BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.	Rulemaking 10-05-006 (Filed May 6, 2010)

REPLY COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) ON PROPOSED DECISION ON SYSTEM TRACK I AND RULES TRACK III OF THE LONG-TERM PROCUREMENT PLAN PROCEEDING AND APPROVING SETTLEMENT

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Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (the "Commission"), San Diego Gas & Electric Company ("SDG&E") hereby submits these reply comments concerning the proposed *Decision on System Track I and Rules Track III of the Long-Term Procurement Plan Proceeding and Approving Settlement*, issued February 21, 2012 in the above-captioned docket (the "Proposed Decision" or "PD").

The Proposed Decision addresses issues in Tracks I and III of the long-term procurement plan ("LTPP") proceeding. It adopts a proposed settlement agreement related to system resource need developed by a majority of the parties in System Track I (the "Settlement Agreement" or "SA"). The Settlement Agreement resolves all Track I issues except: (1) SDG&E's pending request for a need determination for new resources to meet Local Capacity Requirements ("LCR"); and (2) the possibility of need to procure currently uncontracted existing resources.[1/] The PD also addresses several Rules Track III issues, including, *inter alia*, (i) procurement rules related to once-through-cooling ("OTC") generation facilities; (ii) refinements to the process for evaluating utility-owned generation ("UOG") bids and competing independent power producer ("IPP") bids; (iii) procurement by investor-owned utilities ("IOUs") of greenhouse gas ("GHG")-related products; and (iv) general procurement oversight rules.

1/ *See* Settlement Agreement attached to *Motion of PG&E, et al. for Expedited Suspension of Track 1 Schedule and for Approval of Settlement Agreement* ("Motion"), filed August 3, 2011 in R.10-05-006.

In its comments on the PD, SDG&E noted its support for approval of the Settlement Agreement, but explained that revisions to the PD were necessary to clarify the Commission's determination regarding System Track I issues. Other Settlement Agreement parties echoed this point in their comments.[2/] With regard to Rules Track III issues, SDG&E responds herein to points made in parties' comments regarding (i) refinements to the process for evaluating UOG bids and competing IPP bids; (ii) IOU procurement of GHG-related products; and (iii) general procurement oversight rules.

(i) Refinements to the Process for Evaluating UOG Bids and Competing IPP Bids

In its opening comments on the PD, SDG&E raises several concerns regarding the PD's proposed rules regarding UOG and offers proposed modifications to the PD designed to mitigate the negative ratepayer impacts that could result from adoption of the rules proposed in the PD.[3/] SDG&E will not repeat those arguments here, but notes that the revisions to the PD proposed by Independent Energy Producers Association ("IEP") would exacerbate the harm caused by adoption of the rules as proposed in the PD. IEP recommends, for example, that the "RFO failure" requirement proposed in the PD should require an application filing rather than an advice letter filing.[4/] As SDG&E explained in its opening comments, however, the "RFO failure" requirement proposed in the PD is unreasonably burdensome; IEP's proposal to require an application filing rather than an advice letter filing to demonstrate "failure" would serve to compound the problem.

The delay in the UOG approval process caused by the addition of several layers of administrative process in the PD's proposed procedure would be significantly increased by requiring two application filings for each proposed project. Adoption of the "RFO failure" requirement, particularly as modified by IEP, would erect such a massive barrier to UOG that IOUs might reasonably conclude that the Commission is unwilling to approve UOG and that all UOG-related efforts should therefore be abandoned. Such an outcome would represent a significant setback for ratepayers, who would be deprived of the potential benefits of UOG. In certain cases, UOG may be a more favorable option than an IPP contract; as SDG&E pointed out in its opening comments, the Commission's obligation is to protect the public interest rather

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2/ *See, e.g., Opening Comments of Pacific Gas & Electric Company on Proposed Decision on System Track I and Rules Track III of the Long-Term Procurement Plan Proceeding*, filed March 12, 2012 in R.10-05-006 ("PG&E Comments"); *Comments of the California Independent System Operator Corporation on the System Track I and Rules Track III Proposed Decision*, filed March 12, 2012 in R.10-05-006 ("CAISO Comments"); *Opening Comments of GenOn California North, LLC on Proposed Decision on System Track I and Rules Track III of the Long-Term Procurement Plan Proceeding and Approving Settlement*, filed March 12, 2012 in R.10-05-006 ("GenOn Comments").

3/ *Comments of San Diego Gas & Electric Company on Proposed Decision on System Track I and Rules Track III of the Long-Term Procurement Plan Proceeding and Approving Settlement*, filed March 12, 2012 in R.10-05-006 ("SDG&E Comments"), pp. 5-8.

4/ *Comments of the Independent Energy Producers Association on the Proposed Decision on Tracks I and III of the Long-Term Procurement Plan Proceeding*, filed March 12, 2012 in R.10-05-006 ("IEP Comments"), p. 11.

than specific market participants. While it is clear that the "RFO failure" requirement would benefit independent power producers, there is *no* evidence in the record that the "RFO failure" requirement would serve the public interest, nor is there any evaluation of the potential harm to ratepayers. Accordingly, the "RFO failure" proposal – including the application filing requirement proposed by IEP – should be rejected.

IEP's recommendation that the PD be modified "to allow UOG projects to be re-priced only before the issuance of the CPCN," should similarly be denied.[5/] First, as SDG&E explained in its opening comments, the CPCN process is not the appropriate vehicle for seeking approval of projects that are already constructed, thus IEP's proposal is inapposite in that regard.[6/] In addition, adoption of IEP's proposal to allow UOG re-pricing only prior to Commission approval of such UOG would directly contravene the goals articulated in the PD of "equaliz[ing] the playing field" and of ensuring that "the ability to recover capital costs in rates should be parallel for UOG and PPAs".[7/] IEP admits that IPP PPAs may be re-priced after they take effect, subject in some cases to Commission approval.[8/] IEP's proposal would unfairly deny UOG the same treatment. The modification proposed by IEP would interfere with the Commission's effort to establish a level playing field between UOG and IPPs, and would create inequity in the recovery of capital costs. Accordingly, IEP's proposal to limit IOUs' ability to seek "re-pricing" of UOG should be rejected.

Finally, the proposal of the Division of Ratepayer Advocates ("DRA") to apply the UOG rules adopted in the final decision to renewable UOG should be denied.[9/] The Commission has previously made clear that from a policy perspective, renewable UOG is distinct from conventional UOG. The Commission has deemed renewable UOG to be a "preferred" form of UOG,[10/] and indeed, has consistently encouraged the IOUs to actively seek out opportunities for renewable UOG.[11/] While DRA argues that the passing references to renewable UOG included in its testimony establishes a robust record on the question of whether to align the Commission's policy treatment of conventional UOG and renewable UOG, it is clear that this claim is not sustainable.[12/] The evidentiary record does not support deviation from the Commission's long-standing policy of extending "preferred" status to renewable UOG. Accordingly, DRA's proposed revision to the PD should be rejected.

5/ *See* IEP Comments, p. 10.
6/ SDG&E Comments, pp. 6-7.
7/ *See* PD, p. 34.
8/ IEP Comments, p. 10.
9/ *See* DRA Comments, pp. 2-3.
10/ D.07-12-052, *mimeo*, p. 211.
11/ *See, e.g.*, D.06-05-039, *mimeo*, pp. 33-34; D.07-02-011, *mimeo*, pp. 23-25; D.08-02-008, *mimeo*, pp. 32-35.
12/ *See* DRA Comments, pp. 2-3.

(ii) IOU Procurement of GHG-Related Products

With regard to the PD's proposed rules regarding IOU procurement of GHG-related products, SDG&E notes that in general, parties proposed modifications to the same elements of the PD as SDG&E.[13/] Like SDG&E, several parties argued in favor of:

- changing the procurement limits, especially modifying the lower procurement limit for the 2015-2017 compliance period to zero;
- allowing sales, brokered transactions, and bilateral transactions within the compliance period with less onerous restrictions;
- allowing procurement of offset forwards;
- modifying the offset use limit to match the ARB cap-and-trade regulation; and
- allowing updates to compliance forecasts.

Given this general agreement among parties as to recommended changes to the PD, SDG&E's comments herein focus on related proposed clarifications.

First, SDG&E agrees with PG&E that while the PD implies that the IOUs' respective GHG Plans are approved, subject to the modifications identified in the PD, the PD should be revised to make this point explicit in the final decision. SDG&E supports the modification of Ordering Paragraph 8.a proposed by PG&E to clarify this determination.

Second, the term "compliance obligation" for purposes of calculating limits should be defined clearly in the final decision.[14/] As Calpine recommends, "compliance obligation" should include not only UOG and utility imports of electricity from out of state, but also all the IOU's contractual obligations to acquire compliance instruments (*e.g.*, tolling agreements, purchase power agreements, and qualifying facility agreements that place the burden on the electricity buyer to acquire allowances).[15/] SDG&E was clear in its Rules Track III testimony that its definition of "compliance obligation" included such contractual obligations.[16/]

[13/] *See, e.g.,* PG&E Comments; DRA Comments; *Opening Comments of Southern California Edison Company on Proposed Decision of Administrative Law Judge Peter Allen*, filed March 12, 2012 in R.10-05-006 ("SCE Comments"); *Comments of the Green Power Institute on the Proposed Decision of ALJ Allen*, filed March 12, 2012 in R.10-05-006 ("GPI Comments"); *Comments of the Western Power Trading Forum on the Proposed Decision of Administrative Law Judge Allen*, filed March 12, 2012 in R.10-05-006 ("WPTF Comments").

[14/] SCE refers to "compliance obligation" as the direct compliance obligation with contract obligations as a separate category. SCE Comments, p. 7. Calpine suggests the term may be interpreted in the PD as direct obligations only and as not including contract obligations. *Comments of Calpine Corporation on Proposed Decision*, filed March 12, 2012 in R.10-05-006 ("Calpine Comments"), p. 7.

[15/] Calpine Comments, p. 7.

[16/] SDG&E/Miller, Exh. 313-C, Appendix A.

Finally, SDG&E agrees that SCE's proposed change to refer to the procurement limits as "year-end position limits" should be adopted for the table in Ordering Paragraph 8a.[17/] This change provides two clarifications: (i) the timing is at year-end, which is implicit in the PD, but should be explicit; and (ii) the limit is for the quantity of allowances held and/or retired at year-end, which is the quantity that can be used for compliance with the ARB regulation. It is not the total number of allowances acquired, but the total acquired less any sales of allowances that is
the relevant quantity. Accordingly, SCE's clarifying edit should be adopted.

(iii) General Procurement Oversight Rules

DRA proposes that the PD be modified to allow the Commission's Energy Division ("ED") to determine the assignment of Independent Evaluators ("IEs") to specific projects or tasks.[18/] DRA does not provide a rationale for its proposed revision – it merely notes that it made the proposal and that the proposal was not adopted in the PD. This is not an adequate basis to support DRA's recommendation to revise the PD. Moreover, as SDG&E witness, Juancho Eekhout has explained:

> The DRA proposal does not allow for application of the IOU's insight into the skills of a particular IE and why those skills might add value in the context of a given solicitation. The IOU and the IE are the parties best situated to evaluate these criteria and make a determination. Being forced into a potentially unsatisfactory or unworkable relationship is not in the interest of the IOU, the IE or the ratepayer.[19/]

Thus, DRA's proposal to revise the PD to allow the ED to determine IE assignment to specific projects or tasks should be denied.

For the reasons set forth above, the Commission should approve the PD with the modifications described herein and in SDG&E's Opening Comments.

Respectfully submitted this 19th day of March, 2012.

/s/ Aimee M. Smith

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17/ *See* SCE Comments, p. 12.
18/ DRA Comments, pp. 9-10.
19/ SDG&E/Eekhout, Exh. 315, p. 16.