

**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)

**COMMENTS OF SAN DIEGO GAS AND ELECTRIC COMPANY
(U 902 E) ON TRACK 3 PROPOSED DECISION MODIFYING
LONG-TERM PROCUREMENT PLANNING RULES**

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**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 and Electric Company (“SDG&E”) provides these comments regarding the proposed *Decision Modifying Long-Term Procurement Planning Rules* (the “PD”) issued in Track 3 of the above-captioned long-term procurement plan (“LTPP”) proceeding.

The PD makes several changes to the rules applicable to procurement of electricity by the California investor-owned utilities (“IOUs”). The PD, *inter alia*, (i) modifies the methodology used by the IOUs to estimate reasonable levels of Direct Access (“DA”) and Community Choice Aggregation (“CCA”) departing load over the 10-year term of the IOU bundled procurement plans (“BPPs”) and provides for avoidance of non-bypassable charges; (ii) requires the IOUs to submit a Tier II Advice Letter to seek Commission approval of medium-term bilateral contracts if the size of the contract is over 50 MW; (iii) eliminates the requirement to hold an energy

auction in order to determine “net capacity costs” for purposes of applying the § 365.1(c)(2) Cost Allocation Mechanism (“CAM”);^{1/} and (iv) extends the period between re-evaluation of each Independent Evaluator (“IE”) included in an IOU’s IE pool.

As discussed in more detail below, SDG&E strongly supports the proposal to eliminate the energy auction requirement and to allow use of the “Joint Parties Proposal” mechanism (“JPP”) adopted in D.07-09-044 to determine the net capacity costs to be allocated via the CAM. Providing the option to use the JPP in place of energy auctions will reduce administrative burden and delay, and will help to ensure that costs subject to the CAM are allocated fairly to all benefitting parties. SDG&E does not, however, support the proposal to require the IOUs to submit Tier II Advice Letters to seek Commission approval of medium-term bilateral contracts where the size of the contract is over 50 MW. This proposal serves little purpose and imposes significant burden on the IOUs and Commission staff. In addition, SDG&E proposes modifications below intended to clarify the specific non-bypassable charges that DA and CCA departing load would avoid under the PD’s proposal. Finally, SDG&E recommends clarifications regarding the effective date of changes to the procurement rules related to (i) use of the JPP in place of an energy auction; and (ii) extension of the period between IE re-evaluations.

II. DISCUSSION

A. The PD should be Revised to Expressly State that Preapproval is not Required for Medium-Term Bilateral Contracts

The PD considers whether circumstances exist in which the IOUs should be required to seek preapproval of a medium-term contract (*i.e.*, a contract of three consecutive months or greater and under five years in duration) if the IOU has followed its established AB 57 bundled procurement plan authorization in entering into the contract. The PD points out that “[l]ong-term

^{1/} All statutory references herein are to the Public Utilities Code unless otherwise noted.

contracts must be submitted with an application to the Commission for preapproval, whereas short-term and medium-term contracts do not need preapproval,” and further that “[w]e currently do not impose oversight via advice letters over medium term contracts except for contracts [of two years or greater] with [Once-Through Cooling] units.”^{2/} The PD concludes that “there is a gap in Commission oversight” – although it fails to cite any evidence of harm arising from this alleged gap – and proposes a new procurement rule requiring the IOUs to seek approval of medium-term bilaterally-negotiated contracts if the size of the contract is over 50 MW.^{3/}

The PD should be revised to eliminate this proposed requirement and to clarify that Commission preapproval is not required for medium-term bilateral contracts that are consistent with an IOUs’ BPP. First, the record of the proceeding does not support the conclusion that imposition of this proposed procurement rule is justified. The PD cites arguments offered by the Office of Ratepayer Advocates (“ORA”), Sierra Club California (“SCC”) and California Environmental Justice Alliance (“CEJA”) as support for the new rule. However, the arguments made by these parties are inapposite to the question of whether the proposed new rule is in the public interest. These parties address elimination of the *current* rule regarding preapproval for long-term contracts – expressing concern over “reduction” in Commission oversight of IOU contracting – rather than adoption of a *new* rule related to medium-term bilateral contracts.^{4/} The proposal to add the Tier II AL filing requirement clearly would not bring about a reduction in Commission oversight; rather the proposed rule is “in addition to all previous procurement rules.”^{5/}

^{2/} PD, p. 39.

^{3/} *Id.* at pp. 39-40.

^{4/} *Id.* at p. 39.

^{5/} *Id.* at p. 40 (emphasis added).

The confusion evidenced here may stem from a lack of clarity in the question regarding contract approval rules included in the March 21, 2013 Ruling (the “Ruling”).^{6/} Question 4 in the Ruling asked parties to comment on potential new or modified rules regarding IOU execution of bundled procurement contracts without additional review by the Commission:

- 4. *Specification of the rules that, if followed, would allow the IOUs to execute bundled procurement contracts without additional review by the Commission***
 - a. Please comment on the following potential new or modified rules to ensure competitive bundled procurement transactions:**
 - i. The IOUs must submit an advice letter or application if they follow their established AB 57 bundled procurement plan authorization, and:**
 - 1. The contract unit price is a higher than a particular percentage (such as 80%) of the CAISO Capacity Procurement Mechanism or other administratively or market established price,**
 - 2. The RFO did not attract sufficient participants, or**
 - 3. The total megawatts (MW) procurement is over a specified level of MW.**

The Ruling did not, however, make clear whether the proposal related to elimination of *existing* rules related to long-term term contracts, or adoption of *new* rules related to medium-term or short-term contracts. Accordingly, certain parties appeared to interpret the question as a proposal to change the existing rule requiring the IOUs to submit long-term contracts for Commission approval via an application, which would result in a reduced level of oversight for long-term contracts. These parties objected to this concept and urged the Commission to maintain the existing rule regarding submission of long-term contracts for Commission

^{6/} *Administrative Law Judge’s Ruling Seeking Comments on Track III Rules Issues*, issued in R.12-03-014 on March 21, 2013 (the “Ruling”).

approval via application. ORA, for example, framed the Question 4 proposal as elimination of the current rule requiring preapproval of long-term contracts and adoption of a new automatic approval rule:

The following proposals (Questions 4a i 1 – 3 and ii of Ruling) *appear to reduce Commission oversight through the elimination of the current up-front reasonableness review of each individual procurement contract*. Instead, the proposal would automatically approve procurement contracts except in limited circumstances when certain criteria trigger a review.^{7/}

ORA urged the Commission to “reject the proposal to eliminate up-front reasonableness review except in limited circumstances and instead *retain the current process* of approving contracts through advice letter resolutions or application decisions.”^{8/} Comments submitted by CEJA and CSS – which express concern with “eliminating” and “reducing” existing oversight – suggest that their interpretation of Question 4 is similar to that of ORA. In other words, these parties’ comments focus solely on potential modification of the existing preapproval requirement for *long-term* contracts and are therefore not relevant to the question of whether a new preapproval requirement should be adopted for medium-term bilateral contracts. Other parties, including SDG&E, understood Question 4 to ask whether the Commission should impose a new rule regarding preapproval of contracts *other than* long-term contracts. These parties objected to the imposition of a new preapproval requirement, citing the concerns that are outlined in the PD and arguing that the procurement rules currently in place effectively ensure that IOU transactions are reasonable and in the public interest.^{9/}

^{7/} *Division of Ratepayer Advocates’ Comments in Response to Administrative Law Judge’s Ruling Seeking Comment on Track III Rules Issues*, filed April 26, 2013 in R.12-03-04 (“ORA Comments”), p. 10 (emphasis added). The Division of Ratepayer Advocates is the predecessor entity to ORA.

^{8/} *Id.*

^{9/} *See Comments of San Diego Gas & Electric Company in Response to Ruling Seeking Comment on Track III Rules Issues*, filed April 26, 2013 in R.12-03-04 (“SDG&E Comments”), p. 11 ; *Southern California Edison Company’s Comments in Response to Ruling Seeking Comment on Track III Rules Issues*, filed April 26, 2013 in R.12-03-04 (“SCE Comments”), p. 11; *Pacific Gas & Electric Company’s Comments on Track III Rules Issues*, filed April 26, 2013 in R.12-03-04 (“PG&E Comments”), pp. 14-15.

Thus, the current record is insufficient to justify adoption of a new procurement rule requiring preapproval of medium-term bilateral contracts over 50 MW; the record documents the shortcomings of the proposed new rule and the comments cited as evidence to support the proposed new rule do not in fact even address the proposal. Moreover, the selection of the 50 MW threshold is arbitrary and not supported by the record. Question 4.a.i.3, which related to total MW of procurement was most reasonably understood as referring to procurement above an IOU's need rather than to the size of an individual contract.^{10/} Thus, the record on this latter issue is wholly inadequate to justify a finding by the Commission that preapproval of bilateral contracts above 50 MW is in the public interest.

In addition to the lack of record support for and arbitrary nature of the proposal to require preapproval for medium-term bilateral contracts that exceed 50 MW, SDG&E notes the existence of practical concerns regarding the requirement. SDG&E is uniquely positioned to address this issue as it has, as the request of the Commission's Energy Division ("ED"), been routinely filing its medium-term bilaterally-negotiated resource adequacy ("RA") contracts for preapproval via the Tier II AL process since July, 2012.^{11/} Although SDG&E did not agree that it was required to do so under the Commission's rules (as the PD confirms), it nevertheless complied with the ED's request. Substantial effort is involved in preparing and filing each Tier II AL and SDG&E's compliance with ED's request imposed significant burden on the utility. Having undertaken this experiment, SDG&E submits that the burden imposed on IOU and Commission staff in preparing and processing Tier II ALs for all medium-term bilateral contracts is not justified given the limited value of the filing – it is worth noting that the ALs submitted by SDG&E have each been approved without protest.

^{10/} See, e.g., SDG&E Comments, p. 11; ORA Comments, p. 12; SCE Comments, p. 13.

^{11/} See SDG&E Advice Letters 2390-E, 2527-E, 2527-E-A, 2528-E, 2548-E, 2528-E-A.

The Commission's current rules provide sufficient oversight of medium-term bilateral contracts. The rules require that the IOUs consult with their respective Procurement Review Groups ("PRGs") regarding all medium-term bilateral transactions and that bilateral transactions be separately reported in the IOUs' respective quarterly compliance reports ("QCRs"), which are subject to audit.^{12/} This level of oversight has proven effective for the decade that the bilateral contracting rules have been in place. As noted above, no party presented evidence that the current rules regarding oversight of medium-term bilaterally-negotiated contracts have proved lacking. Indeed, the fact that no party protested the medium-term bilateral contracts submitted by SDG&E via the Tier II AL process over the past 18 months undercuts the claim that the current level of oversight is inadequate and that adoption of a burdensome new preapproval requirement is necessary. The public interest clearly does not support imposition of administratively burdensome requirements where no need for them exists.

Accordingly, the PD should be revised to eliminate the proposal to require the IOUs to seek preapproval of medium-term bilaterally-negotiated contracts if the size of the contract is greater than 50 MW, and to expressly state that Commission preapproval is not required for any short-term or medium-term contracts that are consistent with an IOUs' BPP. Should the Commission, instead, elect to adopt the proposal to require the IOUs to seek preapproval of medium-term bilaterally-negotiated contracts that are over 50 MW, SDG&E requests that it expressly state that medium-term bilaterally-negotiated contracts that are *below* 50 MW do not require Commission preapproval. SDG&E's recent experience suggests that there exists a lack of clarity as to what the Commission's existing rules are regarding preapproval of medium-term bilaterally-negotiated contracts, including those that are less than 50 MW. The Commission

^{12/} D.03-12-062, *mimeo*, Conclusions of Law 11 and 12.

should also make clear that the rule, if adopted, does not apply to medium-term contracts that are bid into a solicitation.

B. The PD should be Revised to Clarify the Specific Non-Bypassable Charges that DA and CCA Departing Load would Avoid Under the Proposal

The PD proposes a methodology for estimating the reasonable levels of expected DA and CCA departing load over the 10-year term of the IOUs' BPPs "using information provided by the California Energy Commission and/or by a Community Choice Aggregator in its Binding Notice of Intent."^{13/} The PD further provides that forecasted DA and CCA "departing load shall not be subject to non-bypassable charges for any incremental standard procurement costs incurred by the IOUs for the period after the date of departure assumed in their approved bundled plans."^{14/} SDG&E submits that in the case of CCA departing load, the IOU forecasts should rely *solely* upon the Binding Notice of Intent provided by CCA(s), as this is the most reliable indicator of departing CCA load. In addition, SDG&E submits that greater specificity is required in the PD regarding which non-bypassable charges DA/CCA departing load would avoid.

It is not reasonable for DA/CCA departed load to avoid *all* non-bypassable charges. Indeed, the discussion in the PD makes clear that it is not intended that DA/CCA providers be permitted to avoid CAM charges, for example.^{15/} DA/CCA departing load is currently subject to the following non-bypassable charges (with some exceptions): Power Charge Indifference Adjustment ("PCIA"), Nuclear Decommission ("ND"), Public Purpose Program ("PPP"), Department of Water Resources Bond Charges ("DWR-BC"), and Ongoing Competition Transition Charge ("CTC").^{16/} While it may be reasonable for departing DA/CCA load to be

^{13/} PD, Ordering Paragraph 1.

^{14/} *Id.*

^{15/} *See* PD, p. 55.

^{16/} *See* SDG&E approved tariff schedules located at http://regarchive.sdge.com/tm2/pdf/ELEC_ELEC-SCHEDS_DA-CRS.pdf; http://regarchive.sdge.com/tm2/pdf/ELEC_ELEC-SCHEDS_E-DEPART.pdf.

relieved of the obligation to pay a PCIA charge related to contracts entered into *after* the date of departure assumed in the IOUs' approved bundled plans, DA/CCA departing load should continue to be obligated to pay PCIA charges for load procured by the IOU *prior to* the date of departure. In addition, SDG&E submits that DA/CCA departing load should continue to be obligated to pay the remaining current non-bypassable charges (*i.e.*, non-bypassable charges other than PCIA).

The PCIA recovers from departed load customers applicable above-market commodity costs of SDG&E's total procurement resource portfolio in order to ensure bundled customer indifference to the customer departing.^{17/} The PCIA charge is "vintaged" – that is, cost responsibility is allocated to a departing load customer only for resources procured *prior to* their departure date (*i.e.*, procurement that is of a particular "vintage"). SDG&E submits that DA/CCA departing load should continue to be "vintaged." In other words, departing DA/CCA load should be required to pay the non-bypassable PCIA charges incurred *prior to* their departure in order to ensure that bundled customer indifference will be maintained; departing DA/CCA load should, however, be permitted to avoid the PCIA charge for IOU procurement that occurs *after* the date of departure assumed in the IOUs' approved bundled plans.

As noted above, while avoidance of certain PCIA non-bypassable charges may be reasonable, DA/CCA departing load should continue to be required to pay the remaining non-bypassable charges identified. In addition, it is important to remain mindful of the fact that the Commission may adopt new non-bypassable charges in the future. The Commission should avoid adopting a broad statement now that could be interpreted as relieving the obligation of DA/CCA departing load to pay *all* current and future non-bypassable charges. To avoid confusion, the PD should be revised to remove the categorical treatment of non-bypassable

^{17/} D.06-07-030, *mimeo*, pp. 25-28.

charges and to instead specifically identify the non-bypassable charge avoided – *i.e.*, to provide that forecasted DA and CCA departing load shall not be subject to (i) the PCIA non-bypassable charge for any incremental standard procurement costs incurred by the IOUs for the period *after* the date of departure assumed in the IOUs approved bundled plans; and (ii) non-bypassable charges the Commission may specifically identify as avoidable in the future, but shall otherwise remain subject to all other non-bypassable charges.

C. The PD should be Revised to Clarify the Effective Date of the Revisions to the CAM Rules and IE Rules

As discussed above, SDG&E strongly supports the proposal to eliminate the energy auction requirement and to allow use of the JPP mechanism adopted in D.07-09-044 to determine the net capacity costs to be allocated via the CAM. SDG&E urges the Commission to adopt this modification to the CAM rules, and requests further that the final decision include an express statement to the effect that if, as of the date of the final decision, the Commission has approved application of CAM to an IOU contract, and the IOU has not yet conducted an energy auction related to that contract (or has conducted an energy auction, but the results of the auction will soon expire), the IOU is relieved of its obligation to conduct an energy auction and may instead use the JPP mechanism to determine the net capacity cost associated with the CAM'd contract.

In addition, SDG&E requests clarification regarding modification of the IE rules. The PD leaves the majority of the existing rules regarding IEs in place, revising them slightly to allow IEs to remain in the selection pool without term limits, subject to evaluation every three years instead of every two years.^{18/} SDG&E supports this aspect of the PD. The existing IE

^{18/} PD, p. 68.

rules are generally effective and the change made by the PD will reduce administrative burden. SDG&E requests additional clarification that, upon adoption of a final decision, any IE term that was scheduled to end in 2014 will be automatically extended to 2015.

III. CONCLUSION

For the reasons set forth above, the PD should be revised in accordance with the recommendations described herein and set forth in Attachment A hereto.

Dated this 18th day of February, 2014 in San Diego, California.

Respectfully submitted,

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ATTACHMENT A

**Proposed Finding of Fact, Conclusion of Law
and Ordering Paragraphs**

PROPOSED FINDING OF FACT:

11. ~~There is a gap in~~ The Commission's current policies regarding review of medium term bilateral procurement contracts of three consecutive months or greater and under five years in duration (including the requirement ~~with the exception that power purchase agreements with OTC plants with contract duration of greater than two years must be submitted to the Commission's via a Tier III advice letter~~) provide adequate oversight.

PROPOSED CONCLUSION OF LAW:

8. It is in the public interest to maintain the existing rules regarding review and approval of procurement contracts. ~~impose greater oversight of medium term bilateral contracts. Utilities will now be required to submit Tier II Advice Letters seeking Commission approval to enter into a medium term bilateral contract if the size of the contract is over 50 MW. This rule is in addition to all previous procurement rules.~~

OR

8. It is in the public interest to impose greater oversight of medium term bilateral contracts. Utilities will now be required to submit Tier II Advice Letters seeking Commission approval to enter into a medium-term bilateral contract if the size of the contract is over 50 MW. This rule is in addition to all previous procurement rules. Utilities are not required to submit Tier II Advice Letters seeking Commission approval to enter into (i) a medium-term bilateral contract if the size of the contract is below 50 MW; and (ii) a medium-term contract of any size that results from a competitive solicitation.

PROPOSED ORDERING PARAGRAPHS:

1. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company (collectively, the IOUs) shall estimate reasonable levels of expected Direct Access and Community Choice Aggregation departing load over the 10-year term of the IOUs bundled plans, using, **in the case of Direct Access Load**, information provided by the California Energy Commission **and, in the case of Community Choice Aggregation**, in the **Community Choice Aggregator's** ~~its~~ Binding Notice of Intent. The IOUs shall then exclude this departing load from their future bundled procurement plans, and only procure for the assumed amounts of retained bundled load. Having been excluded from the bundled portfolio planning scenarios, the forecasted Direct Access and Community Choice Aggregation departing load shall not be subject to **Power Charge Indifference Adjustment (PCIA)** non-bypassable charges for any incremental stranded procurement costs incurred by the IOUs for the period after the date of departure assumed in their approved bundled plans. **The forecasted Direct Access and Community Choice Aggregation departing load shall continue to be obligated to pay PCIA charges that were incurred prior to the date of departure assumed in the IOUs' approved bundled plans, and shall remain subject to all other non-bypassable charges, except as specifically stated by the Commission.**

~~3. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall submit Tier II Advice Letters seeking Commission approval to enter into a medium-term bilateral contract if the size of the contract is over 50 megawatts. This rule is in addition to all previous procurement rules.~~

34. Energy auctions shall no longer be required to net capacity costs for facilities subject to the Cost Allocation Mechanism. Instead Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall use the mechanism adopted in Decision 07-09-044, known as the "Joint Parties' Proposal," to set the residual capacity costs that would be allocated to benefitting customers. **The "Joint Parties' Proposal" may be used to net capacity costs for facilities subject to the Cost Allocation Mechanism immediately upon adoption of this order.**

56. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall re-evaluate Independent Evaluators every three years. **The evaluation deadline for each Independent Evaluator currently serving will be automatically extended by one year upon adoption of this order.**