

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue)	
Implementation and Administration of California)	Rulemaking 11-05-005
Renewables Portfolio Standard Program.)	(Filed May 5, 2011)
)	

**SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)
REPLY COMMENTS REGARDING 2012 DRAFT
RENEWABLE PROCUREMENT PLAN**

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**I.
INTRODUCTION**

In accordance with the Rules of Practice and Procedure of the California Public Utilities Commission (the “Commission”) and the *Assigned Commissioner’s Ruling Identifying Issues and Schedule of Review for 2012 Renewables Portfolio Standard Procurement Plans Pursuant to Public Utilities Code Sections 399.11 et seq. and Requesting Comments on New Proposals* (the “ACR”), issued in the above-captioned docket on April 5, 2012, San Diego Gas & Electric Company (“SDG&E”) hereby submits these reply comments concerning its draft 2012 Renewable Portfolio Standard (“RPS”) Procurement Plan and related appendices (together, the “Plan”) and certain Commission proposals to modify the existing RPS procurement and review process.

**II.
DISCUSSION**

A. SDG&E’s Proposed 60% Success Rate for RPS Contracts is Reasonable

SDG&E’s Plan currently estimates that projects in development will experience a success rate of approximately 60%, on average.^{1/} This estimate is based on SDG&E’s project-by-project assessment of historical trend data, the potential for future performance and other potential risk

^{1/} *San Diego Gas & Electric Company 2012 Draft Renewable Procurement Plan*, filed May 23, 2012 (“SDG&E Draft 2012 RPS Plan”), Attachment 1, p. 4.

factors. The Division of Ratepayer Advocates (“DRA”) asserts that this estimated success rate is too low and “does not reflect current trends in the number of RPS projects that successfully deliver energy.”^{2/} DRA points to aggregated contract data of the California investor-owned utilities (“IOUs”) that indicates a success rate higher than 60%, and claims that “the success rate for projects in development should be closer to PG&E’s assumed 78% success rate.”^{3/}

The Commission should reject DRA’s proposal for a “one-size fits all” contract success rate. SDG&E’s success rate calculation is based upon its own evaluation and information assessment, and is a central component of its procurement strategy. The Commission has previously made clear the IOUs may apply their business judgment to running solicitations and are ultimately responsible for the success of their RPS program implementation.^{4/} SDG&E must not be required to supplant its business judgment with that of another IOU or of DRA; rather, if SDG&E is to be held accountable for its RPS-related procurement decisions, it must be permitted to exercise its discretion to make such decision. In SDG&E’s view, the method of determining project success that is outlined in its RPS Plan is the most reliable and accurate basis for estimating future performance. Accordingly, the Commission should reject DRA’s suggestion that SDG&E’s estimated success rate be ignored in favor of a one-size fits all estimate based upon non-SDG&E-specific data.

B. The Proposal of Market Participants to Require Disclosure of Confidential Market-Sensitive and Trade Secret Procurement Information Must be Rejected

Several market participant parties offer general complaints regarding the practice of protecting certain confidential information related to procurement solicitations from disclosure. CalEnergy Generation Operating Company (“CalEnergy”) points out that it would benefit

^{2/} *The Division of Ratepayer Advocates’ Comments on Renewable Portfolio Standard Plans*, filed June 27, 2012 (“DRA Comments”), p. 15.

^{3/} *Id.*

^{4/} *See, e.g.*, D.11-04-030, *mimeo*, p. 3.

developers to have “key information” regarding the utilities’ net short position for renewables, as well as details regarding how “generation characteristics are weighted in the Least Cost Best Fit analysis, including variables such as generation type, baseload v. intermittent, dispatchability, location, etc.”^{5/} Ormat Technologies (“Ormat”) similarly proposes that Independent Evaluators (“IEs”) require the IOUs “to be much more specific about their needs and requirements.”^{6/} Finally, the Independent Energy Producers Association (“IEP”) notes that “significant portions of some Independent Evaluators’ reports are redacted and unavailable to the public,” and further that “the goal of greater transparency will be thwarted to the extent the preliminary Independent Evaluator’s report is similarly redacted.”^{7/} These comments are misguided and represent an improper collateral attack on the rules adopted by the Commission in D.06-06-066, *et seq.*

CalEnergy points out that disclosure of the IOUs’ confidential procurement information “would provide valuable assistance to the renewable development community.”^{8/} While this obvious fact is not subject to challenge, the Commission’s primary concern in this instance must be to protect ratepayers from excessive RPS program costs, rather than to provide assistance to particular market participants. Indeed, the Commission has observed that in adopting legislation related to confidential treatment of procurement information, “[t]here is no evidence that . . . the Legislature was concerned with enhancing the competitive posture of generators.”^{9/} It has noted further that “[w]hile we accept that the release of more information on utility procurement could lead to more efficient investment decisions, we must guard against the release of information that can lead to more opportunities for market manipulation.”^{10/}

^{5/} *Comments of CalEnergy Generation Operating Company on Renewable Portfolio Standard Plans and New Proposals for RPS Implementation*, filed on June 27, 2012 (“CalEnergy Comments”), pp. 16, 19.

^{6/} *Comments on RPS Plans and New Proposals*, filed by Ormat Technologies on June 27, 2012 (“Ormat Comments”), p. 4.

^{7/} *Comments of the Independent Energy Producers Association on the RPS Procurement Plans*, filed on June 27, 2012 (“IEP Comments”), p. 20.

^{8/} CalEnergy Comments, p. 19.

^{9/} D.06-06-066, as amended by D.07-05-032, *mimeo*, p. 18.

^{10/} *Id.*

The proposals by CalEnergy and Ormat to require disclosure of SDG&E’s confidential net short information and specific detail regarding the least-cost, best fit (“LCBF”) evaluation directly violate Commission rules and long-standing statutory protections, and must therefore be rejected. The Commission adopted rules regarding confidentiality of procurement-related information in D.06-06-066, *et seq.* It is clear that under the confidentiality matrix adopted in D.06-06-066 (the “Matrix”), utility net short data is protected under categories VI.A and VI.B, which apply to utility bundled net open (long or short) positions for capacity and energy, respectively. LCBF evaluations are, likewise, protected under Matrix category VII.G, which protects “analyses and evaluations of proposed RPS projects.”

The protections outlined in D.06-06-066, *et seq.* are derived from the statutory protections extended to non-public, market-sensitive procurement information and trade secret information under Public Utilities Code §§ 454.5(g) and 583,^{11/} and Govt. Code § 6254(k).^{12/} The decision acknowledges that although the Commission and parties attempted to identify “*most* categories of data that will be called for in the electricity procurement area,” it is not possible to predict each and every category of information that might be requested in the context of a procurement proceeding.^{13/} In order to account for this practical reality, the decision expressly contemplates an ongoing need to “make changes to the Matrix as we gain experience with its use,”^{14/} and allows parties to rely on statutory provisions concerning confidentiality, as well as Commission General Order 66-C (“G.O. 66-C”), in order to request confidential treatment where the Matrix does not apply.^{15/} While, as noted above, it is plain that the Matrix does apply to RPS net short data and LCBF evaluations, assuming, *arguendo*, that the Matrix did

^{11/} All statutory references herein are to the Public Utilities Code unless otherwise noted.

^{12/} See D.06-06-066, as amended by D.07-05-032, *mimeo*, p. 1, Ordering Paragraph 1.

^{13/} *Id.* at pp. 19-20 (emphasis added).

^{14/} *Id.* at p. 20.

^{15/} *Id.* at Ordering Paragraphs 3-4.

not apply to such information, it is clear under a statutory analysis that the information must be protected from disclosure.

RPS net short data and LCBF evaluations are protected under §§ 454.5(g) and 583, as well as Govt. Code § 6254(k). Section 583 establishes a right to confidential treatment of information otherwise protected by law.^{16/} Section 454.5(g) and Govt. Code § 6254(k) provide the substantive basis for protecting RPS net short data and LCBF evaluations.^{17/}

Section 454.5(g) requires the Commission to protect from disclosure market sensitive information related to a utility's procurement plan:

The Commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are non-market participants shall be provided access to this information under confidentiality procedures authorized by the Commission. (Emphasis added)

Information is "market sensitive" if it has "the potential to materially affect an electricity buyer's market price for electricity."^{18/}

Under the Public Records Act, Govt. Code § 6254(k), records subject to the privileges established in the Evidence Code are not required to be disclosed.^{19/} Evidence Code § 1060 provides a privilege for trade secrets, which Civil Code § 3426.1 defines, in pertinent part, as information that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure.

^{16/} See D.06-06-066, as amended by D.07-05-032, *mimeo*, pp. 27-30.

^{17/} See *id.* at p. 29 (noting that in determining whether information is confidential, the Commission does not look to § 583, which sets forth the process for handling confidential information, to determine confidentiality. It looks, instead, to other statutory provision that provide "the substantive theories for asserting confidentiality.").

^{18/} *Id.* at pp. 2-3, 41-42, 46-47.

^{19/} See also Govt. Code § 6254.7(d).

With regard to net short data, disclosure of SDG&E's net short position clearly has the potential to affect the price paid by SDG&E ratepayers for renewable energy. Meeting the aggressive goal of 33% renewables by 2020 will require SDG&E to conduct procurement activities within a specified time period. Although SDG&E has disclosed general information about whether it has a need to procure RPS products during each compliance period, SDG&E does not disclose the specific volumes that it must procure. If the market becomes aware that SDG&E will experience a high net short position, it is likely that renewable energy prices will rise in response to SDG&E's high demand. If, on the other hand, the market becomes aware that SDG&E has low demand for new projects, bidders in SDG&E's RPS solicitations may artificially reduce pricing. Given the obvious potential for disclosure of specific net short information to affect market pricing, it is clear that RPS net short information is "market sensitive" procurement data that must be protected under § 454.5(g).

Moreover, while § 454.5(g) focuses solely on the market sensitivity of the data at issue, and does not include a "ratepayer harm" requirement, it is clear that disclosure of specific net short data would harm utility ratepayers. If SDG&E experiences a high RPS net short, and this fact is disclosed to the market, the result would likely be a rise in renewable energy prices, which would produce a corresponding rise in RPS compliance costs for SDG&E's ratepayer customers. Conversely, if the market becomes aware that SDG&E has low demand for new projects, bidders in SDG&E's RPS solicitations may artificially reduce pricing in order to ensure selection and Commission approval of a contract, and then seek contract re-pricing at a subsequent point, which creates delay burdens the administrative process. Thus, given the potential for disclosure of specific RPS net short data to affect the price paid by SDG&E ratepayers for renewable energy, and the ratepayer harm caused by such disclosure, this information must be protected under § 454.5(g).

In addition, RPS net short data is protected the Public Records Act, Govt. Code § 6254(k). Net short data confers independent economic value (in the form of avoided procurement costs) from not being generally known to developers, who could obtain value from its disclosure. Thus, this information is properly characterized as trade secret information that must be protected under Govt. Code § 6254(k).

It is equally clear that LCBF evaluation information is properly treated as market sensitive, electric procurement-related information protected under §§ 454.5(g) and trade secret information protected under Govt. Code § 6254(k). LCBF evaluations provide insight into SDG&E's procurement needs and often involve project viability assessments. Specific knowledge of SDG&E's portfolio needs confers negotiation leverage on counter-parties, which plainly has the potential to affect the price paid by SDG&E ratepayers for renewable energy. Accordingly, LCBF evaluation information must be protected under § 454.5(g).

In addition, because such information could influence market prices if it were to be disclosed to market participants, it constitutes “information that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure.”^{20/} Thus, this information is properly characterized as trade secret information that must be protected under Govt. Code § 6254(k).^{21/}

Finally, specific RPS net short data and LCBF evaluation information is protected by Commission General Order (“G.O.”) 66-C, which operates to protect those “reports, records, and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage.” Net short data is protected under G.O. 66-C inasmuch as disclosure of the data could cause substantial harm to utility ratepayers since

^{20/} See Civil Code § 3426.1.

^{21/} SDG&E notes further that project-specific viability assessments may also constitute confidential trade secret information of the relevant project developers. The information at issue relates directly to viability of the respective projects and takes into account barriers to project success. Disclosure of this extremely sensitive information could harm developers' ability to negotiate necessary contracts and/or could invite interference with project development by competitors.

such disclosure would place SDG&E at a significant disadvantage in future procurement negotiations, resulting in increased costs to ratepayers. Disclosure of data related to SDG&E's need for renewable generation provides unfair negotiating leverage to counter-parties, potentially allowing them to raise prices or impose unfavorable conditions where SDG&E's demand for RPS generation is high. Accordingly, G.O. 66-C requires that specific RPS net short data be protected from disclosure.

Similarly, disclosure of specific LCBF evaluation information would, as explained above, give counter-parties insight into SDG&E's procurement needs and would place SDG&E at an unfair business disadvantage in negotiating RPS procurement contracts. In addition, disclosure of project viability scores included in the LCBF analysis would likely create a perception among developers that California is not committed to assisting their renewables projects or protecting their commercially-sensitive project information. This could deter developers from siting projects in California, thereby increasing the difficulty experienced by SDG&E (and other RPS-obligated entities) in achieving RPS compliance. Accordingly, LCBF evaluation data must be protected under G.O. 66-C.

IEP's comments regarding confidentiality of procurement-related information are similarly flawed. The IE reports submitted by SDG&E with its requests for Commission approval of RPS power purchase agreements ("PPAs") are redacted in accordance with the rules established in D.06-06-066. IEP's apparent recommendation that the applicability of D.06-06-06 be suspended in order to promote "the goal of greater transparency" is contrary to the public interest and represents an improper collateral attack on D.06-06-066.^{22/} Thus, it is plain that the

^{22/} Section 1709 of the Public Utilities Code establishes that "[i]n all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive." The Commission has defined a collateral attack as "an attempt to invalidate the judgment or order of the Commission in a proceeding other than that in which the judgment or order was rendered." (D.07-04-017, *mimeo*, p. 8). While parties may challenge a Commission determination by filing an application for rehearing or a petition for modification, collateral attacks on Commission decisions are prohibited. (*See, e.g.*, D.08-04-063, D.07-10-015, D.07-04-017, D.07-03-047).

proposals of CalEnergy, Ormat and IEP to require disclosure of confidential IOU procurement information must be rejected.^{23/}

C. The Commission Should Consider Need in Utilizing the RPS Procurement Process to Minimize Transmission Costs

The ACR proposes a new method for alleviating issues resulting from the large volume of potentially non-viable projects in the California Independent System Operator's ("CAISO's") interconnection queue.^{24/} Specifically, the ACR proposes to limit the volume of RPS procurement to the amount of deliverability capacity that the CAISO determines is available at any given area.^{25/} Under this approach, if the volume of projects shortlisted by the IOUs exceeds the available deliverability capacity in a given area, the Commission would allocate such capacity to the best ranked projects among the three IOUs until all available capacity is accounted for.^{26/} In its comments on the ACR proposal, Southern California Edison Company ("SCE") proposes that the Commission instead allocate the available deliverability capacity in proportion to each IOU's load-share.^{27/} SCE's allocation method would result in SDG&E receiving approximately 10% of any available capacity, and SCE and Pacific Gas & Electric Company ("PG&E") each receiving approximately 45% of available capacity.

SDG&E is supportive of the Commission's efforts to use the RPS procurement review process to help minimize costly network upgrades. The Commission's allocation of available deliverability capacity is a crucial aspect of this effort. As discussed in its opening comments, SDG&E believes that the available deliverability capacity should be allocated to the least

^{23/} SDG&E notes further that in proposing that the IE impose certain requirements on the IOUs regarding the content of solicitation materials, Ormat misstates the scope of the IE's role. In D.07-12-052, the Commission observed that "[t]he purpose of an IE in the RFO solicitations is to ensure a fair, competitive procurement process free of real or perceived conflicts of interest." (D.07-12-052, *mimeo*, p. 140 [emphasis added]). Thus, the role of the IE is limited to consideration of the process employed by an IOU in conducting a solicitation. The IE's responsibilities plainly do not include mandating inclusion of particular information in a solicitation.

^{24/} ACR, pp. 24-29.

^{25/} *Id.*

^{26/} *Id.* at p. 28.

^{27/} *Southern California Edison Company's Comments on Assigned Commissioner's April 5, 2012 Ruling Requesting Comments on New Proposals Related to Renewable Portfolio Standard Procurement Plans*, filed June 27, 2012 ("SCE Comments"), p. 10.

expensive, most viable projects.^{28/} This method incentivizes inexpensive, viable projects and would result in the best projects being built to satisfy the State's RPS goals. In contrast, SCE's proposal of allocating the available deliverability capacity based on load share could result in more expensive and/or less viable projects being built in the place of less expensive, more viable projects.

It is important to note, however, that both methods of allocating capacity discussed above suffer from the weakness that they do not take RPS procurement needs into account. If the Commission were to allocate capacity solely on the basis of the IOUs' evaluation of which projects are the least expensive and most viable, a particular IOU could receive zero capacity in the initial allocation, and thus not be able to move forward with any RPS projects, even where it has a need to procure RPS resources to meet its RPS targets. Similarly, if the Commission allocated capacity based solely on load-share, a particular IOU may not receive enough capacity to meet its RPS need. In either scenario, an IOU that failed to meet RPS goals for this reason would be forced to rely upon § 399.15(b)(5)(A), which allows the Commission to waive enforcement of RPS requirements if "there is inadequate transmission capacity to allow for sufficient electricity to be delivered from proposed eligible renewable energy resource projects using the current operational protocols of the Independent System Operator." Establishing a process that on its face has a high risk of triggering this provision is not an ideal outcome. As a practical matter, however, this potential outcome must be acknowledged in the evaluation of both of the above-described allocation methodologies.

An alternate option would be to allocate the capacity to the least-cost, most viable projects, but only up to a particular IOU's RPS need. For example, if SDG&E and SCE each shortlisted a 100 MW project in the Tehachapi area, and the CAISO has indicated that 100 MWs of deliverability capacity are available in that area, the Commission should allocate the capacity

^{28/} SDG&E Draft 2012 RPS Plan, Attachment 1, p. 36.

to the less expensive and more viable of the two projects. However, if, in this example, SDG&E can meet its RPS need with shortlisted projects that are located in other areas where there is sufficient deliverability capacity, and SCE cannot, the CAISO should allocate the capacity to SCE, even if SCE's project is the more expensive of the two. This process may come closer to accomplishing the goal of minimizing costly transmission upgrades while still allowing each IOU to meet its RPS goals.

D. SDG&E's Proposed Cap on Network Upgrade Costs is Reasonable and Serves to Protect Utility Ratepayers

SDG&E's Plan notes that it "protects ratepayers by establishing transmission upgrade cost limits and including conditions precedent in the PPA whereby if the upgrade costs are higher than the thresholds established in the PPA, the contract can be terminated."^{29/} IEP challenges this ratepayer protection measure, asserting that utility ratepayers should be required to assume the full burden of potentially significant unanticipated network upgrade costs.^{30/} IEP attempts to provide a cost-causation rationale to support its argument, claiming that "[b]uyers' procurement practices largely determine the need for transmission upgrades and expansions."^{31/} This argument is overly-simplistic and ignores the role of the LCBF evaluation in determining project selection.

SDG&E relies upon the CAISO's determinations of required system upgrades and associated estimated costs for proposed renewables projects. In evaluating projects under the LCBF framework and developing its shortlist, SDG&E seeks to identify projects that offer the greatest value and to minimize, to the extent possible, cost to ratepayers. If network upgrade costs for a project are considerably higher than expected, it is neither fair nor reasonable to expect ratepayers to absorb the additional expense. Automatic allocation of increased network

^{29/} SDG&E Draft 2012 RPS Plan, Attachment 1, p. 13.

^{30/} IEP Comments, p. 18.

^{31/} *Id.*

upgrade costs to ratepayers would preclude SDG&E's ability to identify on behalf of its ratepayers those RPS contracts that offer an overall value, and to protect its ratepayers from excessive RPS-related cost exposure. Accordingly, the Commission should reject IEP's assertion that SDG&E's cap on network upgrade costs is unreasonable.

E. The Commission Should Approve SDG&E's Tiered Shortlist Proposal

The ACR included a proposal that the IOUs create two RPS solicitation shortlists – the “Primary Shortlist” would include projects with Phase 2 studies and the “Provisional Shortlist” would consist of all other projects. SDG&E supported this basic concept in its opening comments and explained its proposal for a “tiered” approach to the shortlist.^{32/} As described in its Plan, SDG&E's shortlist would be organized into three categories:

- **Tier 1 “Nominal Need”:** Projects that are shortlisted because they fulfill SDG&E's Nominal Need (prior to applying probability weighting). SDG&E will require exclusivity as a condition for Tier 1 shortlisting.
- **Tier 2 “Probability-Weighted Need”:** Projects that are shortlisted because they fulfill SDG&E's Probability-Weighted Need. For these projects, SDG&E will attempt to negotiate exclusivity for a limited period.
- **Tier 3 “Contingency Need”:** Projects that are shortlisted because they fulfill SDG&E's Contingency Need. These projects will be shortlisted on a “stand-by” basis and counterparties will be informed of such. Exclusivity will not be required for Tier 3 shortlisting.

In its comments on the ACR proposal, IEP asserts that projects on the Provisional Shortlist should not be required to withdraw from another utility's RPS solicitation. SDG&E agrees with the notion that as the probability that the utility will negotiate a PPA with a counterparty decreases, so too should the level of exclusivity provided to the utility.

Taking into account the ACR proposal and IEP's comments, SDG&E proposes to update the shortlist approach described in its Plan to reflect the following structure:

^{32/} See SDG&E Draft 2012 RPS Plan, Attachment 1, Appendix C, p. 7.

Revised SDG&E Shortlist Organization

	Level of RPS Need the Project Will Fulfill	Interconnection Study	Exclusivity
Tier 1	Nominal Need	Phase 2 Study Required	Full
Tier 2	Probability-Weighted Need	Phase 2 Study Not Required	Up to 6 Months
Tier 3	Contingent Need	Phase 2 Study Not Required	Not Required

Tier 1 shortlisted projects would be selected to fulfill SDG&E's nominal RPS need, which is calculated assuming SDG&E's RPS portfolio delivers at its full potential, as described in SDG&E's RPS Plan.^{33/} Such projects would be required to have received Phase 2 studies from the CAISO and they would be required to provide full exclusivity to SDG&E, meaning that they must withdraw from the solicitations of other utilities.

Tier 2 shortlisted projects would be selected to fulfill SDG&E's probability-weighted RPS need, which is calculated assuming SDG&E's RPS portfolio delivers less than its full potential as determined in accordance with the Commission's approved methodology for calculating RPS net short position. These projects need not have obtained Phase 2 studies and SDG&E will attempt to negotiate exclusivity with these counterparties for a period of up to six months, but exclusivity would not be required. SDG&E would require full exclusivity as soon as the project obtains a Phase 2 study if SDG&E intends to move forward with the negotiation of a PPA.

Tier 3 shortlisted projects would be selected to fulfill SDG&E's contingent RPS need, which is calculated by multiplying SDG&E's probability-weighted need by 150%. SDG&E advises projects on the Tier 3 shortlist that the likelihood of a PPA is low; SDG&E selects projects for its Tier 3 shortlist so that it is prepared to move forward with the next best projects from the solicitation in the event projects from its Tier 1 and 2 shortlists do not materialize. Such projects need not have obtained a Phase 2 study and SDG&E will not require exclusivity from these counter-parties. If SDG&E moves forward with the negotiation of a PPA with a Tier

^{33/} See SDG&E Draft 2012 RPS Plan, Attachment 1, p. 19.

3 shortlisted project, SDG&E would require full exclusivity as soon as the project obtained a Phase 2 study.

This approach takes into account the need, as a practical matter, to shortlist a sufficient volume of projects to meet SDG&E's nominal, probability-weighted, and contingent RPS needs, while mitigating the concerns that might arise from the fact that SDG&E is less likely to negotiate PPAs with counterparties on its Tier 2 and 3 shortlists.

F. SDG&E's Approach to "Over-Procurement" Protects Ratepayers

DRA asserts that "in no event should the Commission adopt a minimum margin of procurement AND something other than a 100% success rate."^{34/} It correctly points out that the probability-weighted success rate and the margin of over-procurement approaches are both intended to "counter future project failure and other unforeseen circumstances."^{35/} SDG&E seeks herein to clarify that it does not over-procure by signing PPAs for deliveries in excess of its forecasted, probability-adjusted need. It has instead, as discussed in Section E above, developed a shortlisting approach whereby it (i) includes on its shortlist bids representing 150% of its forecasted probability-weighted need; (ii) separates shortlisted bids into Tiers 1, 2 and 3; (iii) negotiates PPAs with Tier 1 and 2 projects first in order to meet its forecasted probability-weighted need; and (iv) maintains in a separate Tier 3 shortlist those bids that are in excess of forecasted probability-weighted need, but which might be accepted in the event a Tier 1 or 2 bid does not result in a PPA.

SDG&E submits that this approach benefits ratepayers where it ensures that a Tier 3 replacement bid is on its shortlist and readily available in the event a Tier 1 or 2 bid does not result in a PPA. Inclusion of Tier 3 bids on the shortlist does not impose any costs on ratepayers since no PPA is executed with Tier 3 bidders unless it is necessary to do so to replace a Tier 1

^{34/} DRA Comments, p. 8 (emphasis in original).

^{35/} *Id.*

or 2 bid. Accordingly, if the Commission adopts DRA’s proposal to make adoption of a minimum margin of procurement mutually exclusive with adoption of something other than a 100% success rate, it should expressly state that SDG&E’s tiered shortlisting approach is consistent with such a mandate.

G. SDG&E’s Proposed Approach to Assigning Network Upgrade Costs does not Result in Double-Billing of Costs

In discussing allocation of network upgrade costs, SDG&E’s Plan notes that “[p]rojects with existing interconnections should not have any upgrade costs assigned, unless the project is a repower or expansion of existing facilities or otherwise requires modifications to an existing interconnection to meet new standards.”^{36/} Tenaska Solar Ventures (“Tenaska”) raises the concern that “SDG&E’s statement appears to propose that a project expansion should be assigned upgrade costs even if those anticipated upgrade costs resulting from the project expansion are already included as part of an executed [large generator interconnection agreement (“LGIA”)] covering an earlier phase of a project.”^{37/}

SDG&E clarifies that it agrees with Tenaska – if the interconnection facilities identified in an LGIA have been built and the associated cost already allocated, the costs should not be included in the bid evaluation process. SDG&E notes, however, that a circumstance may arise in which an LGIA contemplates interconnection facilities for a large-sized project that is built in phases (*e.g.*, the LGIA contemplates a 300 MW facility, but the first phase of construction is 100 MW). When evaluating a bid for a project that is sized smaller than its interconnection request, SDG&E typically scales down the interconnection costs for bid ranking purposes after consultation with the developer. In that event, a later expansion of the project would require SDG&E to consider the interconnection costs associated with the expansion. The above-

^{36/} SDG&E Draft 2012 RPS Plan, Attachment 1, p. 30.

^{37/} *Comments of Tenaska Solar Ventures on the Assigned Commissioner’s Ruling*, filed June 27, 2012 (“Tenaska Comments”), p. 7.

referenced statement in SDG&E’s Plan is intended to recognize the need for *ad hoc* consideration of interconnection costs in instances where the developer intends to spread the costs identified in the LGIA over multiple phases of its project.

H. SDG&E’s Plan Does Not Discriminate Against Non-CAISO Projects

CalEnergy, the Imperial Irrigation District (“IID”) and SolarReserve. LLC (“SolarReserve”) argue that SDG&E’s Plan penalizes projects that are sited in non-CAISO balancing areas.^{38/} Specifically, IID argues that SDG&E’s process of assigning deliverability value to proposed projects indicates a preference for CAISO-interconnected projects.^{39/} The claim that SDG&E’s Plan unreasonably discriminates against non-CAISO projects lacks merit.

As IID correctly points out, SDG&E’s bid evaluation methodology does include an assessment of deliverability value. SDG&E’s methodology assigns greater value to projects that can provide Resource Adequacy (“RA”) value to SDG&E, *regardless of whether the project connects to the CAISO*. Although IID argues that this process indicates a preference for CAISO-interconnected projects, in reality, SDG&E’s process indicates a preference for projects that provide RA value (regardless of location).

The CAISO does, in some cases, grant RA value to non-CAISO capacity that is imported at the interties to the CAISO system. However, the capacity that the CAISO will consider as providing RA value is limited by the Maximum Import Capacity (“MIC”) that the CAISO assigns to each intertie point. The MIC is allocated between CAISO-connected utilities based on a statewide percentage of California load share, which is completely unrelated to and independent from the actual capacity of the interconnected resource. In addition, the amount of available import capacity is subject to change minute to minute, depending on how both systems

^{38/} CalEnergy Comments, p. 10; *Opening Comments of Imperial Irrigation District on RPS Procurement Plans and New Proposals*, filed June 27, 2012 (“IID Comments”), p. 16; *Opening Comments of Solar Reserve, LLC on Procurement Plans and New Proposals*, filed June 27, 2012 (“SolarReserve Comments”), p. 5.

^{39/} IID Comments, p. 16.

change their resource dispatch to best manage their systems. Because of these limitations on the potential RA value of projects that are imported at CAISO intertie points, SDG&E cannot rely on receiving the full RA value from these non-CAISO projects.

SDG&E’s bid evaluation process allows for a case-by-case analysis of this category of projects to determine what, if any, RA value should be assigned to such projects. This analysis includes consideration of: (a) the amount of import capacity that is available to SDG&E at the intertie in question; (b) whether the project’s capacity exceeds such available import capacity; and (c) whether the transmission studies performed on behalf of the project by the neighboring balancing authority and/or the CAISO provide any indication of whether the CAISO may grant RA value to the project.

SDG&E has not – and will not – arbitrarily reject IID-connected resources or any other non-CAISO resources. Indeed, SDG&E executed a 150-megawatt solar contract with a non-CAISO project (the Solargen2 project) on the basis of its LCBF evaluation. SDG&E does, however, require close analysis of the RA value of such projects to ensure that ratepayers are not paying for value that they may not ultimately receive due to the CAISO’s method of assigning RA value to such projects. SDG&E acknowledges that IID and others have proposed suggested changes to the CAISO’s current RA allocation methods.^{40/} SDG&E agrees that there may be value in some of these proposals and is supportive of continued discussions on this topic with the CAISO.

I. SDG&E Continues to Support Projects in the Imperial Valley Region

IID points out that “renewable development in the Imperial Valley continues to face significant barriers and remains at a decidedly suboptimal level.”^{41/} It asserts that the IOUs

^{40/} For example, IID and CalEnergy argue that the Commission should direct IOUs to assume that the MIC at the IID-CAISO intertie will be no less than 1400 MW. (IID Comments, p. 22; CalEnergy Comments, p. 5). IID also argues that the Commission should “allow qualifying projects to secure long-term RA capacity rights at the interties . . .” (IID Comments, p. 22).

^{41/} IID Comments, p. 13.

should include a discussion of Imperial Valley issues in their respective plans, and should continue the monitoring of Imperial Valley proposals and outreach efforts contemplated in D.11-04-030.^{42/}

SDG&E notes that it remains committed to the Imperial Valley region. It maintains an office in the region to serve as an information center for potential renewable developers and, as of June 2012, has approximately 3300 GWh under contract that will be facilitated by the Sunrise Powerlink transmission line (“Sunrise”). Provided that all of these projects come online as expected, SDG&E will have fulfilled its Sunrise renewables commitment undertaken in D.08-12-058. In order to account for potential project failure and to achieve its Sunrise commitment, SDG&E continues to consider PPAs with projects located in the Imperial Valley region.

J. SDG&E Supports the Proposal to Establish Clear Criteria Governing what Contract Amendments Require Review via the Tier 3 Advice Letter Process

Under the Commission’s current process, “material” amendments to an RPS PPA require Commission review. IEP proposes that the Commission identify what types of PPA amendments would be considered “material” and trigger the Tier 3 advice letter review process.^{43/} SDG&E generally supports IEP’s proposal, with a few modifications. SDG&E agrees that good cause must be shown for a proposed PPA amendment, and that the requested change should be due to circumstances beyond the reasonable control of the developer.^{44/} It suggests that IEP’s list of circumstances triggering a Tier 3 advice letter filing be slightly revised; SDG&E proposes that the Tier 3 advice letter filing requirement be limited to the following situations:

- Change in generation technology;
- Extension of the COD by more than 12 months (rather than 18 months);
- Change in delivery point if such change causes a need for a new Phase I interconnection study;
- Increase in capacity;

^{42/} *Id.*

^{43/} IEP Comments, pp. 11-12.

^{44/} *Id.*

- Any change affecting price such as a change in the expected hourly delivery profile; and
- Any project modification that could trigger a change to the product content Category classification.

SDG&E submits that clarification of the Commission’s expectations regarding review of contract amendments would assist all stakeholders. Accordingly, it urges the Commission to adopt IEP’s proposal with the modifications outlined above.

K. SDG&E’s Credit Provisions are Reasonable and Serve to Protect Utility Ratepayers

In its comments, IEP acknowledges the relationship between credit requirements and ensuring project viability, but ignores the role of credit requirements in protecting ratepayers from unreasonably high RPS compliance costs. IEP correctly notes that SDG&E’s credit requirements (outlined in Section 12.0 of its RPS Solicitation document)^{45/} involve a relatively low security deposit to be paid at contract execution, a higher deposit at contract approval and further escalating deposits to be paid as milestones are achieved and throughout the delivery term.^{46/}

This approach reflects the exponential increase over time in the difficulty of replacing a failed contract in SDG&E’s portfolio. If a project fails to achieve a milestone at an early point in the development process, SDG&E has greater flexibility and more time available to replace that contract. If, on the other hand, a project fails at a point close in time to its expected commercial operation date, SDG&E would likely have fewer available options for replacing that contract and the options that did exist would likely be more expensive. As DRA notes in articulating its support for SDG&E’s credit provisions, “with regards to contract failure, the inclusion of this provision should cover some of the presumably higher replacement costs that would be borne by

^{45/} SDG&E Draft 2012 RPS Plan, Attachment 1, Appendix A, pp. 27.

^{46/} IEP Comments, p. 5.

SDG&E's ratepayers for having to procure an equivalent product in the short-term to make up for such project delays or failures."^{47/}

IEP asserts that "[a]s some of the greatest development risks are eliminated . . . the project's development security should likewise be reduced."^{48/} As a practical matter, however, a project can experience failure at any point in the construction process and through the delivery term. Rather than being reduced over time, replacement costs for failure of expected deliveries *increase* over time. Accordingly, the security amounts required of project developers should be aligned with the potential cost to ratepayers in the event of project failure.

III. CONCLUSION

For the reasons detailed above, SDG&E respectfully requests that the Commission approve SDG&E's draft 2012 Plan and consider the new proposals included in the ACR in accordance with SDG&E's comments in its Plan and herein.

Respectfully submitted this 18th day of July, 2012.

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^{47/} DRA Comments, p. 16.

^{48/} *Id.*

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