

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

Order Instituting Rulemaking to Integrate and Refine
Procurement Policies and Consider Long-Term
Procurement Plans

Rulemaking 12-03-014
(Filed March 22, 2012)

OPENING BRIEF

of

THE VOTE SOLAR INITIATIVE

Ronald Liebert
Ellison, Schneider & Harris, L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Email: rl@eslawfirm.com

November 25, 2013

Attorneys for The Vote Solar Initiative

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

Order Instituting Rulemaking to Integrate and Refine
Procurement Policies and Consider Long-Term
Procurement Plans

Rulemaking 12-03-014
(Filed March 22, 2012)

OPENING BRIEF of THE VOTE SOLAR INITIATIVE

I. INTRODUCTION

The Vote Solar Initiative (Vote Solar)¹ has not independently analyzed SCE or SDG&E’s studies demonstrating the need to procure additional local capacity resources (LCRs) in Track 4. Therefore, Vote Solar takes no position, at this time, as to the validity of the utilities’ requests to procure between 500 and 550 MWs of new generation capacity in their service territories.

However, it is imperative that the Commission: (1) require that the utilities fully maximize all LCR procurement already authorized in Track 1 prior to soliciting any additional LCR MWs authorized in Track 4, to ensure the proper procurement of mandated Preferred Resources and energy storage (ES);² (2) reject SCE’s efforts to convert a portion of the Commission’s Track 1 Preferred Resources mandate into an “all source” procurement process that, in combination with SCE’s Track 4 all source procurement proposal, will result in gas fired generation (GFG) improperly displacing Preferred Resources; and (3) order the utilities first to fulfill any authorized Track 4 procurement with Preferred Resources and more distributed generation. This will help

¹ Vote Solar is a non-profit grassroots organization working to fight climate change and foster economic opportunity by bringing solar energy into the mainstream. Since 2002, Vote Solar has engaged in state, local and federal advocacy campaigns to remove regulatory barriers and implement key policies needed to bring solar to scale.

² *Note:* hereinafter, Vote Solar will refer to the combination of Preferred Resources and ES simply as “Preferred Resources.”

ensure that California and the Commission’s policies and preferences for the procurement of Preferred Resources are met, GHG emissions reduction goals are forwarded, and the utilities’ LCR needs are satisfied.

Finally, Vote Solar supports SCE’s proposal to enter into contingency contracts, as necessary, for “backstop” purposes, to ensure that all LCR needs are met. On the other hand, Vote Solar opposes the utilities’ contingent siting and/or energy park proposals as unnecessary, unlikely to provide timely benefits, if any, and more costly.

II. PRIMARY ISSUES FOR RESOLUTION

A. Should the CPUC authorize SCE and/or SDG&E to procure additional resources at this time for the purposes within the scope of this proceeding?

In Track 1 of this LTPP proceeding, the Commission authorized SCE, in D.13-02-015, to procure 1,400–1,800 MWs of new capacity to satisfy the local capacity resource (LCR) need identified for the LA Basin. The Commission directed that:

- a. At least 1000 MW, but no more than 1200 MW, of this capacity must be from conventional gas-fired resources . . .;
- b. At least 50 MW of capacity must be procured from energy storage resources;
- c. At least 150 MW of capacity must be procured from preferred resources . . .; [and]
- d. Subject to the overall cap of 1800 MW, up to 600 MW of capacity, beyond the amounts specified required to be procured pursuant to subparagraphs (a), (b) and (c) above, may be procured through preferred resources . . .³

In Track 4, SCE repeatedly asserts that it needs and intends to procure the full 1,800 MWs of LCR authorized in D.13-02-015, including all the Preferred Resources mandated in that decision, in addition to the additional 500 MWs it is requesting in Track

³ D.13-02-015, Ordering Paragraph No.1

4 to satisfy new LCR needs associated with the permanent closure of San Onofre, for a total LTPP LCR procurement authorization of 2,300 MWs:

SCE does intend to aggressively pursue Preferred Resources and ES, and plans to fully utilize the 1800 MW of Track 1 procurement authority, including the 600 MW amounts exclusively set aside for Preferred Resources and ES.⁴

However, there are two problems with SCE's Track 4 procurement proposals. First, while expressing its need to procure the entire 1,800 MWs authorized in Track 1, SCE acknowledges that if it procures only 1,400 MWs of the 1,800 MWs authorized in Track 1, it could avoid procuring 400 MWs of Track 1 Preferred Resources because those Preferred Resources are mandated only if SCE decides to procure the entire 1,800 MW authorization. SCE indicates that even if it did this, it still wants to procure all of the additional 500 MWs requested in Track 4.⁵ Since, as will be discussed, SCE's Track 4 all source solicitation proposal is unlikely to result in the selection of Preferred Resources, but, is instead, designed to increase the chances that large GFG will be selected, it is imperative that the Commission mandate that SCE obtain its entire Track 1 authorization, including all 800 MWs of the mandated Preferred Resources, prior to allowing SCE to solicit any additional MWs authorized in Track 4. Failing to do this may result in the Commission inadvertently allowing 1,700 MWs⁶ of the total authorized 2,300 MWs (Track 1 plus Track 4) being met by new GFG construction and operation in the LA Basin, which runs counter to policies intended to increase the use of Preferred Resources and significantly reduce GFG emissions in California.⁷

⁴ Exh. SCE-2, p.22; See also Tr.13:2000-2001 (SCE witness Cushnie); Tr.13:2090 (SCE witness Silsbee)

⁵ Tr.13:2002-2003, 2007 (SCE witness Cushnie)

⁶ I.e., 1000 MWs authorized for GFG in Track 1 plus 700 MWs of new GFG resulting from GFG winning all 700 MWs in SCE's proposed Track 1 (200 MWs) and Track 4 (500 MWs) all source solicitation.

⁷ Tr.11:1635-36 (CAISO witness Millar); Tr.12:1913 (SCE witness Nelson -- "I believe State as a policy wants to fill or feels that it has the need to fill with 50 percent Preferred Resources. We will support the State.") *Although Vote Solar has focused primarily on SCE, the same concerns and necessary Commission directives equally apply to SDG&E.*

Second, SCE's Track 4 proposals improperly seek to change SCE's Track 1 procurement authorization by trying to convert a portion of the Commission's Track 1 Preferred Resources mandate into an "all source" solicitation.⁸ There is no mention of an all source procurement process in D.13-02-015 and as Ordering Paragraph 1 makes clear, SCE only is authorized to procure between 1,000-1,200 MWs of GFG *with all the remaining MWs to come from Preferred Resources*. So, contrary to SCE's assertions in Track 4, D.13-02-015 does **not** permit SCE to procure 1000 MWs of its 1,800 MW Track 1 authorization from GFG, 600 MWs from Preferred Resources and 200 MWs from a new all source solicitation.⁹ Rather, D.13-02-015 requires that in this scenario, SCE must purchase all the remaining 800 MWs from Preferred Resources: "[a]ll additional resources beyond the minimum requirement must also be from preferred resources, or from energy storage resources."¹⁰

It is expected SCE will argue that SCE should be allowed to do this because by seeking only 1,000 MWs of GFG, instead of the full 1,200 MWs authorized, and "replacing" those 200 MWs of GFG with 200 MWs from an all source solicitation, non-GFG resources can compete to displace those 200 MWs of GFG. However, there are multiple problems with SCE's all source solicitation proposals. First, as discussed above, D.13-02-015 mandates that all Track 1 procurement beyond the authorized MWs for GFG must come only from Preferred Resources, so SCE is not "replacing" GHG procurement with an all source solicitation, but trying to replace 200 MWs of Preferred Resources procurement with an all source solicitation.

Second, SCE's claim that an all source solicitation creates a level playing field on which all potential resources can fairly compete is erroneous. As SCE's witness candidly admitted in Track 1, which the Commission found important enough to cite in D.13-02-015:

⁸ See, for example, Exh. SCE-1, pp.55-56.

⁹ Exh. SCE-1, p.55 -- SCE provides no citation for its assertion, at lines 11-12, that "[a]n additional 200 MW can be sourced from any mix of technology, providing the procurement is consistent with the Preferred Loading Order."

¹⁰ D.13-02-015, pdf, p.82.

SCE opposes requiring all resources to bid into a single all-source RFO. SCE witness Cushnie contends: “Certain preferred resources just aren’t going to be viable in (an all-source) solicitation,” and that he is not aware of a preferred resource ever prevailing against a conventional resource in an all-source RFO.¹¹

Therefore, it is highly unlikely than anything other than 200 MWs of new GFG would be selected in SCE’s proposed all source procurement process for Track 1.

Third, it appears that the real intent behind SCE’s revisionary Track 1 all source procurement proposal is to make it easier for GFG to supply SCE’s request for 500 MWs of additional procurement in Track 4. In Track 4, SCE wants the Commission to authorize an additional 500 MWs of LCRs, which SCE proposes to procure through an all source solicitation. SCE then argues that for ease, speed and cost savings purposes, the all source 500 MWs requested in Track 4 should be combined with the all source 200 MWs SCE wants to carve out of its Track 1 authorization to create a combined all source solicitation for 700 MWs of LCRs to be procured as part of its Track 1 procurement processes.¹²

Although arguing that all resources can equally compete in this new 700 MW all source solicitation, SCE’s Track 1 testimony demonstrates that it is highly unlikely Preferred Resources can fairly compete in an all source solicitation and SCE admits, in Track 4 testimony, that a combined 700 MW all source solicitation makes it more likely that larger GFG projects will be successful.¹³ Not only is this contrary to California and this Commission’s policies favoring Preferred Resources and reductions in GHG emissions, but if approved, would actually replace Preferred Resources mandated by the Commission with GFG. It is hard to imagine a more backward looking and disfavored process.

¹¹ D.13-02-015, pdf, pp.86-87

¹² SCE-1, p.57

¹³ Tr.13:1970 (SCE witness Cushnie)

Finally, there are practical reasons for not allowing SCE to bypass the Commission's Preferred Resources mandates for LCR procurement in D.13-02-015. Certainly, it is difficult to build and operating new GFG in the LA Basin. Problems with siting, land acquisition, permitting, community opposition and the difficulty of obtaining emission reduction credits in the LA Basin are all significant challenges, adding time and cost and uncertainty.¹⁴ In contrast, such issues are not present or not as great a burden for Preferred Resources.

For all these reasons, the Commission must ensure that SCE procures all of its 1,800 MW Track 1 authorization, including 800 MWs of Preferred Resources, before SCE is permitted to procure any additional LCRs authorized in Track 4.

B. If so, what additional procurement amounts should be authorized at this time?

Vote Solar has no position on this issue.

C. What additional resources, if any, should be authorized to fill procurement needs? Should there be any requirements or restrictions on procurement amounts for any specific resources or categories of resources?

The retirement of San Onofre and potential closure of OTC plants in Southern California is a once in a lifetime opportunity to replace large amounts of existing generation with new, clean generating resources in Southern California.¹⁵ The proper focus on Loading Order resources (including storage) and reducing GHG emissions will result in improved locally placed generation capacity and significant air quality benefits for the residents of Southern California. For these reasons, the Commission should require, if it authorizes any additional Track 4 LCR procurement, that the utilities first satisfy that additional need with Preferred Resources, including

¹⁴ Tr.12:1859-60 (SDG&E witness Anderson); Tr.13:1959 (SCE witness Cushnie); Tr.13:2098 (SCE witness Silsbee)

¹⁵ Tr.11:1669 (CAISO witness Millar)

[E]stablishing procurement mechanisms to allow phased deployment of greater quantities of distributed PV, and using distributed PV in combination with energy efficiency, automated demand response and energy storage to meet LCR needs in the LA Basin and San Diego, and providing incentives for PV system owners to orient their arrays to the west to maximize late afternoon energy production.¹⁶

The phased deployment of Preferred Resources allows the utilities to “closely match [LCR] needs” with the procurement of Preferred Resources, especially distributed generation, “due to their relatively short lead times and modularity, without concerns about obtaining air quality or carbon emissions permits or credits.”¹⁷ Only if sufficient Preferred Resources cannot be obtained should the utilities be permitted to fill any remaining need with the cleanest possible GFG, preferably procured pursuant to SCE’s contingent contracting proposal.¹⁸

Vote Solar also recommends the Commission consider adopting a backstop procurement mechanism based on “a RAM-, ReMAT-, or CSI-like mechanism,” which would allow “more solicitations by the utilities in the event conventional resources or transmission development is delayed or canceled.”¹⁹ In addition, the Commission should allow third party aggregators to satisfy Preferred Resources targets for

[S]pecific circuits identified by SCE or CAISO designated as critical for LCR or voltage support needs. This would also facilitate deployment of Preferred Resources more quickly to backstop gas or gas-fired resources that fail to materialize in a timely manner.²⁰

Contrary to the opinions of those favoring GFG as the primary solution for LCR needs in Southern California, Vote Solar is not inflexible in its support of a Preferred

¹⁶ VSI-1, p.1

¹⁷ VSI-1, p.12 (Vote Solar comments in response to ALJ’s 9/4/13 questions)

¹⁸ Tr.13:1961 (SCE witness Cushnie)

¹⁹ VSI-1, p.13 (Vote Solar comments in response to ALJ’s 9/4/13 questions)

²⁰ Id.

Resources strategy.²¹ Rather, Vote Solar believes that without the Commission's insistence that the utilities first try to procure Preferred Resources, it is unlikely the utilities will do so because of the demonstrated non-level playing field posed by SCE's "all source" procurement strategy. However, Vote Solar recognizes that if the utilities are not able to completely fill their LCR needs with Preferred Resources in the necessary timeframe, they should be allowed to fill their remaining need with the cleanest GFG available as a backstop measure, preferably located at brownfield locations.²²

D. What process should the utilities use to fill any procurement amounts authorized at this time?

As previously discussed, above, the Commission should order the utilities to fill any authorized Track 4 LCR needs first with Preferred Resources, with GFG permitted only on a contingent contract basis should Preferred Resources be unable to fully satisfy Track 4 LCR needs. A particular advantage of this approach is that it will allow time for SCE (and SDG&E²³) to verify, in their Preferred Resources Pilots, the advantages of developing new and expanding the use of existing Preferred Resources to supply LCR needs, in order to reduce the need for new GFG construction and operation in the LA Basin. As the Commission directed in D.13-02-015:

SCE should continue to assess and implement all ways to include cost-effective and viable preferred resources to reduce LCR needs. As more preferred demand side resources are available to meet these needs, SCE's LCR needs will be reduced toward the minimum authorized procurement level.²⁴

²¹ Vote Solar supports SCE's Mesa Loop-In transmission project and has not taken a position on SDG&E's Pio Pico GFG project. However, if either or both are not built, Vote Solar recommends those MWs be replaced with Preferred Resources, with GFG only as a contingent contract backup. VSI-1, pp.3, 9, 11

²² WPTF-1, p.6: "[E]xisting brown field or OTC site can offer several advantages. These sites already have air permits, transmission interconnections, natural gas interconnections, and can often be redeveloped on a timelier basis and at less cost than new green field development."

²³ Tr.12:1815 (SDG&E witness Anderson)

²⁴ D.13-02-015, pdf, p.87

Vote Solar firmly believes that the development and continuing deployment of Preferred Resources will allow utilities to gain valuable insights on how these resources can be most effectively and efficiently integrated into the grid. This is why the Commission should order that an additional Track 4 authorization be

[S]ourced from Preferred Resources, which have shorter lead times for development and can be phased - in as needed. This approach also allows SCE to take full advantage of data and results obtained from the proposed Living Pilot to maximize the effectiveness in meeting LCR needs as well as meeting utility and customer expectations with each successive block of Preferred Resource procurement.²⁵

For all these reasons, Vote Solar urges the Commission direct SCE and SDG&E to submit applications to institute Preferred Resources Pilots, developed in an open and transparent stakeholder process, as soon as possible.

E. Are there other determinations the CPUC should consider, or conditions the CPUC should impose, regarding Track 4 procurement?

Although Vote Solar recognizes there may be some value in SCE's request for permission to enter into GFG contingency contracts as backup for GFG and Preferred Resources authorized in Tracks 1 and 4, Vote Solar does not find similar value or need for contingent site preparation proposals.²⁶ SCE's proposal to sign PPAs with GFG developers that contain opt-out clauses appear to be more reasonable and simpler to implement than the utilities' contingent site preparation proposals, provided the option payment is not exorbitant.²⁷

Further, there is no indication in the record, and in fact, significant skepticism on the part of independent energy producers, that such utility "help" is needed or would be beneficial. As IEP's witness describes:

²⁵ VSI-1, p.4

²⁶ Tr.13:1959 (SCE witness Cushnie)

²⁷ VSI-1, p.13 (Vote Solar comments in response to ALJ's 9/4/13 questions)

[W]hile the CEC staff appears to believe that it could obtain authority to undertake permitting facilities absent a project proposal (or that it could expedite the approval process under the traditional siting procedures), it is not at all clear that the CEC currently has the authority to provide pre-approval of projects that are not really projects. If the CEC needed to obtain new siting authority from the Legislature, this could delay project development at a time when the need for action is immediate.

Second, siting power plants is a very time-intensive process. It involves extensive environmental review of the proposed project as well as review of alternatives to the project. It is not exactly clear how the proponents of the energy park would address all of the siting issues that might come up without having a specific project in mind.²⁸

Therefore, Vote Solar recommends that the Commission tell the utilities now that it will not authorize contingent site preparation or energy park development proposals for the purpose of backstopping LTPP procurement authorizations.

III. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Vote Solar recommends the Commission adopt the following Findings of Fact and Conclusions of Law.

A. Recommended Findings of Fact

1. Ordering Paragraph 1 of D.13-02-015 directs that for SCE's Track 1 procurement, all additional resources procured beyond the 1,000-1,200 MWs allocated for GFG must be from Preferred Resources and energy storage.

2. Pursuant to D.13-02-015, if SCE seeks to procure the full 1,800 MWs authorized in Track 1, of which 1,000 MWs are GFG, the remaining 800 MWs must be procured from Preferred Resources and energy storage.

²⁸ Exh. IEP-1, pp.36-37

3. As noted in D.13-02-015, it is highly unlikely that Preferred Resources can fairly or successfully compete in an all source solicitation.

B. Recommended Conclusions of Law

1. SCE must first procure all 1,800 MWs of local capacity resources authorized in Track 1 (in D.13-02-015) before procuring any additional resources authorized in Track 4.

2. SCE cannot, in Track 4, alter the resources allocation mandate of D.13-02-015 by replacing 200 MWs of required Preferred Resources and energy storage procurement authorized in Track 1 with 200 MWs from an “all source” solicitation.

3. SCE and SDG&E must first make all reasonable efforts to procure Preferred Resources, including distributed PV and energy storage to satisfy any additional local capacity resources authorized in Track 4 before soliciting GFG resources.

4. SCE and SDG&E shall submit applications for Preferred Resource Pilot Programs, developed in an open and transparent manner with stakeholder input, no later than four months from the date of this Order. The purpose of these Pilot Programs is to determine how to maximize the effectiveness of using Preferred Resources to meet LCR needs and to facilitate successive solicitations for Preferred Resources to meet Track 4 and subsequent LTPP procurement authorizations.

5. SCE and SDG&E are authorized to enter into contingency contracts, as necessary and subject to a determination of cost reasonableness by

the Commission, for “backstop” purposes, to ensure that all authorized local capacity resource needs are met.

6. The utilities’ contingent siting and/or energy park proposals are unnecessary and not economical, and will not be approved for LTPP procurement “backstop” purposes.

IV. CONCLUSION

For the reasons discussed, Vote Solar respectfully requests that the Commission (1) order SCE and SDG&E to fully maximize their LCR procurement already authorized in Track 1 before procuring any additional LCRs authorized in Track 4; (2) deny SCE’s request to convert 200 MWs of mandatory Preferred Resources procurement into 200 MWs from an “all source” solicitation; (3) require SCE and SDG&E to first seek to satisfy any Track 4 LCR authorization with Preferred Resources, including distributed PV; (4) direct SCE and SDG&E to submit applications for Preferred Resources Pilot Programs, developed in an open and transparent manner, for the purpose of maximizing the use of Preferred Resources authorized in this and subsequent LTPP proceedings; (5) authorize SCE and SDG&E to enter into contingent contracts for the purpose of “backstopping” their LTPP procurement; and (6) reject SCE and SDG&E’s proposals for contingent site preparation and contingent energy park development.

Dated: November 25, 2013

Respectfully submitted,



Ronald Liebert
Ellison, Schneider & Harris, L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Email: rl@eslawfirm.com

Attorneys for The Vote Solar Initiative