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May 8, 2014

ADVICE LETTER 2600-E  
(U 902-E)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**SUBJECT: APPROVAL OF SAN DIEGO GAS & ELECTRIC AMENDMENT AND  
RESTATEMENT OF AGREEMENT FOR POWER PURCHASE WITH A FIRM  
CAPACITY QUALIFYING FACILITY (OCEANSIDE REFRIGERATION, INC.)  
WITH GOAL LINE L.P.**

## I. INTRODUCTION

San Diego Gas & Electric Company ("SDG&E") hereby requests that the California Public Utilities Commission ("Commission" or "CPUC") approve the *Amendment and Restatement of Agreement for Power Purchase With a Firm Capacity Qualifying Facility (Oceanside Refrigeration, Inc.)* with Goal Line, L.P. ("Goal Line" or "Seller") dated July 2, 2013 (the "Amendment") that modifies an existing Qualifying Facility ("QF") contract. The existing QF contract for energy and capacity deliveries from the Goal Line facility, a 49.9 megawatt ("MW") cogeneration facility located in Escondido, California ("Facility") was executed on December 4, 1990. Firm power deliveries began on February 15, 1995 and will expire on February 14, 2025.<sup>1</sup>

As part of this filing, SDG&E is requesting that the Commission approve an incentive payment to SDG&E shareholders of ten percent (10% ) of the ratepayer savings expected to be generated by the Amendment as set forth below and in the Confidential Appendices in Part 2.

Under the Amendment the Facility will convert to a Utility Prescheduled Facility, or from regulatory "must take" operations pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA")<sup>2</sup>, to operations scheduled by SDG&E.<sup>3</sup> The Amendment provides SDG&E with the right to schedule the Facility, rather than being required to accept energy at times that it may not be needed or cost-effective. SDG&E currently does not have scheduling rights under the existing contract and is required to take and pay for energy that is delivered, regardless of need or cost. In addition to this significant operational benefit, the Amendment is also anticipated to result in reduced greenhouse gas ("GHG") emissions and lowered payments for energy. These benefits will together result in greater value to customers over the term of the Amendment. Once approved and upon satisfaction of certain conditions, the Amendment will become effective and replace the existing QF contract in all respects. The Amendment will expire on February 14, 2025.

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<sup>1</sup> Subsequent to its execution, but prior to this Advice Letter filing, the Amendment and Restatement of Agreement was amended to clarify the formula in Appendix 9.3. References throughout this Advice Letter to the "Amendment" refer to the *Amendment and Restatement of Agreement for Power Purchase With a Firm Capacity Qualifying Facility (Oceanside Refrigeration, Inc.)* as so amended. The amendment is provided in Confidential Attachment D to this Advice Letter.

<sup>2</sup> *Public Utility Regulatory Policies Act*, 16 U.S.C. §796, *et seq.*

<sup>3</sup> The Amendment is included as Confidential Attachment D to this advice letter.

As a bilaterally negotiated Utility Prescheduled Facility agreement, the Amendment falls directly within the procurement options set forth in the QF/Combined Heat and Power (“CHP”) Settlement approved by the Commission in Decision (“D.”) 10-12-035, which became effective on November 23, 2011 (“QF/CHP Settlement” or “Settlement”).<sup>4</sup> As a CHP facility that satisfied the PURPA efficiency requirements as of September 20, 2007 and will convert to a Utility Prescheduled Facility under the Amendment, Goal Line is eligible to obtain a new agreement through bilateral negotiations under the terms of the QF/CHP Settlement. Pursuant to the terms of the Settlement, the Amendment may be submitted for Commission approval via Tier 3 advice letter. The Amendment will help achieve the policy objectives set forth by the parties to the QF/CHP Settlement by converting “must-take” QF generation to a Utility Prescheduled Facility arrangement.<sup>5</sup> It also is consistent with Commission precedent supporting such conversions.

SDG&E further requests that the Commission approve an incentive payment to SDG&E shareholders of ten percent (10%) of the ratepayer savings expected to be generated by the Amendment. Under the Amendment total savings are valued at approximately \$7,190,000 in present value (“PV”) over the remainder of the Term. This request is being made in keeping with the Restructuring Advice Letter Filing (“RALF”) process adopted by the Commission in D.98-12-066, which SDG&E attempted to follow in the preparation and submission of this Advice Letter. In accordance with the RALF process, SDG&E provided the Commission’s Office of Ratepayer Advocates (“ORA”) with a copy of the Confidential Appendices from Part 2 of this Advice Letter on February, 18, 2014. ORA conducted an independent review of SDG&E’s ratepayer savings analysis and notified SDG&E that it would not issue a Qualifying Facility Restructuring Reasonableness Letter (“QRFFL”) based on an objection to the use of the RALF process to submit an Advice Letter pursuant to the QF/CHP Settlement. SDG&E notes that the Commission recently rejected the argument that QF/CHP agreements that were modified as a result of the Settlement are ineligible for RALF treatment in Resolution No. E-4627 issued on March 13, 2014. Therefore, SDG&E requests that the Commission approve the requested incentive, which is a key element of the RALF process.

Given the clear benefits of the Amendment, SDG&E requests that the Commission (1) approve the Amendment without modification, (2) authorize recovery of costs associated with the Amendment through SDG&E’s Energy Resource Recovery Account (“ERRA”), and (3) authorize continued recovery of stranded costs consistent with D. 02-12-074 and 02-11-022. SDG&E also requests that the Commission determine that any GHG reductions associated with the Amendment shall count toward SDG&E’s GHG Emissions Reduction Targets in the QF/CHP Settlement, and find that the Amendment is not a covered procurement subject to the Emissions Performance Standard (“EPS”) adopted in D.07-01-039.

## II. BACKGROUND AND DESCRIPTION OF THE AMENDMENT

### A. Description of the Facility and Existing QF Contract

Goal Line is a 49.9 MW qualifying cogeneration facility that consists of a combustion turbine and a heat recovery steam generator. The combustion turbine burns natural gas and has a nameplate capacity of 42 MW. Exhaust from the combustion turbine is in turn ducted to a heat recovery steam generator (“HRSG”) to produce steam. High pressure steam from the HRSG is used in a 10.2 MW steam turbine generator. Steam from the steam turbine generator is used in

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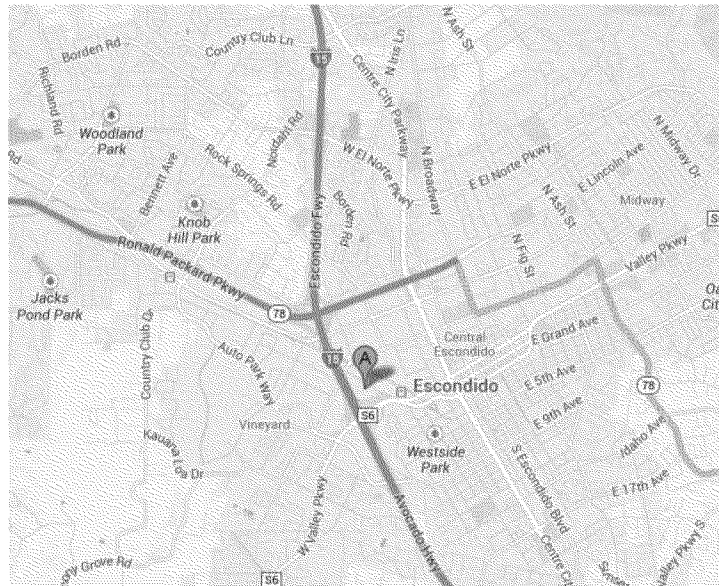
<sup>4</sup> CHP Program Settlement Agreement Term Sheet (“Term Sheet”), § 4.3.1

<sup>5</sup> *Id.* at § 1.2.1.4 (stating that the policies and purposes of the State CHP Program will be achieved by a program that “supports the change in operations of inefficient CHP to provide greater benefits to the State”).

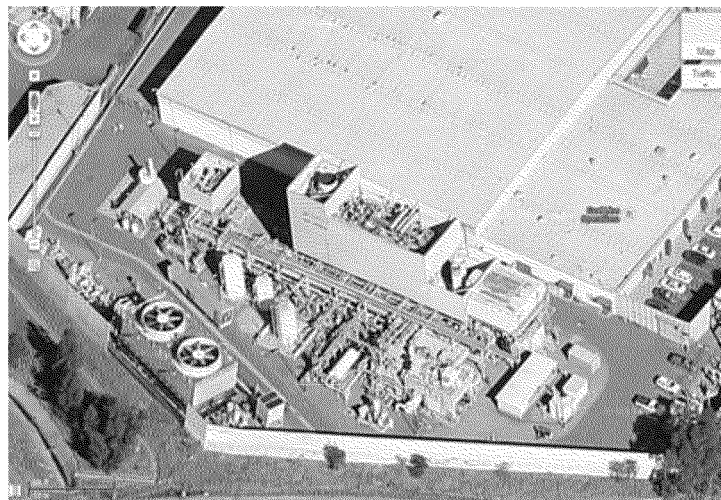
compressors used to produce ice at a neighboring ice rink, which is also owned by Goal Line but leased to PE Ice-Plex, LLC. An auxiliary boiler produces steam for the ice rink when the cogenerator is not dispatched or operating. As part of the implementation of the Amendment, Goal Line will install a new gas line specifically for gas deliveries for the auxiliary boiler. All electrical output produced at Goal Line and not used on site has been sold to SDG&E since the unit commenced commercial operation on February 15, 1995.

Goal Line is located at 555 North Tulip Street, Escondido, CA 92025 at Latitude 33.11907 and Longitude: -117.0990.

Map of Goal Line location in Escondido



Aerial view of the existing Goal Line facility



SDG&E and Goal Line executed a Restatement of Agreement for Power Purchase with a Firm Capacity Qualifying Facility (based on the Standard Offer 2) on December 4, 1990, as amended from time to time (the "SO2"). The Facility began firm operations on February 15, 1995, and has since provided energy and capacity deliveries to SDG&E customers. Under the SO2, the Goal

Line Facility is a “must-take” resource and SDG&E currently pays Goal Line for energy deliveries based on SDG&E’s posted variable short-run avoided cost (“SRAC”) for QFs pursuant to D.06-07-032. The existing SO2 has 10 years remaining in its term and is scheduled to terminate at midnight on February 14, 2025.

In light of Goal Line’s long-term thermal contract with PE Ice-Plex, LLC, SDG&E believes that the Facility would continue to meet the Federal Energy Regulatory Commission’s (“FERC”) cogenerator efficiency requirements for the remainder of the term of the existing QF contract. SDG&E found it prudent to negotiate with Goal Line for a contract amendment that would allow, among other benefits, removal of the “must-take” obligation, enhanced operational flexibility resulting from SDG&E’s scheduling rights, GHG emission reductions, and continued rights to the Resource Adequacy (“RA”) benefits from the Facility.

Goal Line meets the federal definition and is certified as a “qualifying cogeneration facility”.<sup>6</sup> Goal Line will no longer be required to operate as a QF under the Amendment. Goal Line will instead operate as an “Exempt Wholesale Generator” (“EWG”) and will meet the efficiency requirements necessary to maintain the Project’s status as a “cogeneration” facility as defined in Section 25134 of the California Public Resources Code.

Goal Line will also enter into a Large Generator Interconnection Agreement (“LGIA”). The point of interconnection for the project is at the SDG&E facilities at the ESCO substation in Escondido, CA. The point of delivery shall be the California Independent System Operator (“CAISO”) controlled facilities at the main bus at the ESCO substation and related PNode ESCO\_\_6\_\_N001. Goal Line’s CAISO Resource ID is ESCO\_\_6\_\_GLMQF.

SDG&E will be the scheduling coordinator and will supply the fuel required to run the Facility.

## **B. History of Negotiations**

Negotiations between Goal Line and SDG&E to amend the SO2 began in December 2011. Between January 2012 and June 2013, Goal Line and SDG&E finalized the terms and conditions of the Amendment and obtained internal approval to proceed with the transaction. By the end of June 2013, the framework for the Amendment and the financial terms were reached. SDG&E and Goal Line executed the Amendment on July 2, 2013. SDG&E reported on the status of the Goal Line negotiations with the PRG on a regular basis as part of the update on the overall CHP program.

## **C. Summary of the Amendment Terms**

The Amendment provides significant improvements over the SO2. Under the Amendment, SDG&E has the right to schedule the Facility. Seller is obligated to provide day-ahead notices of availability (*i.e.*, notify SDG&E of available capacity and changes in available capacity), comply with forced outage and other reporting obligations, and comply with the CAISO tariff provisions.<sup>7</sup> SDG&E’s ability to manage the output of this resource in the CAISO’s day ahead (and some flexibility in the hour-ahead, and real time markets) when it is economic to do so will allow

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<sup>6</sup> See Section 292.205 of FERC Regulations, 18 C.F.R. §292.205.

<sup>7</sup> The CAISO has repeatedly stated a desire to have grandfathered QF contracts updated to comply with CAISO Tariff and interconnection requirements. See *e.g.*, D.07-09-040 at 133-135 (describing CAISO position regarding QF compliance with CAISO Tariff requirements).

SDG&E to better manage its portfolio while ensuring that the resource remains available to run when needed.

Under the Amendment, the Facility is required to qualify as an Exempt Wholesale Generator throughout the term of the Amendment, and SDG&E is relieved of its obligation to purchase “must take” power from Goal Line. SDG&E anticipates that removal of the must-take obligation and conversion to a dispatchable facility will result in the Facility operating at a significantly reduced level (*i.e.*, below 30 percent capacity factor) when compared to its historical level under the SO2. Capacity payments will be made based upon the Facility’s availability rather than on the quantity of “must-take” energy delivered, regardless of whether that energy is needed at the time it is generated and delivered.

Goal Line will be compensated for deliveries under the Amendment on a monthly basis. Among other payments, Goal Line will be compensated via a capacity payment rate, a payment for the dispatch rights, a performance bonus, and a variable operation and maintenance (“O&M”) rate based on energy deliveries. SDG&E will become the fuel manager and will better manage the fuel of the Facility based on a guaranteed heat rate provided in the Amendment.

SDG&E will continue to receive all rights to the RA value from the Facility. The RA value is anticipated to increase to its maximum capacity of 49.9 MW with the conversion to a dispatchable facility. SDG&E will be responsible for the GHG compliance costs based on the actual run of the Facility.

The Amendment includes a CP where, if the CPUC has not approved the Amendment by July 2, 2014, then either SDG&E or Seller may terminate the Amendment and the existing QF contract will remain in effect. Confidential terms of the Amendment are further discussed in Confidential Attachment B.

### **III. THE AMENDMENT IS CONSISTENT WITH THE QF/CHP SETTLEMENT AND COMMISSION PRECEDENT REGARDING CONVERSIONS TO UTILITY PRESCHEDULED FACILITIES**

#### **A. The Facility meets QF/CHP Settlement requirements to obtain a new agreement through bilateral negotiations.**

Bilaterally negotiated and executed Utility Prescheduled Facilities agreements are an important part of the procurement options available to generators under the new CHP Program approved by the Commission in D.10-12-035.<sup>8</sup> Under the terms of the QF/CHP Settlement, a CHP facility that has met the PURPA efficiency requirements as of September 20, 2007 and converts to a Utility Prescheduled Facility (“UPF”) is able to amend or replace its legacy PPA through bilateral negotiations.<sup>9</sup> Because Goal Line satisfies these requirements, it is eligible to amend its current Standard Offer 2 (“SO2”) PPA through bilateral negotiations. First, as discussed in section II.A above, the Facility was compliant with the PURPA efficiency requirements as of September 20, 2007. Second, under the Amendment, the Facility will convert to a UPF as defined in the QF/CHP Settlement. The QF/CHP Settlement defines UPF as “[a]n Existing CHP Facility that has changed operations to convert to a “utility controlled scheduled dispatchable generation facility, including but not limited to an EWG”.”<sup>10</sup> Goal Line qualifies as an Existing CHP Facility as defined in the QF/CHP Settlement, as it was an operational CHP facility before the effective date of the

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<sup>8</sup> Term Sheet, § 4.3.1.

<sup>9</sup> *Id.* at § 4.8.1.1

<sup>10</sup> *Id.* at § 17 (“Glossary of Defined Terms”).

QF/CHP Settlement.<sup>11</sup> Further, the Amendment requires Goal Line to commit the entire Facility to SDG&E, and provides SDG&E with the right to schedule the Facility as needed.<sup>12</sup> It also requires Goal Line to satisfy Federal Energy Regulatory Commission regulations to qualify as an Exempt Wholesale Generator throughout the term of the Amendment.<sup>13</sup> The Facility will therefore become a “utility controlled scheduled dispatchable generation facility” under the Amendment.

**B. Both the Restructuring Advice Letter Filing procedure adopted in CPUC Decision 98-12-066 and the terms of the QF/CHP Settlement require a Tier 3 Advice Letter filing for this Amendment.**

As required by the Restructuring Advice Letter Filing (“RALF”) procedure adopted in Decision 98-12-066, SDG&E sought a Qualifying Facility Restructuring Reasonableness Letter (“QFRRL”) of support or no opposition from the ORA.

The QF/CHP Settlement sets forth the processes for obtaining Commission approval of PPAs or amendments executed pursuant to the Settlement. The Settlement provides that “IOUs will utilize a Tier 3 Advice Letter for all other PPAs (new, repowering or existing PPAs that contain any material modification of the PPAs approved in this Settlement)”<sup>14</sup> As discussed above, the Amendment contains material modifications to the Facility’s legacy PPA and has a term in excess of five years. Therefore, the Amendment can be submitted for approval by Tier 3 advice letter.

**C. The Facility is not a covered procurement subject to the Emissions Performance Standard.**

Pursuant to Section 4.10.4 of the QF/CHP Settlement Term Sheet, PPAs and Legacy PPA Amendments that are equal to or greater than five years in length that are submitted by Tier 2 or Tier 3 advice letter must demonstrate compliance with the EPS. In D.07-01-039 the Commission adopted an EPS that applies to baseload generation with an annualized plant capacity factor of at least 60 percent. Because the Facility’s annualized capacity factor is expected to be significantly below 60 percent under the Amendment, the Amendment is not a form of covered procurement subject to the EPS. SDG&E is seeking a finding to this effect consistent with Section 4.10.4.1 of the Term Sheet.

**D. The Commission has recognized the value of converting QF generation to a Utility Prescheduled Facility.**

The Commission has recognized the benefits associated with converting regulatory “must-take” QF generation to Utility Prescheduled Facilities. In approving the QF/CHP settlement in D.10-12-035, the Commission stated that such conversions give the IOU the “ability to dispatch the resource when it is needed, rather than the facility providing baseload generation or operating based on a thermal host’s needs,” and “may ultimately result in GHG emission reductions.”<sup>15</sup> Without these amendments, the QF generation facilities would remain must-take resources pursuant to PURPA, and IOUs would be required to take and pay for energy when it was

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<sup>11</sup> The Term Sheet defines “Existing CHP Facility” as “one that was operational before the Settlement Effective Date,” and “CHP Facility” as “[a] facility that meets the federal definition of a qualifying cogeneration facility under 18 C.F.R. § 292.205.” See Term Sheet, § 17 (“Glossary of Defined Terms”).

<sup>12</sup> Amendment §§ 1.1

<sup>13</sup> *Id.* at § 3.1(b).

<sup>14</sup> *Id.* at § 4.10.2

<sup>15</sup> D.10-12-035 at 45-46 and Finding of Fact 19.

delivered, regardless of need or cost. The Amendment allows SDG&E the right to schedule the unit according to least cost, best fit principles. As further demonstrated in Confidential Attachment B, this dispatchability is anticipated to provide significant energy cost savings to ratepayers over the remaining term.

#### IV. THE AMENDMENT PROVIDES SIGNIFICANT CUSTOMER BENEFITS

The Amendment provides significant customer benefits. As described above, the Amendment converts the facility to a dispatchable UPF, reduces total costs, may increase the Facility's available RA, and may reduce GHG costs. Conversion to a UPF will provide significant operational benefits in allowing SDG&E to schedule the Facility as needed and when cost-effective. As a UPF, SDG&E projects that the Facility will have a capacity factor significantly lower than it did under the SO2. The Amendment will also result in reduced GHG emissions from the Facility through the reduction of the hours that it is operating (i.e., lower capacity factor). These benefits will together result in greater value to customers over the term of the Amendment. An analysis of this expected value is included in Confidential Attachment B. Under the QF/CHP Settlement, existing QF facilities that convert to Utility Prescheduled Facilities can count toward the GHG Emissions Reduction Targets in the Settlement.<sup>16</sup> In addition, under the QF/CHP Settlement, existing QF facilities that convert to Utility Prescheduled Facilities can count toward SDG&E's CHP MW target.<sup>17</sup> SDG&E is requesting that the Commission determine that any GHG reductions associated with the Amendment count toward SDG&E's GHG Emissions Reduction target and its MW target included in the QF/CHP Settlement.

#### V. CONCLUSION

The Amendment provides for the continued operation of the Facility under terms and conditions that will provide significant benefits. Additionally, enabling utilities to replace existing QF contracts with new PPAs that capture greater operational and economic benefits for customers is consistent with the intent and provisions of the QF/CHP Settlement and its authorizing decision. SDG&E requests that the Commission:

1. Approve the Amendment, including the Amendment to Appendix 9.3, without modification as just and reasonable;
2. Authorize continued recovery of the costs associated with the Amendment through SDG&E's ERRA and recovery of stranded costs consistent with D.02-12-074 and 02-11-022;
3. Determine that any GHG reductions associated with the Amendment count toward SDG&E's GHG Emissions Reduction target included in the QF/CHP Settlement;
4. Find that because the expected annualized capacity factor of the Facility under the Amendment is below 60 percent, the Amendment is not a covered procurement subject to the EPS adopted in D.07-01-039.
5. Find that the Goal Line capacity counts toward SDG&E's CHP MW Target per 4.8.1.2 of the CHP/QF Settlement.
6. Allocate SDG&E shareholders 10% of the projected cost savings from the Amendment in accordance with the Restructuring Advice Letter Filing process and D.98-12-066.

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<sup>16</sup> Term Sheet, §§ 4.8.1.3, 7.1.2. GHG emissions reductions will be determined using the methodology described in § 7.3.1.3 for Utility Prescheduled Facilities.

<sup>17</sup> Term Sheet, §§ 4.8.1.2, 2.2.2.3.

**PROTESTS**

Anyone wishing to protest this filing may do so by letter sent via U.S. mail, by facsimile or electronically, any of which must be received no later than May 28, 2014, which is 20 days after the date of this filing. Protests should be mailed to:

CPUC Energy Division- DMS Branch  
Tariff Files, Room 4005  
505 Van Ness Avenue  
San Francisco, California 94102  
Facsimile: (415) 703-2200  
E-mail: [EDTariffUnit@cpuc.ca.gov](mailto:EDTariffUnit@cpuc.ca.gov)

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above. The protest also should be sent via U.S. mail (and by facsimile and electronically, if possible) to SDG&E at the address shown below on the same date it is mailed or delivered to the Commission:

Attn: Megan Caulson  
Regulatory Tariff Manager  
8330 Century Park Court, Room 32C  
San Diego, CA 92123-1548  
Facsimile No. 858-654-1879  
E-Mail: [MCaulson@semprautilities.com](mailto:MCaulson@semprautilities.com)

**EFFECTIVE DATE**

SDG&E requests that this advice filing be effective on or before August 31, 2014. SDG&E submits this request as a Tier 3 advice letter.

**NOTICE**

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on the attached list and the parties on the service list for R.12-03-014.

Address changes to the General Order 96-B service list should be directed to SDG&E at Tariffs by facsimile at (858) 654-1879 or by e-mail to [SDG&ETariffs@semprautilities.com](mailto:SDG&ETariffs@semprautilities.com).

For changes to any other service list, please contact the Commission's Process Office at (415) 703-2021 or at [Process\\_Office@cpuc.ca.gov](mailto:Process_Office@cpuc.ca.gov). Send all electronic approvals to [SDG&ETariffs@semprautilities.com](mailto:SDG&ETariffs@semprautilities.com).

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CLAY FABER  
Director – Regulatory Affairs



**Appendices:**

Appendix 1, Declaration of Keith Durand Seeking Confidential Treatment and the IOU Matrix

Confidential Appendix A: Consistency with Commission Decisions and Rules and Project Development Status

Confidential Appendix B: Contract Summary and Financial Analysis

Confidential Appendix C: Comparison of Goal Line Amendment to SDG&E's CHP Pro Forma Tolling Agreement Power Purchase Agreement

Confidential Appendix D: Goal Line Amendment and the Amendment to Appendix 9.3

Confidential Appendix E: Goal Line existing SO2 PPA and Amendments

Confidential Appendix F: Work Papers, Data, and Models for Analyses

Confidential Appendix G: Independent Evaluator report

# CALIFORNIA PUBLIC UTILITIES COMMISSION

## ADVICE LETTER FILING SUMMARY ENERGY UTILITY

**MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)**

Company name/CPUC Utility No. **SAN DIEGO GAS & ELECTRIC (U 902)**

Utility type:

ELC     GAS  
 PLC     HEAT     WATER

Contact Person: Joff Morales

Phone #: (858) 650-4098

E-mail: jmorales@semprautilities.com

EXPLANATION OF UTILITY TYPE

ELC = Electric                      GAS = Gas  
 PLC = Pipeline                    HEAT = Heat      WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 2600-E

Subject of AL: Approval of SDG&E Amendment and Restatement of Agreement for Power Purchase With Firm Capacity Qualifying Facility (Oceanside Refrigeration, Inc.) with Goal Line L.P.

Keywords (choose from CPUC listing): Power Purchase Agreement

AL filing type:  Monthly  Quarterly  Annual  One-Time  Other \_\_\_\_\_

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #: N/A

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: None

Summarize differences between the AL and the prior withdrawn or rejected AL<sup>1</sup>: N/A

Does AL request confidential treatment? If so, provide explanation: N/A

Resolution Required?  Yes  No

Tier Designation:  1  2  3

Requested effective date: 8/31/2014

No. of tariff sheets: 0

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: None

Service affected and changes proposed<sup>1</sup>: N/A

Pending advice letters that revise the same tariff sheets: None

**Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:**

**CPUC, Energy Division**  
**Attention: Tariff Unit**  
**505 Van Ness Ave.,**  
**San Francisco, CA 94102**  
**EDTariffUnit@cpuc.ca.gov**

**San Diego Gas & Electric**  
**Attention: Megan Caulson**  
**8330 Century Park Ct, Room 32C**  
**San Diego, CA 92123**  
**mcaulson@semprautilities.com**

<sup>1</sup> Discuss in AL if more space is needed.

General Order No. 96-B  
ADVICE LETTER FILING MAILING LIST

cc: (w/enclosures)

Public Utilities Commission

DRA

Y. Schmidt  
W. Scott

Energy Division

P. Clanon  
S. Gallagher  
H. Gatchalian  
D. Lafrenz  
M. Salinas

CA. Energy Commission

F. DeLeon  
R. Tavares

Alcantar & Kahl LLP

K. Harteloo

American Energy Institute

C. King

APS Energy Services

J. Schenk

BP Energy Company

J. Zaiontz

Barkovich & Yap, Inc.

B. Barkovich

Bartle Wells Associates

R. Schmidt

Braun & Blaising, P.C.

S. Blaising

California Energy Markets

S. O'Donnell  
C. Sweet

California Farm Bureau Federation

K. Mills

California Wind Energy

N. Rader

CCSE

S. Freedman  
J. Porter

Children's Hospital & Health Center

T. Jacoby

City of Chula Vista

M. Meacham  
E. Hull

City of Poway

R. Willcox

City of San Diego

J. Cervantes  
G. Lonergan  
M. Valerio

Commerce Energy Group

V. Gan

Constellation New Energy

W. Chen

CP Kelco

A. Friedl

Davis Wright Tremaine, LLP

E. O'Neill  
J. Pau

Dept. of General Services

H. Nanjo  
M. Clark

Douglass & Liddell

D. Douglass  
D. Liddell  
G. Klatt

Duke Energy North America

M. Gillette

Dynegy, Inc.

J. Paul

Ellison Schneider & Harris LLP

E. Janssen

Energy Policy Initiatives Center (USD)

S. Anders

Energy Price Solutions

A. Scott

Energy Strategies, Inc.

K. Campbell  
M. Scanlan

Goodin, MacBride, Squeri, Ritchie & Day

B. Cragg  
J. Heather Patrick  
J. Squeri

Goodrich Aerostructures Group

M. Harrington

Hanna and Morton LLP

N. Pedersen

Itsa-North America

L. Belew

J.B.S. Energy

J. Nahigian

Luce, Forward, Hamilton & Scripps LLP

J. Leslie

Manatt, Phelps & Phillips LLP

D. Huard  
R. Keen

Matthew V. Brady & Associates

M. Brady

Modesto Irrigation District

C. Mayer

Morrison & Foerster LLP

P. Hanschen

MRW & Associates

D. Richardson

OnGrid Solar

Andy Black

Pacific Gas & Electric Co.

J. Clark  
M. Huffman  
S. Lawrie  
E. Lucha

Pacific Utility Audit, Inc.

E. Kelly

R. W. Beck, Inc.

C. Elder

School Project for Utility Rate  
Reduction

M. Rochman

Shute, Mihaly & Weinberger LLP

O. Armi

Solar Turbines

F. Chiang

Sutherland Asbill & Brennan LLP

K. McCrea

Southern California Edison Co.

M. Alexander

K. Cini

K. Gansecki

H. Romero

TransCanada

R. Hunter

D. White

TURN

M. Florio  
M. Hawiger

UCAN

M. Shames

U.S. Dept. of the Navy

K. Davoodi

N. Furuta

L. DeLacruz

Utility Specialists, Southwest, Inc.

D. Koser

Western Manufactured Housing  
Communities Association

S. Dey

White & Case LLP

L. Cottle

Interested Parties in

R.12-03-014

San Diego Gas & Electric Advice Letter 2600-E  
May 8, 2014

CONFIDENTIAL DECLARATION

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

**DECLARATION KEITH DURAND REGARDING  
CONFIDENTIALITY OF CERTAIN DATA**

I, Keith Durand do declare as follows:

1. I am an Energy Contracts Originator for San Diego Gas & Electric Company ("SDG&E"). I have reviewed the attached Advice Letter No. 2600-E, including Confidential Appendices A, B, C, D, E, F, and G (the "Confidential Appendices"), and am personally familiar with the facts and representations in this Declaration. If called upon to testify, I could and would testify to the following based upon my personal knowledge and/or belief.

2. I hereby provide this Declaration in accordance with D.06-06-066, as modified by D.07-05-032, and D.08-04-023, to demonstrate that the confidential information ("Protected Information") provided in the Responses submitted concurrently herewith, falls within the scope of data protected pursuant to the IOU Matrix attached to D.06-06-066 (the "IOU Matrix").<sup>1</sup> In addition, the Commission has made clear that information must be protected where "it matches a Matrix category exactly or consists of information from which that information may be easily derived."<sup>2</sup>

3. I address below each of the following five features of Ordering Paragraph 2 in

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<sup>1</sup> The Matrix is derived from the statutory protections extended to non-public market sensitive and trade secret information. (See D.06-06-066, *mimeo*, note 1, Ordering Paragraph 1). The Commission is obligated to act in a manner consistent with applicable law. The analysis of protection afforded under the Matrix must always produce a result that is consistent with the relevant underlying statutes; if information is eligible for statutory protection, it must be protected under the Matrix. (See *Southern California Edison Co. v. Public Utilities Comm.* 2000 Cal. App. LEXIS 995, \*38-39) Thus, by claiming applicability of the Matrix, SDG&E relies upon and simultaneously claims the protection of Public Utilities Code §§ 454.5(g) and 583, Govt. Code § 6254(k) and General Order 66-C.

<sup>2</sup> See, *Administrative Law Judge's Ruling on San Diego Gas & Electric Company's April 3, 2007 Motion to File Data Under Seal*, issued May 4, 2007 in R.06-05-027, p. 2 (emphasis added).

D.06-06-066:

- That the material constitutes a particular type of data listed in the Matrix,
- The category or categories in the Matrix to which the data corresponds,
- That it is complying with the limitations on confidentiality specified in the Matrix for that type of data,
- That the information is not already public, and
- That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.<sup>3</sup>

4. SDG&E's Protected Information: As directed by the Commission, The instant confidentiality request satisfies the requirements of D.06-06-066<sup>4</sup> because the information contained in the Confidential Appendices provided by SDG&E is of the type of information protected by the Matrix as follows:

Confidential Appendix A:

Consistency with Commission Decisions and Rules Category VIIIA.; Specific Quantitative Analysis, Category VIILB.; Appendix Terms and Conditions, Category VILG.; Total Energy Forecast, Category V.C.

Confidential Appendix B:

Goal Line Appendix Summary - Appendix Terms and Conditions, Category VILG; Specific Quantitative Analysis, Category VIILB. Total Energy Forecast, Category V.C.

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<sup>3</sup> D.06-06-066, as amended by D.07-05-032, *mimeo*, p. 81, Ordering Paragraph 2.

<sup>4</sup> See, *Administrative Law Judge's Ruling on San Diego Gas & Electric Company's Motions to File Data Under Seal*, issued April 30 in R.06-05-027, p. 7, Ordering Paragraph 3 ("In all future filings, SDG&E shall include with any request for confidentiality a table that lists the five D.06-06-066 Matrix requirements, and explains how each item of data meets the matrix").

Confidential Appendix C:	Comparison of Goal Line Amendment with SDG&E's Pro Forma CHP Tolling PPA - Contract Terms and Conditions, Category VILG.
Confidential Appendix D:	Goal Line Amendment - Terms and Conditions, Category VILG
Confidential Appendix E:	Goal Line existing SO2 PPA and amendments - Contract Terms and Conditions, Category VILG.
Confidential Appendix F:	Specific Quantitative Analysis, Work papers, data, and models Category VIII.B.
Confidential Appendix G:	Van Horn Consulting: Independent Review of Economic Evaluation

5. As an alternative basis for requesting confidential treatment, SDG&E submits that the Amendment enclosed in the Advice Letter is material, market sensitive, electric procurement-related information protected under §§ 454.5(g) and 583, as well as trade secret information protected under Govt. Code § 6254(k). Disclosure of this information would place SDG&E at an unfair business disadvantage, thus triggering the protection of G.O. 66-C.<sup>5</sup>

6. Public Utilities Code § 454.5(g) provides:

The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant

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<sup>5</sup> This argument is offered in the alternative, not as a supplement to the claim that the data is protected under the IOU Matrix. California law supports the offering of arguments in the alternative. *See, Brandolino v. Lindsay*, 269 Cal. App. 2d 319, 324 (1969) (concluding that a plaintiff may plead inconsistent, mutually exclusive remedies, such as breach of contract and specific performance, in the same complaint); *Tanforan v. Tanforan*, 173 Cal. 270, 274 (1916) ("Since . . . inconsistent causes of action may be pleaded, it is not proper for the judge to force upon the plaintiff an election between those causes which he has a right to plead.")

reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.

7. General Order 66-C protects "[r]eports, records and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage."

8. Under the Public Records Act, Govt. Code § 6254(k), records subject to the privileges established in the Evidence Code are not required to be disclosed.<sup>6</sup> Evidence Code § 1060 provides a privilege for trade secrets, which Civil Code § 3426.1 defines, in pertinent part, as information that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure.

9. Public Utilities Code § 583 establishes a right to confidential treatment of information otherwise protected by law.<sup>7</sup>

10. If disclosed, the Protected Information could provide parties, with whom SDG&E is currently negotiating, insight into SDG&E's procurement strategies, which would give them an unfair negotiating advantage and could ultimately result in increased cost to ratepayers. In addition, if developers mistakenly perceive that SDG&E is not committed to assisting their projects, disclosure of the Protected Information could act as a disincentive to developers. Accordingly, pursuant to P.U. Code § 583, SDG&E seeks confidential treatment of this data, which falls within the scope of P.U. Code § 454.5(g), Evidence Code § 1060 and General Order 66-C.

11. Generators' Protected Information: The Protected Information also constitutes

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<sup>6</sup> See also Govt. Code § 6254.7(d).

<sup>7</sup> See, D.06-06-066, *mimeo*, pp. 26-28



confidential trade secret information of the generator listed therein. SDG&E is required pursuant to the terms of the Amendment to protect non-public information. Some of the Protected Information in the Amendment relates directly to the operation of the project. Disclosure of this extremely sensitive information could harm the generator's ability to negotiate necessary contracts.

12. Accordance with its obligations under its Amendment and pursuant to the relevant statutory provisions described herein, SDG&E hereby requests that the Protected Information be protected from public disclosure.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 8th day of May, 2014 at San Diego, California.

A handwritten signature in cursive script, reading "Keith Durand". The signature is written in black ink and is positioned above a horizontal line.

Keith Durand  
Energy Contracts Originator  
Electric & Fuel Procurement  
San Diego Gas & Electric

San Diego Gas & Electric Advice Letter 2600-E  
May 8, 2014

CONFIDENTIAL PART II