

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

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

**COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY
(U 902 E) ON DECISION CONDITIONALLY ACCEPTING 2012
RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLANS
AND INTEGRATED RESOURCE PLAN OFF-YEAR SUPPLEMENT**

**I.
INTRODUCTION**

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 comments concerning the proposed *Decision Conditionally Accepting 2012 Renewables Portfolio Standard Procurement Plans and Integrated Resource Plan Off-Year Supplement* (the “PD”) issued on October 9, 2012.

In accordance with the schedule adopted by the Commission, SDG&E submitted its draft Renewable Portfolio Standard (“RPS”) procurement plan, draft RPS request for offers (“RFO”) and draft RPS pro forma documents (together the “draft Plan”) on May 23, 2012. On August 15, 2012, SDG&E filed an update to its draft Plan. The purpose of SDG&E’s update filing was to incorporate relevant aspects of Commission decisions adopted since submission of SDG&E’s original draft Plan, including the RPS compliance decision (D.12-06-038) and the Feed-in Tariff decision (D.12-05-035), and to make other miscellaneous changes to the draft Plan.

The PD conditionally accepts SDG&E’s draft Plan, while requiring SDG&E to make certain modifications described in the PD. The PD also adopts a schedule for the

2012 solicitation and for organization of the 2013 solicitation cycle. As discussed below, SDG&E generally supports the PD, but offers a limited number of proposed clarifications and revisions. Specifically, SDG&E requests that the PD be modified to (i) make clear that projects eligible for the Renewable Auction Mechanism (“RAM”) program are prohibited from participating in an RPS Solicitation until the RAM program is fully subscribed; (ii) clarify that the investor-owned utilities (“IOUs”) have the option to issue a solicitation and/or execute bilateral contracts to sell excess RPS products; (iii) amend the schedule for the 2012 solicitation; (iv) clarify that the 12-month period for contract execution starts on the date that the Commission’s decision or resolution approving the final shortlist becomes final; and (iv) expressly acknowledge that the Energy Division Director may extend this 12-month contract execution deadline.

II. DISCUSSION

A. The PD Should be Modified to Expressly Prohibit Projects Eligible for the RAM Program from Participating in an RPS Solicitation Until the RAM Program is Fully Subscribed

The PD requires the IOUs to set eligibility criteria for RPS program solicitations so that the minimum size of projects participating in RPS solicitations is greater than three MW, reasoning that projects sized at three MW and below have contracting options under the Feed-In Tariff (“FiT”) programs and other similar programs.^{1/} SDG&E supports this requirement, which eliminates the potential overlap between RPS solicitations and the FiT, but notes that the PD fails to address the risk of overlap between RPS solicitations and the RAM program. Accordingly, the PD should be modified to expressly prohibit projects that

^{1/} PD, pp. 42-43.

are eligible for the RAM program from participating in an IOU's RPS solicitation until the relevant IOU's RAM program is fully subscribed.

Directing RAM-eligible projects to the RAM program, rather than permitting developers of such projects to choose between the RAM program and an RPS solicitation will protect ratepayers' interests by reducing the opportunity for gaming and avoiding duplicative procurement efforts. Commission precedent supports this conclusion. In D.12-05-035 (the "FiT Decision"), the Commission considered the potential for overlap between the FiT and RAM programs and determined that such overlap was contrary to the public interest. It noted the possibility that a bidder could elect to participate in *both* the FiT and the RAM program, and choose to execute a contract under the program yielding the highest price. It concluded that the most effective means of preventing potential gaming was to make the FiT program and the RAM program mutually exclusive.^{2/} Plainly, an identical risk exists here to the extent the PD would allow an overlap between RPS solicitations and the RAM program; a bidder could bid into both solicitations using different price points and choose to move forward with the transaction that imposes the highest cost on ratepayers.

The potential for program overlap is also problematic in that it results in duplicative procurement efforts. The Commission observed in the FiT Decision that duplicative procurement mechanisms "increase administrative burdens and complicate the implementation process for program participants and the Commission."^{3/} The Commission concluded that the burdens placed on Commission and stakeholder resources by

^{2/} D.12-05-035, *mimeo*, p. 68.

^{3/} *Id.*

overlapping FiT and RAM programs was contrary to the public interest.^{4/} The same burden would be imposed by overlapping RAM and RPS programs; accordingly, the Commission should modify the PD to ensure that such overlap does not occur and that RPS programs are administered as efficiently as possible.

B. The PD Should be Modified to Clarify that the IOUs have the Option to Issue a Solicitation and/or Execute Bilateral Contracts to Sell Excess Procurement

The PD accepts the proposal of Southern California Edison Company (“SCE”) to hold a competitive solicitation for the sale of excess bundled renewable generation, unbundled renewable energy credits (“RECs”) and/or other RPS-eligible products (together, “RPS Products”).^{5/} SDG&E requests that the PD be modified to make clear that the IOUs may also sell excess RPS Products through bilateral transactions. In other words, the PD should make clear that the IOUs may sell excess RPS Products through *either* a solicitation or bilateral deals (or a combination of both), at the IOU’s election.

The ability to sell RPS Products protects ratepayers by allowing the IOUs to manage and optimize their RPS portfolios. Depending on the circumstances involved, a solicitation, the negotiation of a bilateral contract or a combination of these sales mechanisms may be appropriate. If market conditions are rapidly changing, the inability to engage in bilateral transactions would create a competitive disadvantage; the delay inherent in the solicitation process might prevent an IOU from being in a position to strike the deal that is most beneficial for its ratepayers. In addition, the ability to enter into bilateral deals

^{4/} *Id.*

^{5/} PD, pp. 58-60. The PD rejects the proposal that such transactions be subject to a Tier 2 Advice Letter approval process rather than a Tier 3 Advice Letter approval process. *Id.*

provides the IOUs with the opportunity to customize RPS Products for a counter-party in a way that it cannot in a solicitation, so that ratepayers receive maximum value for the product being sold. Accordingly, the Commission should clarify in the final decision that sales of RPS Products may be undertaken through either the solicitation process, bilateral deals or both.

C. PD Should be Revised to Amend the Schedule for the 2012 Solicitation

The PD proposes a schedule for the 2012 RPS solicitation that would involve simultaneous issuance of the IOUs' respective RPS RFOs in late-2012.^{6/} SDG&E recommends, however, that the PD be revised to amend the schedule for the 2012 solicitation to remove the requirement that PG&E and SDG&E hold their RFOs concurrently, and to allow SDG&E to issue its RFO in late Q1 2013, when SDG&E will have necessary information regarding its RPS need. This will enable SDG&E to issue a solicitation for a well-defined, targeted need and maximize the value of contracts resulting from the RFO and/or bilateral negotiations for ratepayers.

While IOU RFOs have traditionally been held concurrently, the Commission has observed that the IOUs should be granted substantial flexibility in the timing of RPS RFOs.^{7/} The Commission's practice of requiring simultaneous RFOs was necessary under the prior RPS framework in order to prevent gaming by bidders between IOU RFOs based on the release date of the market price referent ("MPR") contract pricing benchmark. As the Commission explained in D.04-07-029),

^{6/} PD, Ordering Paragraph 20.

^{7/} D.04-07-029, *mimeo*, p. 6.

As a general principle, we agree that the utilities should be given substantial flexibility in the timing of future solicitations. However, given the current MPR calculation methodology, we are somewhat constrained by the legislative requirements that the MPR established by the Commission does not influence the bids submitted and that the bids submitted do not influence the calculation of the MPR. ***Since the MPR is a statewide number, if one utility’s solicitation precedes another, and the MPR is released in response to that solicitation, the MPR may establish an effective bid floor.***⁸

In Senate Bill (“SB”) x1 2 (“SB 2”), the MPR was replaced with a new procurement expenditure limitation to be determined by the Commission.^{9/} This change in the RPS program eliminates the rationale for requiring simultaneous IOU RFOs. Thus, in recognition of the general principle articulated by the Commission that “the utilities should be given substantial flexibility in the timing of future solicitations,” the PD should be revised to remove the simultaneous RFO issuance requirement and to permit SDG&E and Pacific Gas & Electric Company (“PG&E”) to determine on an individual basis the timing of their respective RFOs.

Each IOU’s RPS compliance status is unique, as the Commission’s decision to allow SCE to not hold a 2012 RFO acknowledges. Given the absence of the MPR as a factor in determining RFO timing, the focus must now be how each IOU can best manage its portfolio. While allowing an IOU to conduct its RFO at the time that is most strategic for that entity may mean that the timing of the IOUs’ respective RFOs no longer coincides, the benefits of such an approach far outweigh any perceived negatives. Under the current framework, the opportunity for gaming by bidders is reduced if IOU solicitations are *not* launched concurrently; if bidders have only one opportunity to submit a price, it is more likely to be their best offer. Moreover, staggered RFOs will prevent the problem of

^{8/} *Id.* (Emphasis added).

^{9/} Senate Bill (“SB”) x1 2 (Stats. 2011, Ch. 1).

projects on one IOU's shortlist being lost to that of another. This will ensure that developers have the maximum incentive to bid competitively.

As a practical matter, the timing of an IOU's RFO must be driven by the availability of information necessary to properly define the IOU's RPS need. It is in the best interest of ratepayers, the market, and the Commission for the IOUs to have the data necessary to determine what RPS products and quantities are required in the RFO – a strong solicitation will lead to a strong shortlist, ensuring that the time taken by the Commission to review and approve these proposed projects is well spent. A solicitation that takes proper account of the IOU's RPS need will provide the market the information it needs to present the most attractive and optimal projects for that IOU, increasing the likelihood of project success and the IOU's achievement of its RPS procurement goals, and maximizing ratepayer value. In other words, a targeted, well-defined RFO will attract the proper bids and is an efficient use of resources; an RFO that solicits bids that ultimately do not coincide with RPS need is a wasteful burden on Commission, utility and stakeholder resources.

With regard to the timing of SDG&E's next RPS RFO, SDG&E notes that many of the projects SDG&E has contracted with that are in development will have either met or missed their milestones by the end of Q1 2013. Information regarding the success or failure of these developing projects is critical in determining SDG&E's RPS need and to proceed with an RFO in the absence of this data would be premature. Accordingly, SDG&E respectfully requests that it be permitted to hold its next RPS RFO in late Q1 2013 rather than in December, 2012.

If a currently unforeseen RPS need becomes apparent following the passage of milestones in Q1 2013 – *i.e.*, *after* the December RFO had been issued and bidding had closed – it would be too late to inform the market of the updated need and to solicit projects to fill it through the RFO mechanism. SDG&E would then be forced to proceed with the analysis of bids from the December 2012 RFO that may no longer be appropriate. The expenditure of the time and resources required to launch and complete an RFO without a distinct procurement objective would be wasteful and burdensome, and clearly would not serve the public interest. Accordingly, the PD should be revised to amend the schedule for the 2012 solicitation to allow SDG&E to issue its RFO in late Q1 2013.

D. PD Should be Amended to Clarify the Operation of the 12-Month Deadline to Execute Contracts and to Expressly Acknowledge that the Energy Division Director May Extend this Deadline

The PD requires that contracts for shortlisted bids be executed within 12 months from the date of the relevant shortlist submittal.^{10/} SDG&E supports this requirement in concept – it will help to ensure that contract terms and conditions reflect the current market. However, to the extent the 12-month period for contract execution starts on the date that the final shortlist is *submitted* to the Commission, it is problematic. First, because the IOUs are not authorized to contract until the shortlist is adopted by the Commission, the twelve months should run from the date that a Commission decision or resolution adopting the shortlist becomes final, rather than from the date that the shortlist is submitted to the Commission. Conclusion of Law 11 appears to adopt this approach, rather than the

^{10/} PD, pp. 31-34.

approach described in the PD and in Finding of Fact 13. Adjusting the timeline as SDG&E proposes removes any handicap that the IOUs or counterparties would be under as a result of delay in the adoption of the shortlist.

Second, SDG&E is concerned that rigid application of this requirement could have negative unintended consequences that would be harmful to ratepayers. Despite the best efforts of the IOUs and counter-parties, it is possible that in some instances, final contract execution might not occur within the 12-month period contemplated in the PD. For example, in light of the PD's requirement that a project have its completed Phase II interconnection study prior to execution, if the CAISO were delayed in issuing those Phase II results, it could result in the contract not being executed within the 12-month window.^{11/} In such cases of reasonable delay – *i.e.*, where a delay in contract execution is not caused by the IOU or the project developer – the IOU should be permitted to seek a reasonable extension of the 12-month deadline. This will prevent a situation in which a opportunity that provides significant benefit to ratepayers is lost due to circumstances outside the control of the utility and the contract counter-party.

The 12-month deadline for contract submission is included in the 2012 RPS solicitation schedule set forth in the PD.^{12/} The PD provides that the “Energy Division Director is authorized . . . to change the schedule as appropriate . . .”^{13/} The discussion of the 12-month filing window does not, however, expressly address the ability of the Energy Division Director to exercise his discretion to extend the filing deadline, where good cause

^{11/} *Id.* at pp. 40-41.

^{12/} *Id.* at Ordering Paragraph 20.

^{13/} *Id.* at Ordering Paragraph 21 (the Ordering Paragraph is misnumbered “19”).

exists to do so. Thus, the PD should be revised to expressly acknowledge that, where appropriate, the Energy Division Director may authorize a reasonable extension of the 12-month filing deadline. In addition, the PD should be revised to make clear that the proper vehicle for seeking an extension is through a request directed to the Energy Division Director, rather than pursuant to Rule 16.6 of the Commission's Rules of Practice and Procedure.^{14/}

III. CONCLUSION

For the reasons set forth above, the PD should be modified in accordance with the discussion herein and Attachment A hereto.

Respectfully submitted this 29th day of October, 2012.

/s/ Aimee M. Smith

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^{14/} Rule 16.6 provides that requests for extension of time to comply with a Commission decision or order may be made by letter or e-mail to the Executive Director.

Attachment A

Proposed Findings of Fact

14. The proposal presented in the April 5, 2012 ACR Requiring expiration of for the shortlist to expire after 12 months after the Commission decision or resolution approving the shortlist becomes final ensures consistency by prohibiting the utility to then execute a bilateral contract for the same project until a subsequent solicitation is initiated. The project is permitted to bid into any subsequent RPS solicitation.

18. In the past, the Commission has directed utilities to set the minimum capacity for projects bidding into the RPS Program's solicitation based on the availability of options for contracting through other programs, such as the Feed-in-Tariff program, that target smaller generation. The Commission has also sought to prevent overlap between the Feed-in-Tariff Program and the Renewable Auction Mechanism program.

19. Allowing projects eligible for the RAM program to also bid into RPS solicitations would create a risk of gaming by bidders between the two programs, and would create a duplicative procurement mechanism leading to increased administrative burden.

Proposed Conclusions of Law

11. It is reasonable to require the shortlist to expire 12 months after approval by the Commission is final because the benefits of being able to compare a contract's value and price to current solicitation data outweighs the concerns regarding the constraints imposed by a limited negotiation period.

14. The minimum size of projects participating in RPS Program solicitations should be increased to greater than three MW based on the existing contracting options for projects with a nameplate capacity of three MW under in the Feed-in-Tariff program and other programs for small renewable generators. Projects eligible for the Renewable Auction Mechanism (RAM) program should not be permitted to bid into a utility's RPS solicitation if that utility's (RAM) program is not fully subscribed.

21. The utilities are authorized to sell excess REC and energy through execution of bilateral sales contracts and/or competitive solicitations. Because it is unclear whether the Tier 2 Advice Letter process will increase the utility's efficient management of its portfolio while maintaining sufficient ratepayer protections, the proposal for an expedited regulatory review process for excess

REC and energy sales through the Tier 2 Advice Letter process should not be approved.

PROPOSED ORDERING PARAGRAPHS

9. Beginning with the final 2012 Renewables Portfolio Standard (RPS) Procurement Plans to be filed with the Commission pursuant to the schedule adopted herein, bids shortlisted by Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E) shall be executed, if at all, within 12 months from the date **the Commission decision or resolution adopting the shortlist becomes final.** ~~utilities submit final shortlists to the Commission for approval.~~ This expiration date is included in the schedule adopted herein **and may be modified by the Energy Division Director if good cause is shown for an extension of the expiration date.** If that deadline is not met, the bid will be removed from the shortlist and the utility will not be permitted to execute a bilateral contract for the same project until after the initiation of a subsequent RPS solicitation. The project may be bid into any subsequent RPS solicitation. This directive applies to future RPS solicitations by PG&E and SDG&E unless otherwise directed by the Commission. While Southern California Edison Company (SCE) will not hold a 2012 solicitation, this requirement will apply to future SCE solicitations until otherwise directed by the Commission.

12. In the final 2012 Renewables Portfolio Standard Procurement Plans to be filed with the Commission pursuant to the schedule adopted herein, Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E) shall amend their plans ~~such~~ **to specify** that the minimum nameplate capacity for projects to bid into a solicitation is greater than three megawatts, **and that projects eligible for the Renewable Auction Mechanism (RAM) program are prohibited from bidding into a solicitation until capacity under the RAM program is fully subscribed.** This directive applies to future RPS Procurement Plans filed by PG&E and SDG&E unless otherwise directed by the Commission. While Southern California Edison Company (SCE) will not hold a 2012 solicitation, SCE shall modify future bid solicitation protocols consistent with this requirement unless otherwise directed by the Commission.

18. In the final 2012 Renewables Portfolio Standard (RPS) Procurement Plans to be filed with the Commission pursuant to the schedule adopted herein, Pacific Gas and Electric Company's (PG&E), Southern California Edison Company's (SCE), and San Diego Gas & Electric Company's (SDG&E) final 2012 RPS Procurement

Plans may include a competitive solicitation for the sale of excess RPS products from existing facilities and must rely on the Tier 3 Advice Letter process for the purpose of obtaining approval of contracts for the sale of excess bundled renewable energy and unbundled RECs. **A competitive solicitation for the sale of excess RPS products for existing facilities is optional and does not preclude negotiation of bilateral contracts for the sale of excess RPS products from existing facilities.** This directive applies to future RPS Procurement Plans filed by PG&E, SCE, and SDG&E unless otherwise directed by the Commission.

20. The following schedule is adopted for the 2012 Renewables Portfolio Standard (RPS) solicitation **and will be applied on an individual basis to each utility issuing a 2012 RPS solicitation:**

SCHEDULE FOR 2012 SOLICITATION

LINE NO.	ITEM	NO. OF DAYS (cumulative)
1	Mailing of Commission decision conditionally accepting 2012 RPS Procurement Plans	0
2	PG&E, SCE and SDG&E file final 2012 RPS Procurement Plans	14
3 <u>1</u>	PG&E and SDG&E Utility issues RFOs (unless amended Plans are suspended by Energy Division Director by Day 24)*	24 <u>1</u>
4 <u>2</u>	PG&E and SDG&E Utility notifies Commission that bidding is closed	84 <u>60</u>
5 <u>3</u>	PG&E and SDG&E Utility notifies bidders of shortlist; no exclusivity agreements may be required before this date	144 <u>120</u>
6 <u>4</u>	PG&E and SDG&E Utility submits shortlists to Commission and Procurement Review Group	154 <u>130</u>
7 <u>5</u>	PG&E and SDG&E Utility files by Tier 2 advice letter (a) Evaluation Criteria and Selection Process Report and (b) Independent Evaluator's Report	184 <u>160</u>
8 <u>6</u>	PG&E and SDG&E Utility's 2012 RPS Solicitation Shortlists Expires	519 <u>TBD</u>
9 <u>7</u>	PG&E and SDG&E Utility submits Advice Letters with contracts/PPAs for Commission approval	TBD

*The utility may adjust this date to a day after day 24, as necessary, without Commission approval.

19. The Energy Division Director is authorized, after notice to the service list of this proceeding, to change the schedule as appropriate or as necessary for **good**

cause shown and/or efficient administration of the 2012 Renewables Portfolio Standard solicitation process.

AFFIDAVIT

I am an employee of the respondent corporation herein, and am authorized to make this verification on its behalf. The matters stated in the foregoing **COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) ON DECISION CONDITIONALLY ACCEPTING 2012 RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLANS AND INTEGRATED RESOURCE PLAN OFF-YEAR SUPPLEMENT** are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 29th day of October, 2012, at San Diego, California

/s/ Hillary Hebert

Hillary Hebert
Partnerships and Programs Manager
Origination and Portfolio Design Department