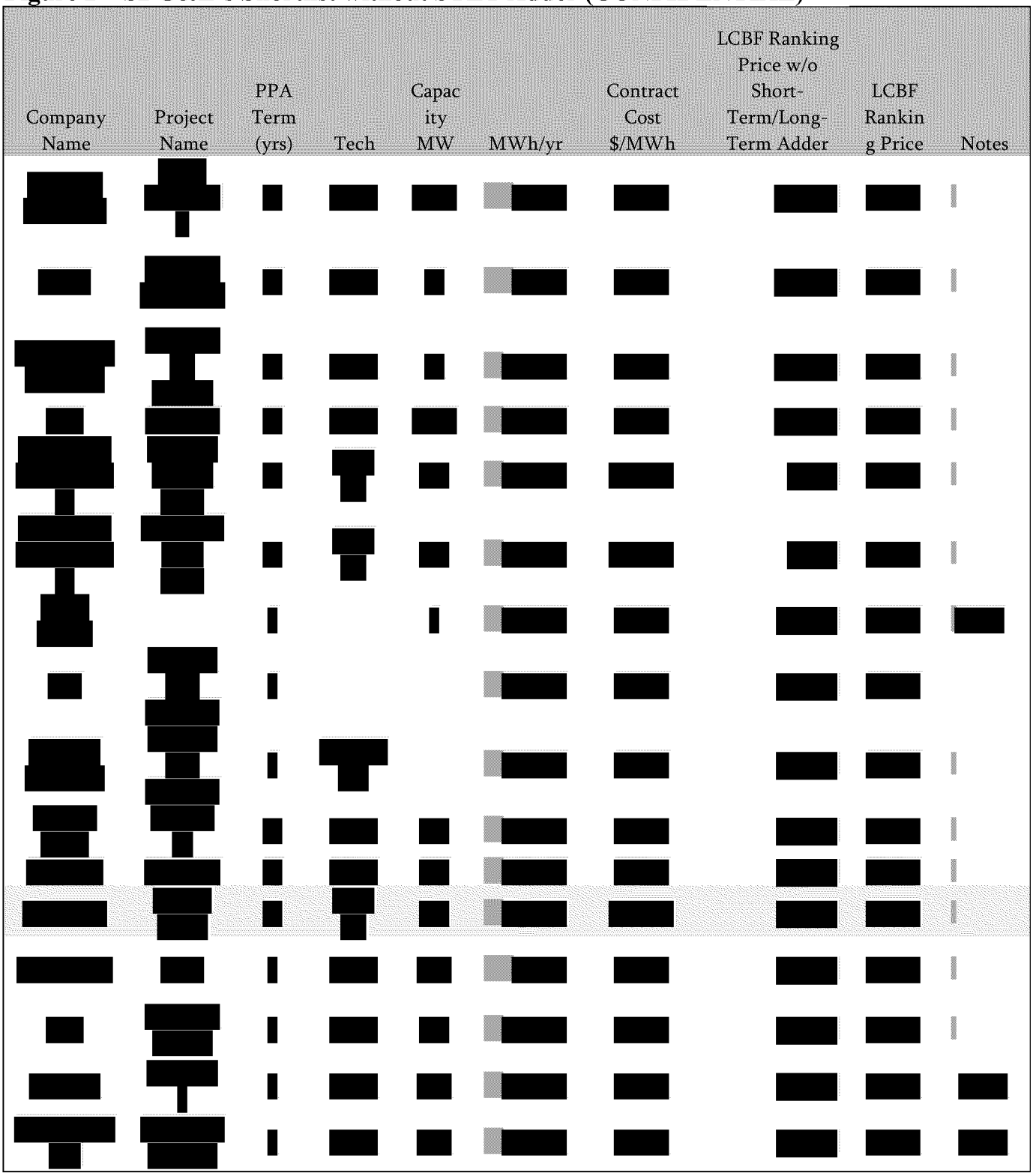

Figure 2 clearly demonstrates that inclusion of the STLT adder unfairly biases evaluation of the proposed deal. This unfair bias is due in part to the somewhat radical assumptions behind the adder. As the Independent Evaluator explains:

> "SDG&E defined [the STLT] adder, which would only be added to the bid ranking prices of contracts delivering in CP1, by first determining what the cost of the "marginal" offer would be if it sought to meet the 2016 need without any CP1 contracts. That cost was called the Mid-Term Price Benchmark (MTPB). For a given offer, the adder computed the total contract cost over and above the MTPB, minus an "avoided renewables cost" of $50/MWh (the TREC cost cap)…"[6]

The assumption of a $50/MWh TREC price is simply inaccurate in today's market. Look to Figures 1 and 2 above to see that SDG&E's TREC offers are currently priced at $[redacted]/MWh and $[redacted]/MWh. The Independent Evaluator also had some objections as to the accuracy of the STLT.[7]

Moreover, a look at SDG&E's RAM results demonstrates an even larger disparity between this project's proposed cost and the offers into the RAM. SDG&E only accepted [redacted]. This does not compare well to the instant proposal's $[redacted]/MWh contract price.[8] The next [redacted] into the RAM behind the [redacted] are *still* better-priced than the instant project.[9] [redacted] were proposing using solar PV technology and [redacted] the same [redacted] as the instant proposal.

Finally, DRA emphasizes that the Sixth PPA Amendment proposal demonstrates a clear abuse of the amendment process. The amendment process is intended to serve as a "shortcut" for projects which already have an approved PPA and have some changes to make. The amendment is not a process under which entirely new projects can shortcut the approval system. Abuse of this potential loophole in the CPUC approval process encourages renewable developers to purchase existing PPAs from failing projects in order to shorten approval time. Such abuse does a disservice to new renewable projects which, in good faith, go through the negotiation process with a utility, are submitted as brand-new

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[6] See pp.3-6 and 3-7 of the Public Version of the Independent Evaluator Report.

[7] See discussion on pages 3-6 through 3-8 of the Independent Evaluator Report.

[8] All prices discussed here are TOD-adjusted, including the price of the instant project

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[9] Only conforming bids are being accounted for and a transmission adder is included. Data from SDG&E's February 17, 2012 presentation to the Procurement Review Group, slide 40.

Advice Letters, and then must wait in the approval queue.

In this case the PPA – for which the first approval was granted on March 15, 2007[10] -- is being used as a shell for clearly new projects. As a result, any consideration of the project's potentially higher viability as an "existing" project and its need for regulatory certainty cannot be applied.

DRA recommends the Commission reject the instant Sixth PPA Amendment and encourage the project to bid into next year's solicitation. If it is able to improve its price, the project can succeed in a competitive playing field against other offers. The project's negligible contribution to CP1 is simply not worth approving the price premium as well as abuse of the process being propagated by the instant Sixth PPA Amendment.

CONCLUSION

Consideration of the instant proposal as an "amendment" is incorrect. The Sixth PPA Amendment proposes to change not just price, [redacted]. SDG&E is proposing a substantial amendment to this deal for the sixth time. The "price reduction" proposed here is an illusion; this is a brand new project that should be evaluated as such.

The Commission's choice in the matter is not whether to let the previous deal continue or approve the modifications. Instead, the choice is whether to approve the instant project, as proposed, or to remove Campo Verde (aka Mt. Signal Solar) from SDG&E's portfolio. There is no possibility of the project moving forward unamended. The Commission must therefore decide whether the project, on its own merits, deserves approval.

As demonstrated above, the Sixth PPA Amendment proposes a price that is uncompetitive, would result in a negligible contribution to SDG&E's Compliance Period 1 obligations, and demonstrates an objectionable use of the amendment process.

Please contact Yuliya Shmidt at (415) 703-2719 if you have any questions about this protest.

/s/ Cynthia Walker
Cynthia Walker, Program Manager
Energy Planning and Policy Branch
Division of Ratepayer Advocates

cc: President M. Peevey; Commissioner T. Simon; Commissioner K. Sandoval; Commissioner M. Florio; Commissioner M. Ferron; J. Simon; P. Douglas; Director of the

[10] See Resolution E-4073.

Energy Division J. Fitch; General Counsel F. Lindh; Chief Administrative Law Judge K. Clopton; Service List R.11-05-005