



DRA

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CPUC, Energy Division
Attention: Tariff Files, Room 4005
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Subject: **Protest of the Division of Ratepayer Advocates (DRA) of San Diego Gas & Electric (SDG&E) Advice Letter 2435-E (Renewable Power Purchase Agreements of SDG&E with 70SM1 8ME LLC and Tallbear Seville LLC)**

INTRODUCTION

The Division of Ratepayer Advocates (DRA) hereby submits this protest of San Diego Gas & Electric's (SDG&E) Advice Letter 2435-E (AL 2435). In AL 2435, SDG&E seeks California Public Utilities Commission (Commission) approval of two power purchase agreements (PPAs) executed with Tallbear Seville LLC (Seville) and 70SM1 8ME LLC (Calipatria), as well as Renewable Auction Mechanism (RAM) eligibility for these projects. DRA protests and recommends that the Commission reject RAM eligibility for these PPAs for the following reasons:

- Approving bilaterally negotiated PPAs for RAM eligibility would undermine the principles and goals of market competition on which the RAM program is based.
- Approving bilaterally negotiated PPAs for RAM eligibility would sidestep the rules and processes established for the RAM program.

DRA currently has no position on whether the Commission should approve or deny the Seville and Calipatria PPAs themselves, as now proposed.

BACKGROUND

SDG&E originally executed the PPAs on December 13, 2012 through bilateral negotiations that began in September 2012. On December 18, 2012, SDG&E submitted AL 2435 to the Commission seeking approval of the Seville and Calipatria PPAs, as well as RAM eligibility for both PPAs. Both the Seville and Calipatria PPAs have 20-year delivery terms and are located in the Imperial Irrigation District (IID) system, outside of the California Independent System

Operator (CAISO) balancing authority. They are 20 MW solar photovoltaic (PV) panel technology-based projects with an expected Commercial Operation Date of early 2015, and would connect with CAISO via a pseudo-tie.¹

The Commission approved the RAM program on December 18, 2010 in Decision (D.)10-12-048. The RAM program consists of four open, competitive solicitations over two years with the goal of streamlining procurement for renewable generation projects between 3 MW and 20 MW in size. The third solicitation is currently taking place. If the timing of the fourth and final RAM auction is consistent with previous RAM solicitations, it should take place around mid-2013. SDG&E currently has a RAM procurement target of 155 MW.

The Seville and Calipatria projects are outside of the CAISO balancing authority area, and therefore ineligible under current RAM rules.² Concurrently with the filing of AL 2435 on December 18, 2012, SDG&E also filed Advice Letter 2437-E (AL 2437). AL 2437 requests the Commission approve a modification to current RAM program requirements - namely, that it “permit projects located in IID’s service territory and interconnecting to the CAISO directly or delivering to the CAISO via pseudo-tie to participate in the RAM program.”³ DRA does not oppose such a modification.

DISCUSSION & RECOMMENDATION

DRA protests and recommends the Commission reject RAM eligibility for the bilateral Seville and Calipatria PPAs, as approving these projects for RAM eligibility would undermine the Commission-developed rules and the intent of the RAM program.

Approving these projects would undermine the principles and goals of market competition on which the RAM program is based.

The Commission authorized the RAM program in D.10-12-048, with several goals in mind, all of which would be undermined by bilateral negotiations:

The RAM is a market-based pricing mechanism, set by seller participation in a competitive solicitation.⁴

Opaque, bilateral negotiations for projects conducted months after a RAM solicitation (specifically the second solicitation, held in May of 2012) are unfair to the parties that participated in this open and competitive RAM solicitation.

¹ SDG&E AL 2435-E, filed December 18, 2012, pages 1-2, 4.

² *Id.* at 2-3.

³ *Id.* at 1.

⁴ Finding of Fact 3, Decision 10-12-048, issued on December 16, 2010, page 86.

The RAM's competitive process will result in just and reasonable rates and optimal resource outcomes.⁵

Even if a given project's bilateral price were similar to the price of other projects that were competitively solicited, the Commission cannot know if that bilateral price would have been equal to, or greater than, what that project's competitive price in a RAM solicitation would have been. Accordingly, the Commission cannot know whether the project's bilateral price would have resulted in the same optimal resource outcome as the competitive price.

The RAM provides assurance that ratepayers are not overpaying for renewable resources.⁶

Because there is no way to compare a project's bilateral price to its competitive price without knowing the latter, there is no assurance that the ratepayer is not overpaying for the renewable energy generated by bilateral PPAs such as Seville and Calipatria.

One primary procurement vehicle can enhance competition and put downward pressure on prices.⁷

By their nature, bilateral negotiations diminish, rather than enhance, competition. Also, it is unclear that bilateral contracts are able to put downward pressure on prices, as competitive solicitations do.

A competitive, market-based solicitation not only protects ratepayers, but also results in optimal resource outcomes and downward pressure on prices. SDG&E has not demonstrated that the bilaterally negotiated Seville and Calipatria PPAs can similarly meet the RAM program's principles and goals.

Approving these projects would sidestep the rules and processes established for the RAM program.

In D.10-12-048, the Commission established several rules and processes for the RAM program. If the Commission were to disregard the rules and processes it developed to protect the principles and goals of the RAM program, it would set a dangerous precedent and risk undermining its future decisions. Decision 10-12-048 is clear that bilateral negotiations are prohibited: "The IOUs should be required to use RAM exclusively for the procurement of system-side renewable projects up to 20 MW in size. ... IOUs should not use ... bilateral negotiations."⁸ The Commission made no exceptions to its rule against bilateral contracts.

⁵ *Id.*, Finding of Fact 4.

⁶ *Id.*, Finding of Fact 8.

⁷ *Id.*, Finding of Fact 12.

⁸ *Id.*, Conclusion of Law 5.

Decision 10-12-048 also clearly states that “a project must be located in one of the investor-owned utility service territories,” another criterion that the Seville and Calipatria projects do not meet. The Decision allows parties to seek modifications to improve the RAM program, and SDG&E did so in filing AL 2437.⁹ That Advice Letter requests that projects located in the IID area and interconnecting to CAISO be eligible to participate in the RAM program.¹⁰ However, AL 2437 has not yet been disposed of by the Commission.

D.10-12-048 clearly states that bilateral contracts are prohibited and projects must be located in one of the investor-owned utility service territories to be eligible for RAM. SDG&E has not presented convincing arguments for why the rules established by the Commission for the RAM program and RAM program modifications should be ignored in order to approve AL 2435.

CONCLUSION

For the above reasons, DRA recommends that the Commission reject RAM eligibility for the Seville and Calipatria PPAs. SDG&E is not without a remedy if the Commission denies RAM treatment for the projects, as they can also be bid into the next RPS solicitation. If the Commission approves AL 2437 in time, these projects may also bid into the next RAM solicitation.

Please contact David Siao at (415) 703-2719 or david.siao@cpuc.ca.gov if you have any questions regarding this protest.

/s/ Michael Campbell

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⁹ *Id.*, Ordering Paragraph 5.

¹⁰ AL 2437-E at 1.