

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

<p>Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development</p>)	R.01-10-024 (Filed October 25, 2001)
--	---	---

**REPLY OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) TO COMMENTS
BY PANOCHÉ ENERGY CENTER LLC ON PROPOSED DECISION GRANTING
PETITION FOR MODIFICATION OF DECISION 04-06-011 (AS MODIFIED BY
D.06-02-031 AND D.06-09-021) REGARDING OTAY MESA ENERGY CENTER**

EMMA D. SALUSTRO
101 Ash Street, HQ-12B
San Diego, California 92101-3017
Telephone: (619) 696-4328
Facsimile: (619) 696-5027
E-mail: ESalustro@semprautilities.com

Attorney for
SAN DIEGO GAS & ELECTRIC COMPANY

November 20, 2012

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

_____))
Order Instituting Rulemaking to Establish Policies and)
Cost Recovery Mechanisms for Generation Procurement)
and Renewable Resource Development)
_____)

R.01-10-024
(Filed October 25, 2001)

**REPLY OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) TO COMMENTS
BY PANOCHE ENERGY CENTER LLC ON PROPOSED DECISION GRANTING
PETITION FOR MODIFICATION OF DECISION 04-06-011 (AS MODIFIED BY
D.06-02-031 AND D.06-09-021) REGARDING OTAY MESA ENERGY CENTER**

Pursuant to the Rule 14.3 of the California Public Utilities Commission’s (“Commission’s”) Rules of Practice and Procedure, San Diego Gas & Electric Company (“SDG&E”) hereby submits this Reply to Comments drafted and served on November 15, 2012 by non-party Panoche Energy Center, LLC (“PEC”) concerning the Commission’s October 26, 2012 proposed decision (“PD”) granting SDG&E’s Petition for Modification (“PFM”) of Decision (“D.”) 04-06-011 (as modified by D.06-02-031 and D.06-09-021). SDG&E wholeheartedly concurs with PEC’s support of the PD, which approves an amendment to SDG&E’s Power Purchase Agreement (“PPA” or “Otay Mesa PPA”) with Otay Mesa Energy Center, LLC (“OMEC”) that clarifies that SDG&E is responsible for the Otay Mesa plant’s greenhouse gas (“GHG”) compliance costs. SDG&E replies to a single discrete argument raised by PEC, however.

I. PEC IS NOT A PARTY TO THIS PROCEEDING, SO ITS COMMENTS ARE NOT PART OF THE RECORD

Before SDG&E addresses PEC’s argument, SDG&E addresses the PEC’s party status in this proceeding at the time of this filing. As the PEC Comments state, on May 1, 2012, PEC filed an unopposed motion for party status stating support of SDG&E’s November 16, 2011

PFM.¹ The PD denies PEC's motion for party status for several reasons.² According to PEC's Comments, on October 31, 2012, in response to PEC's request, Administrative Law Judge ("ALJ") Barnett stated that he would "reconsider[]" PEC's party status.³

Therefore, to SDG&E's belief and knowledge, PEC is not a party to this proceeding.⁴ PEC's motion for party status has not been granted. An ALJ's statement that he will reconsider PEC's party status does not grant party status. Thus, according to Rule 14.3 of the Commission's Rules of Practice and Procedure, *parties* (emphasis added) are permitted to file comments on a proposed decision and, because PEC is not a party, PEC's Comments are not part of the record and do not demand a filed response by SDG&E. However, in the event that ALJ Barnett subsequently grants PEC party status and PEC's Comments become part of the record, SDG&E preserves its response to PEC's Comments by filing this Reply.

II. PEC INCORRECTLY ASSERTS THAT THE 2004 OTAY MESA PPA IS A "2006 CONTRACT"

For reasons beyond SDG&E's knowledge and understanding, PEC's central concern with the PD is the date it considers the Otay Mesa PPA to have been executed. PEC unconvincingly argues that it is "factually inaccurate" to say that Otay Mesa PPA, originally executed in 2004, is a "2004 contract." Instead, PEC asserts that the PD should be revised to state that the Otay Mesa PPA to be a "2006 contract."⁵ This argument is without legal support.

The undisputed facts are SDG&E and OMEC executed the original Otay Mesa PPA contract and received Commission approval in 2004. The original Otay Mesa PPA was amended in 2006 to address discreet issues related to the bankruptcy of OMEC's parent company,

¹ Motion of Panoche Energy Center, LLC for Party Status, filed May 1, 2012; PEC Comments at 3.

² PD at 16 & COL 5.

³ PEC Comments at 3.

⁴ SDG&E declines to take a position on whether PEC should be granted party status in this proceeding.

⁵ PEC Comments at 7.

Calpine.⁶ The Calpine bankruptcy issues were entirely unrelated to GHG compliance obligations, which had not yet been signed into law.⁷ In D.06-09-021, the Commission voiced its support for the 2006 amendment.

In support of its argument that the Otay Mesa PPA should be treated as a 2006 contract instead of a 2004 contract, PEC states that “when contracts that have been approved by the Commission are amended or revised, the Commission generally evaluates the revised contracts as new contracts.⁸ The only support that PEC provides for this statement is D.09-04-010, which found an amendment to a PPA’s original price to be just and reasonable when compared to other contemporary prices.⁹ A review of D.09-04-010 fails to support PEC’s statement above, or its broader assertion that an amendment alters a PPA’s original execution date. Nowhere in D.09-04-010 does the Commission dub the amended PPA to be a “brand new contract.”

Therefore, in light of the fact that the Otay Mesa PPA was executed and approved by the Commission in 2004, it should be treated as a “2004 contract” by the PD. PEC’s unsubstantiated request to re-categorize the Otay Mesa PPA as a “2006 contract” should be denied.

III. CONCLUSION

SDG&E thanks the Commission for its consideration of SDG&E’s Reply To Comments By Panoche Energy Center LLC On Proposed Decision Granting Petition For Modification Of Decision 04-06-011 (As Modified By D.06-02-031 And D.06.09.021) Regarding Otay Mesa Energy Center.

⁶ See D.06-09-021.

⁷ D.06-09-021. Like PEC, SDG&E could not foresee the various GHG compliance issues until certain statutes were adopted into law and their regulatory frameworks were fully established. See SDG&E PFM at 10-11.

⁸ PEC Comments at 7.

⁹ D.09-04-010 at *21-*23.

DATED at San Diego, California, this 20th day of November, 2012.

Respectfully submitted,

/s/ Emma D. Salustro
EMMA D. SALUSTRO
101 Ash Street, HQ12
San Diego, California 92101
Telephone: (619) 696-4328
Facsimile: (619) 699-5027
E-mail: ESalustro@semprautilities.com

Attorney for Defendant:
SAN DIEGO GAS & ELECTRIC COMPANY