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June 4, 2014

Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

Re: **Reply of San Diego Gas & Electric to the Protest of Advice Letter 2600-E, 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.**

Energy Division:

In accordance with Section 7.4.3 of General Order ("GO") 96-B, San Diego Gas & Electric Company ("SDG&E") hereby replies to the protest from the Office of Ratepayer Advocates ("ORA") filed on May 28, 2014.

On May 8, 2014, SDG&E filed AL 2600-E to request 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.

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.

Protest

ORA does not oppose the proposed Amendment. Rather, ORA's protest raises two issues that are tangential to the Amendment. First, ORA claims that SDG&E is not entitled to the 10% shareholder incentive because the amended and restated Goal Line agreement also qualifies as procurement resulting from the QF/Combined Heat and Power (CHP) Settlement pursuant to D.10-12-035 (the "CHP Settlement"). Second, ORA claims that SDG&E's request is flawed because SDG&E did not request that the capacity costs for the amended and restated agreement be allocated to all benefitting customers in accordance with the Commission's cost allocation methodology ("CAM"). ORA is wrong on both points, as discussed below. ORA's positions are contrary to recent Commission decisions regarding both the CHP Settlement and the Restructuring Advice Letter Filing ("RALF") process. The amended and restated Goal Line agreement fully complies with the CHP Settlement and also qualifies for the 10% shareholder incentive. As contemplated by the CHP Settlement, because the agreement does not add new capacity, the appropriate mechanism for recovery of above market costs is the Competition Transition Charge ("CTC"), and not CAM . SDG&E further rebuts ORA's arguments below.

SDG&E's Response

The 10% shareholder incentive for modified QF agreements has a history going back to D.95-12-063, as subsequently modified by D.96-01-009 and D.98-12-066. The purpose behind the incentive was "to encourage [QF] contract restructuring so that total ratepayer costs might be reduced."[1] This longstanding desire to devise processes to encourage CHP/QF contract restructuring and simplify approval of restructured contracts led directly to the development of RALF process. But the RALF process was a vehicle for implementing the contract restructurings *including* the 10% shareholder initiative and not just simply a filing tool.

ORA's attempt to disqualify AL 2600-E from the RALF process because the contract restructuring grew out of the CHP Settlement is misplaced and contrary to recent Commission policy clarifying that CHP Settlement contracts qualify for RALF treatment. In Resolution No. E-4627, the Commission responded to a protest to a PG&E RALF filing by the Marin Energy Authority ("MEA") that challenged the ongoing applicability of the RALF process to CHP/QF contracts modified in response to the CHP Settlement. There, the Commission stated emphatically that

> ***The RALF process is an ongoing mechanism*** as a result of D.98-12-066, which adopted the RALF process and D.99-02-085, which requires the QFRRL. While staff recognizes that ORA is not the only party protesting the QF contract amendments, MEA being a CCA was able to file comments to PG&E Advice Letter 4253-E and staff reviewed each of MEA's concerns and deliberated on them. Because PG&E consulted with ORA and received a QFRRL, and ***since the Commission has not modified or rescinded its orders authoring*** [sic] ***the utilities to use the RALF process, the Commission is bound by the previous decisions and law*** to deliberate the outcome of amendments like the Cymric Demonstration Project. (Emphases added).[2]

To date, the Commission still has not modified or rescinded its orders authorizing the use of the RALF process, including the availability of the 10% shareholder incentive, and so it seems clear that the RALF process is applicable to AL 2600-E. ORA tries to circumvent this clear directive by asserting that its refusal to provide SDG&E with a Qualifying Facility Restructuring Reasonableness Letter ("QFRRL") takes the Advice Letter outside of the RALF process. This argument is without merit. The purpose of the QFRRL is for ORA to document its agreement with the sponsoring utility that the proposed amendment is reasonable.[3] Historically, ORA has complied with the process by issuing a QFRRL stating that it has reviewed and verified the ratepayer cost savings, and, while not expressly endorsing the proposed contract amendment, "does not oppose" the amendment or the requested shareholder incentive.[4] In its Protest to this Advice Letter, ORA conceded that it "does not oppose" the contract amendment[5] and that SDG&E complied with the RALF process.[6] This concession is indistinguishable from a QFRRL

[1] Resolution No. E-4389, *mimeo* at p. 2.
[2] *Id.*, *mimeo* at p.7.
[3] D.98-12-066, *mimeo* at p. 4.
[4] *See*, PG&E's Advice Letter No. 3705-E (Public Version) at p.5, referring to and quoting Confidential Appendix E to the Advice Letter. *See also*, Resolution No. E-4389 (Public Version), *mimeo* at p.7 (referring to ORA's QFFRL, Confidential Appendix B to the Resolution).
[5] ORA Protest, at p.2.
[6] *Id.*

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except that ORA refuses to "officially" issue the QFRRL. ORA appears to suggest that its refusal to cooperate in the RALF process by not issuing the QFRRL allows ORA to have the final word on the shareholder incentive. The Commission should reject this premise - ORA has the right to disagree with the Commission process, but not to usurp the role of the Commission.

In any case, the existence or non-existence of a QFRRL is not the end of the story. In issuing D.98-12-066, the Commission noted that compromise among the parties as to the reasonableness of a restructured CHP/QF agreement could not supplant the Commission's "independent duty to ensure that its decisions are consistent with the record, the law and the public interest."[7] Even if the utility and ORA were in agreement as to the reasonableness of the modified contract and ORA had issued a QFRRL, the burden would remain with the utility to demonstrate the reasonableness of the modifications to the Commission, in the Commission's independent judgment. That independent judgment remains an obligation of the Commission, and should be exercised here to demonstrate that ORA's refusal to cooperate in the issuance of the QFRRL does not strip the Commission of the power to act independently in accordance with the RALF process. The Commission should determine, in its own judgment, that the amended and restated contract provides significant benefits to ratepayers and approve both the amendment and the shareholder incentive, QFRRL or no QFRRL.

ORA's second issue, that the amended and restated contract should be given CAM treatment because such treatment is required by Section 13.1.2.2. of the CHP Settlement is flawed because it (1) is contrary to the express terms of Section 13.1.5. of the CHP Settlement and (2) improperly treats the amendment as though it were procurement of a new resource when, in fact, it is an amendment to an existing agreement that does not add new capacity. Thus, ORA's reliance on 13.1.2.2. is misplaced and Section 13.1.5. of the CHP Settlement controls. Specifically, Section 13.1.5. states:

> 13.1.5. In recognition of the new cost recovery mechanisms contemplated by this Settlement, the Parties agree to advocate exclusion from the Competition Transition Charge (CTC) of any above-market costs associated with purchases of power from a CHP Facility via a PPA entered into pursuant to this Settlement. *However, the above-market costs of QF procurement via Legacy PPAs may continue to be recovered through CTC for the life of those contracts. (*Emphasis added*).*

Here, the Amendment pertains to a Legacy PPA. Accordingly, the associated costs are recoverable through the CTC for the term of the Amendment. CAM treatment is inapposite. Any above-market costs of the contract are appropriately recovered from all benefitting customers, but the proper mechanism is the CTC, not CAM.

Further, SDG&E's interpretation of the applicability of CTC rather than CAM in the context of the CHP Settlement is consistent with the Commission's direction to PG&E in Resolution No. E-4627. That Resolution approved PG&E's advice letter number 4253-E, which amended an existing CHP agreement to add 950 kW of capacity. In issuing the Resolution, the Commission stated that

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[7] D.98-12-066, *mimeo* at p.8.

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> In recognition that this CHP procurement is required by D..10-12-035, the Commission authorizes PG&E to allocate the net capacity costs and associated RA benefits ***with new capacity*** to benefiting customers. (Emphasis added).[8]

By contrast, the above market costs of the underlying, original CHP/QF agreement continued to be collected through the CTC:

> In its Advice Letter 4253-E-A filing PG&E clarifies that it will continue to procure the existing Cymric capacity pursuant to the legacy SO1 PPA; ***any stranded procurement costs associated with the existing facility will continue to be collected under the Competition Transition Charge.*** Any above-market costs associated with the Cymric Addition, which is being procured under the CHP Program, will be recovered in accordance with Term Sheet Section 13.1.2.2. (Emphasis added).[9]

So, the Commission directed that the new capacity be subject to CAM, but any above-market capacity costs of the legacy agreement would continue to be collected *via* the CTC. Because the Goal Line amendment does not provide any new capacity, the net capacity costs of the amended and restated agreement are ineligible for CAM treatment.

Conclusion

ORA concludes that the amended and restated agreement with Goal Line is reasonable and does not oppose its approval. However, ORA objects to SDG&E seeking a shareholder incentive, consistent with the RALF process as recently affirmed by the Commission as applicable to amendments resulting from the CHP Settlement. In order to try to thwart the RALF process, ORA refuses to "formally" issue a QFRRL even though it makes the equivalent acknowledgment in its protest. ORA's argument usurps the role of the Commission by allowing ORA to modify policy through a sleight-of-hand. The Commission should honor its existing policy and approve the amendment, including the shareholder incentive, in the exercise of its own independent judgment, as required. ORA's further argument that the net capacity costs of the amended agreement should be recovered *via* a CAM process ignores the express language of Section 13.1.5. of the CHP Settlement and should be rejected. The Amendment pertains to a Legacy PPA; it does not add any new capacity, which is what Section 13.1.2.2. addresses. For all of these reasons SDG&E requests that the Commission approve the Advice Letter 2600-E as filed.

Sincerely,

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[8] Resolution No. E-4627, *mimeo* at p. 2.
[9] Id., *mimeo* at p. 9.

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cc: President Michael Peevey, CPUC
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