

**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.)	

**REPLY 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 reply 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 its opening comments on the PD, SDG&E proposed, *inter alia*, that the PD be modified to 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.^{1/} SDG&E seeks to clarify herein that rather than proposing a universal rule to be applied categorically to the RPS solicitations of all investor-owned utilities (“IOUs”), SDG&E proposes that each IOU have the discretion to establish on an individual basis, where it deems it necessary and reasonable to do so, an eligibility criterion for its *own* RPS solicitation that operates to prohibit projects eligible for the RAM program from participating in that IOU’s solicitation until that IOU’s RAM program is fully subscribed.^{2/} In addition, SDG&E expresses support herein for the recommendation of Southern California Edison Company (“SCE”) that the PD be modified to allow negotiation of bilateral contracts regardless of whether an RPS solicitation is held, as well as the

^{1/} *Comments of San Diego Gas & Electric Company on Decision Conditionally Accepting 2012 Renewables Portfolio Standard Procurement Plans and Integrated Resource Plan Off-Year Supplement*, filed October 29, 2012 in R.11-05-005 (“SDG&E Opening Comments”), pp. 2-4.

^{2/} SDG&E’s proposed Finding of Fact, Conclusion of Law and Ordering Paragraph relevant to this issue, which are revised versions of those submitted with its opening comments, are attached hereto in Attachment 1.

recommendation Pacific Gas & Electric Company (“PG&E”) that the PD be modified to clarify that the Commission will monitor the total capacity under contract from the Imperial Irrigation District’s (“IID”) Balancing Authority Area.

II. DISCUSSION

A. The PD Should be Modified to Allow Each IOU to Prohibit Projects Eligible for that IOU’s RAM Program from Participating in that IOU’s RPS Solicitation if that IOU’s RAM Program is Not Fully Subscribed

As SDG&E explained in its opening comments, it supports the PD’s proposal to require the IOUs to set eligibility criteria for RPS program solicitations to prevent overlap between the RPS solicitation and the Feed-In Tariff (“FiT”) programs and/or other similar programs.^{3/} It proposed further in its opening comments that the PD be revised to also address the potential overlap between RPS solicitations and the RAM program.^{4/} SDG&E clarifies herein that it proposes that each IOU have the discretion to establish on an individual basis eligibility criteria for its *own* RPS solicitation that would prohibit projects eligible for the RAM program from participating in that IOU’s solicitation until that IOU’s RAM program is fully subscribed.

As SDG&E explained in its opening comments, overlap between the RAM program and RPS solicitations could be problematic to the extent that it might result in gaming by bidders – *i.e.*, a bidder could bid the same product into both solicitations using different price points and choose to move forward with the transaction that imposes the highest cost on ratepayers – and could result in duplicative procurement efforts.^{5/} Accordingly, to prevent the harm to ratepayers that could result from program overlap, the Commission should permit each IOU to establish on an individual basis eligibility criteria for its own RPS solicitation that would prohibit projects eligible for the RAM program from participating in that IOU’s solicitation until that IOU’s RAM program is fully subscribed.

As a practical matter, there may be instances in which the timing of RPS solicitations vis-à-vis RAM solicitations does not present an overlap concern. In addition, there may be circumstances where an IOU perceives a benefit to ratepayers to allowing bidders to bid the

^{3/} See PD, pp. 42-43.

^{4/} SDG&E Opening Comments, pp. 2-4.

^{5/} See D.12-05-035, *mimeo*, p. 68.

same project into a RAM solicitation and an RPS solicitation. Hence, the Commission should not adopt a categorical requirement that RAM-eligible projects be prohibited from bidding into an RPS solicitation. Rather, each IOU should be permitted to determine on an *ad hoc* basis whether the prohibition on simultaneous participation in the RAM and RPS is necessary to protect ratepayers' interests, and where it is, should include such eligibility criterion in its proposed solicitation materials submitted for Commission review.

B. SDG&E Agrees that the PD Should be Modified to Allow Negotiation of Bilateral Contracts Even Where No RPS Solicitation is Held

The PD finds that SCE's proposal to forego a 2012 RPS solicitation is reasonable, but determines that "SCE's proposal that it will consider offers for bilateral contracts during the time period covered by the 2012 RPS Procurement Plans is not reasonable."^{6/} In its opening comments, SCE asserted that the Commission should not restrict SCE from executing bilateral RPS power purchase agreements ("PPAs") during the 2012 RPS solicitation cycle since permitting an IOU to contract bilaterally when there is a "unique or compelling justification" is in the best interest of ratepayers.^{7/} SDG&E agrees with SCE that the prohibition on bilateral contracting proposed in the PD is unnecessary and contrary to ratepayers' interests.

The ability to transact bilaterally provides IOUs with the flexibility necessary to respond to constantly evolving market conditions and changes in project development schedules, over which the IOUs have no control, while still safeguarding its ratepayers. Hence, this vital procurement mechanism should not be contingent on any separate solicitation timeline. SDG&E agrees with the observation of the Independent Energy Producers Association ("IEP") in its opening comments that "[o]pportunities that arise between solicitations can provide significant value to utilities and their ratepayers."^{8/} Indeed, as IEP correctly pointed out, the Commission re-considered its initial prohibition on bilateral contracting for projects under the RAM program, concluding that "the prohibition on bilateral contracting is overly broad *and appears likely to work to the detriment rather than to the advantage of ratepayers.*"^{9/} Thus, Commission precedent supports the conclusion that

^{6/} PD, Conclusions of Law 18 and 19.

^{7/} *Southern California Edison Company's Comments on the Proposed Decision Conditionally Accepting 2012 Renewable Portfolio Standard Procurement Plans and Integrated Resource Plan Off-Year Supplement*, filed October 29, 2012 in R.11-05-005 ("SCE Opening Comments"), p. 3.

^{8/} *Comments of The Independent Energy Producers Association on Proposed Decision Accepting RPS Procurement Plans*, filed October 29, 2012 in R.11-05-005 ("IEP Opening Comments"), p. 7

^{9/} D.11-04-008, *mimeo*, p. 7 (emphasis added).

unnecessarily handicapping an IOU by prohibiting the use of bilateral contracting as a procurement tool is not in ratepayers' best interest.

As SCE's opening comments correctly pointed out, the PD's determination that bilateral contracting in the absence of a solicitation is "unreasonable" improperly prejudices the value of any bilateral contract that could occur outside of an IOU's solicitation cycle. The burden of proving of a contract's value rests on the IOU; in submitting a bilateral contract for approval, it is the IOU's responsibility to justify the deal, explain how its attributes benefit ratepayers and make a compelling case for contract approval. The Commission will make the ultimate value determination by either approving or not approving the contract – solicitation timing does not affect this process. SDG&E agrees with SCE that while the Commission must be concerned with determining the price reasonableness of bilateral transactions, placing burdensome restriction on an IOU's procurement options is not the appropriate solution and is directly contrary to the Commission's policy in favor of "flexibility with accountability."^{10/} In short, bilateral contracts enable an IOU to capture unique, fleeting opportunities that are beneficial to ratepayers but may not be available through the solicitation process. Thus, the right to transact bilaterally should be preserved regardless of whether an IOU issues a solicitation, and the PD should be modified accordingly.

C. SDG&E Agrees that the PD Should be Modified to Clarify that the Commission will Monitor the Total Capacity Under Contract from the IID Balancing Authority Area

SDG&E agrees with PG&E that the Commission "is in the best position to monitor the collective procurement from IID,"^{11/} and therefore requests that the PD be revised to make clear that the Commission will assume this responsibility and will establish a reasonable process to provide IOUs and other stakeholders with up-to-date information regarding contracted generation. In its current form, the PD would require the IOUs to collectively assume no more than 1.4 GW of maximum import capability ("MIC") from the IID. SDG&E supports PG&E's interpretation of this directive – the IOUs must not assume any constraint on import capacity when evaluating an IID project's resource adequacy value. However, there is a risk that the PD's directive could also be interpreted to require the IOUs

^{10/} See D.11-04-030, *mimeo*, p. 11

^{11/} *Pacific Gas and Electric's Opening Comments on the Proposed Decision of ALJ DeAngelis Conditionally Accepting 2012 Renewable Portfolio Standard Procurement Plans and Integrated Resource Plan Off-Year Supplement*, filed October 29, 2012 in R.11-05-005 ("PG&E Opening Comments"), p. 12.

to coordinate bid evaluations, which would be impractical and administratively burdensome, and could potentially lead to legal issues. Plainly, it is in the best interest of ratepayers to have an efficient evaluation process that is free from legal deficiencies. To achieve this goal, the PD should be revised to make clear that the Commission will monitor procurement in the IID area and communicate information regarding contracted generation, and that it will determine the next steps once the contracts from that region collectively reach the 1.4 GW MIC threshold.

III. CONCLUSION

For the reasons set forth above, the PD should be modified in accordance with SDG&E's opening comments, the discussion herein and Attachment A to SDG&E's opening comments, as amended by Attachment 1 hereto.

Respectfully submitted this 5th day of November, 2012.

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Attachment 1

Proposed Findings of Fact

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

Proposed Conclusions of Law

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. **Each utility has the discretion to incorporate into the eligibility criteria of its RPS solicitation a provision prohibiting projects eligible for the Renewable Auction Mechanism (RAM) program from bidding into such utility's RPS solicitation if that utility's RAM program is not fully subscribed.**

PROPOSED ORDERING PARAGRAPHS

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 **must be** greater than three megawatts. **In addition, each utility may, at its discretion, incorporate into the eligibility criteria of its RPS solicitation a provision prohibiting projects eligible for the Renewable Auction Mechanism (RAM) program from bidding into such utility's RPS solicitation if that utility's RAM program is not 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.

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 **REPLY 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 5th day of November, 2012, at San Diego, California

/s/ Hillary Hebert

Hillary Hebert
Partnerships and Programs Manager
Origination and Portfolio Design Department