

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)

**JOINT RESPONSE OF THE  
NATURAL RESOURCES DEFENSE COUNCIL AND  
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES  
IN SUPPORT OF JOINT PETITION FOR MODIFICATION OF DECISION 14-03-004**

SIERRA MARTINEZ  
Natural Resources Defense Council  
111 Sutter Street  
San Francisco, CA 94104  
Telephone: (415) 875-8240  
[smartinez@nrdc.org](mailto:smartinez@nrdc.org)

MARIA STAMAS  
Natural Resources Defense Council  
111 Sutter Street  
San Francisco, CA 94104  
Telephone: (415) 875-8240  
[mstamas@nrdc.org](mailto:mstamas@nrdc.org)

Attorneys for  
NATURAL RESOURCES DEFENSE  
COUNCIL

Dated: June 23, 2014

SARA STECK MYERS  
Law Offices of Sara Steck Myers  
122-28<sup>th</sup> Avenue  
San Francisco, CA 94121  
Telephone: (415) 387-1904  
Facsimile: (415) 387-4708  
Email: [ssmyers@att.net](mailto:ssmyers@att.net)

Attorney for  
CENTER FOR ENERGY EFFICIENCY AND  
RENEWABLE TECHNOLOGIES

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)

**JOINT RESPONSE OF THE  
NATURAL RESOURCES DEFENSE COUNCIL AND  
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES  
IN SUPPORT OF JOINT PETITION FOR MODIFICATION OF DECISION 14-03-004**

The Natural Resources Defense Council (NRDC) and the Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submit this Response in support of the Joint Petition for Modification of Decision 14-03-004 Seeking Notice and Comment of SDG&E's Proposed Procurement Plans, filed by the California Environmental Justice Alliance (CEJA), Sierra Club California (Sierra Club), and Vote Solar on June 12, 2014 ("June 12 Joint PFM"). This Response is timely filed and served pursuant to Rule 16.4(f) of the Commission's Rules of Practice and Procedure and the Administrative Law Judge's (ALJ's) Ruling sent by electronic mail to the service list in R.12-03-014 on June 17, 2014. By that ruling, ALJ Gamson shortened the time to respond to the June 12 Joint PFM to today, June 23, 2014.

**I.  
THE JUNE 12 JOINT PFM CLEARLY IDENTIFIES THE NEED FOR A  
REPEATEDLY REQUESTED PUBLIC AND TRANSPARENT PROCESS FOR  
THE REVIEW AND APPROVAL OF SDG&E'S TRACK 4 PROCUREMENT PLANS.**

On March 21, 2013, the Commission initiated Track 4 of R.12-03-014 for the purpose of considering "additional resource needs related to the long-term outage (and subsequent permanent closure in June 2013) of the San Onofre Nuclear Generation Station, Units 2 and 3 (SONGS)."<sup>1</sup> By D.14-03-004, the Commission, among other things, authorized San Diego Gas

---

<sup>1</sup> D.14-03-004, at p. 8.

and Electric Company (SDG&E) “to procure between 500 and 800 MW by 2022 to meet local capacity needs stemming from the retired [SONGS].”<sup>2</sup> In terms of resources to meet that need, SDG&E was further “required to procure at least 200 MW, and may procure up to the full 800 MW of authorized additional capacity, from preferred resources or energy storage.”<sup>3</sup>

This authorization included the instruction to SDG&E “to solicit procurement offers through an all-source RFO [request for offers], subject to Energy Division approval of its procurement process.”<sup>4</sup> The Commission further identified the “elements” and “requirements” that were to be included by SDG&E in both the RFO and “procurement plan” and conditioned commencement of “any procurement activities” by SDG&E on approval of its procurement plan by the Director of the Energy Division, as “reviewed consistent with this decision.”<sup>5</sup>

In briefing and comments leading up to D.14-03-004, multiple parties requested that the review of the Track 4 procurement plans be a public process to ensure the transparent development and compliance of these plans with the requirements of the underlying procurement authorization.<sup>6</sup> D.14-03-004 ultimately did not provide for such a public notice and comment process on proposed Track 4 procurement plans, depending, instead, on review and approval of those plans by Energy Division alone, a process that had been followed for Track 1 (Local Reliability) procurement by Southern California Edison Company (SCE).

---

<sup>2</sup> D.14-03-004, at p. 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*, at p. 4.

<sup>5</sup> D.14-03-004, Ordering Paragraphs 6 and 7, at pp. 144-145.

<sup>6</sup> Office of Ratepayer Advocates (ORA) Comments (March 3, 2014) on Track 4 Proposed Decision (March 3, 2014), at pp. 7-8; Sierra Club Comments (March 3, 2014) on Proposed Decision, at p. 13; CEERT Comments (March 3, 2014) on Track 4 Proposed Decision, at pp. 9-10; CEERT Reply Comments (March 10, 2014) on Track 4 Proposed Decision, at pp. 2-4; CEJA Reply Comments (March 10, 2014) on Track 4 Proposed Decision, at p. 4; EnerNOC, Inc. (EnerNOC) Reply Comments (March 10, 2014), at p. 4.

However, as explained by CEERT in its Comments on the Track 4 Proposed Decision, that Track 1 process, extended to SDG&E in D.14-03-004, was problematic to begin with in terms of transparency and public review:

“Among other things, that Track 1 process was *not* transparent and involved the development of a procurement plan known only to the utility (SCE) and the Commission’s Energy Division. In fact, as of today, there is simply no evidence, and certainly no notice to other parties, that the Track 1 Request for Offers (RFOs) correctly matched local area needs with resources being solicited or procured or that its results achieve the ‘preferred resources’ outcomes expected by D.13-02-015. In fact, its success in doing so, ... will not be known until the application, with signed agreements, is submitted almost 18 months after the issuance of D.13-02-015.”<sup>7</sup>

As parties have recognized, such an approach is simply not sufficient to provide the Commission’s promised close regulation of the utilities to achieve “strict compliance” with the Loading Order, especially where there is no opportunity for notice and input of stakeholders or review and approval by the Commission to ensure that preferred resources will become “reality” in meeting future energy needs.<sup>8</sup>

The critical failings of this non-transparent review and approval process to ensure that Commission procurement directives and policies have been borne out by SDG&E’s Track 4 procurement plans, as demonstrated and detailed in the June 12 Joint PFM. Thus, as supported in that June 12 Joint PFM, “SDG&E’s procurement plans are inconsistent with the requirements of D.14-04-003,” and, as of the date of that filing, had only been made “provided” on a limited basis to a “small subset of parties to R.12-03-014,” without service to all parties in R.12-03-014.<sup>9</sup> In addition, Specifically, by their June 12 Joint PFM, CEJA/Sierra Club/Vote Solar identify significant and wide-ranging flaws and conflicts between SDG&E’s two Procurement Plans (one labeled for “conventional” and the other labeled for “preferred resources”) and D.14-03-004. In

---

<sup>7</sup> CEERT Opening Comments on Track 4 Proposed Decision, at pp. 7-8; emphasis original.

<sup>8</sup> D.13-02-015, at pp. 11, 38.

<sup>9</sup> June 12 Joint PFM, at p. 1.

terms of SDG&E's "conventional" procurement plan, the June 12 Joint PFM demonstrates that this plan does not comply with D.14-04-003 since it fails to require an all-source RFO in its "conventional" procurement plan, fails to comply with the Loading Order by excluding preferred resources from eligibility, and fails to reduce its authorization request to account for the benefits of recently approved transmission projects.<sup>10</sup> As to SDG&E's "preferred resource" procurement plan, the June 12 Joint PFM makes clear that this plan also does not comply with D.14-03-004 by failing to commit to procure at least 200 MW of additional preferred resources and include distributed generation in its proposed resources.<sup>11</sup>

Of note, on this last point, D.14-03-004 did *not* adopt SDG&E's request to simply "count" (or "subtract") preferred resources procured in other programs from its Track 4 obligation. Yet, SDG&E's "preferred resource" procurement plan persists in this approach, completely thwarting the direction by D.14-03-004 for SDG&E to separately procure an additional 200 MWs of preferred resources outside of these programs.<sup>12</sup> Clearly, a different process for review and approval of these plans is now required.

**II.**  
**THE MOST DIRECT MEANS OF CURING THE DEFICIENCIES IN SDG&E'S PLANS  
AND THE CURRENT "REVIEW" PROCESS IS TO MODIFY D.14-03-004 TO  
REQUIRE THOSE PLANS TO BE SUBMITTED BY A TIER 3 ADVICE LETTER.**

D.14-03-004 must be modified, as requested by the June 12 PFM, to correct a deficient and non-transparent process that is serving today to exacerbate and even "bless" conflicts between SDG&E's procurement plans and that decision's orders that govern the Track 4 procurement authorization. As explained below, the "process" identified by Energy Division

---

<sup>10</sup> June 12 PFM, at pp. 2-4.

<sup>11</sup> *Id.*, at pp. 4-5.

<sup>12</sup> *Id.*, at pp. 5-6.

*after-the-fact* of the filing of the June 12 PFM is *not* sufficient for this purpose and, in fact, reflects a misunderstanding by Energy Division itself of its obligations under D.14-03-004.

Instead, the Commission should grant the June 12 PFM to “allow for formal notice and comment to SDG&E’s proposed procurement plans.”<sup>13</sup> However, NRDC and CEERT, joined by Environmental Defense Fund (EDF) and Clean Coalition, have today filed a further Joint PFM to modify D.14-03-004 to require that SDG&E’s Track 4 procurement plans be submitted through a Tier 3 Advice Letter, a process that would not only allow party comment, but also provide for Commission review of the final plans (June 23 PFM). Such review is necessary given the specific shortcomings of SDG&E’s plans.

**III.  
THE “PROCESS” FOR PARTY INPUT ON SDG&E’S PLANS  
IDENTIFIED BY ENERGY DIVISION AFTER-THE-FACT OF THE FILING  
OF THE JUNE 12 PFM IS INSUFFICIENT AND AT ODDS WITH D.14-03-004.**

*After the fact* of both the filing of the June 12 Joint PFM and ALJ Gamson’s ruling shortening time to respond to June 23, an electronic mail communication was sent by Energy Division Staff to the service list in this proceeding in the afternoon of June 17, 2014. By this email, the Energy Division, for the first time, attached and served the service list in R.12-03-014 (LTPP) with SDG&E’s “LTPP/Track 4 Procurement Plan (Conventional Procurement)” and a “LTPP/Track 4 Procurement Plan (Preferred Resources)... *filed* with the Energy Division of the California Public Utilities Commission (CPUC) on May 1, 2014,” more than six weeks earlier.<sup>14</sup> By that email, parties were given the very limited opportunity to review and submit informal comments to Energy Division (two personnel only) in less than 5 business days (due on June 24). In subsequent emails from both Energy Division and the ALJ to the R.12-03-014 service list, parties were informed as follows:

---

<sup>13</sup> June 12 PFM, at p. 9.

<sup>14</sup> June 17 Energy Division Electronic Email, emphasis added.

(1) On June 20, 2014, Energy Division sent an email rejecting requests for additional time to respond, indicating that “comments submitted after June 24 will not be reviewed by Energy Division.” That same email stated that “Energy Division’s review is limited to determining whether SDG&E has met the requisite *conditions to submit* a procurement application” (emphasis added) and that “[p]arties will have the opportunity to fully participate in the Commission’s formal process once SDG&E’s procurement application is submitted.”<sup>15</sup>

(2) Prior to this email being sent, the ALJ sent another email to parties on June 18, 2014, stating that there were “two separate but related processes at this time relating to the SDG&E Procurement Plan,” a “formal process” related to the June 12 PFM with responses due on June 23 and an “informal Energy Division process” for “informal comments” due on June 24.<sup>16</sup>

Remarkably, despite conceding the “informality” of the Energy Division’s process, the ALJ’s email went on to conclude that the “Energy Division process may or may not moot the Petition,” although parties “are free to argue either way, or to provide other comments.” The ALJ’s email also indicated that among the “various possibilities of what may occur in the interaction of the two processes,” the “Petitioners may withdraw the Petition in light of the Energy Division provision for informal comment” or the Proposed Decision on the Joint PFM either “may determine the Petition is moot in light of the Energy Division provision for informal comments,” determine that the Petition is not moot, but denied; or grant the Petition in whole or in part.<sup>17</sup>

The ALJ’s June 18 email, however, does make clear that Energy Division’s “responsibility” regarding the SDG&E Track 4 Procurement Plans was not simply whether SDG&E “has met requisite *conditions to submit* a procurement application” (emphasis added), as

---

<sup>15</sup> June 20 Energy Division Electronic Email.

<sup>16</sup> June 18 ALJ’s Ruling by Electronic Email.

<sup>17</sup> Id.

claimed by Energy Division. Instead, the ALJ re-states the actual language of D.14-03-004, as follows:

“Energy Division is required to review the SDG&E Procurement Plan per Ordering Paragraph 7 of D.14-03-004, and the Director of the Energy Division is to review and, if the Procurement Plan is consistent with D.14-03-004, approve the Procurement Plan in writing. Until then, SDG&E ‘shall not commence any procurement activities’ nor file any procurement-related applications.”<sup>18</sup>

This set of emails from both the Energy Division and the ALJ only exacerbate the concerns expressed in both the June 12 PFM and the June 23 PFM (filed today by NRDC, CEERT, EDF, and Clean Coalition) regarding not only the shortcomings of SDG&E’s Track 4 Procurement Plans, but the “process” for review itself. Of great concern are the Energy Division’s questionable statements about its own “review” process and responsibilities under D.14-03-004. To begin with, SDG&E’s plans were not “filed” with the Energy Division, since this word connotes a publicly available “file” accessible by all parties on the Commission’s website. No such “link” or “docket” exists for this filing, and certainly no such “filing” was made as part of the formal docket, R.14-03-014. That is problem #1 for this entire process – no open, public availability of these documents in a timely manner that would allow meaningful and transparent input by all stakeholders. An after-the-fact “service” of these plans, weeks after their submission to Energy Division, with an impossible fast-track “informal” comment process only adds to concerns of closed-door, isolated, and discretionary decision-making by Energy Division where an “approval” decision may have already been made.

Second, there is *no* comparison between “informal” comments submitted to only two Energy Division personnel and “formal” comments or responses that are fully noticed, publicly filed, and considered and resolved in a Commission decision vetted and voted out in a public

---

<sup>18</sup> June 18 ALJ’s Ruling by Electronic Email.



meeting. The former, again, is part of a discretionary, closed-door process that *excludes and limits* public review. The suggestion, therefore, by the ALJ that this “informal” and highly truncated comment process could “moot” the formal public June 12 Joint PFM is contrary and adverse to the Commission’s legal duty to ensure due process in its proceedings.

Finally, and of greatest concern to NRDC and CEERT, is the effort by Energy Division to seemingly limit the importance of its role as the key decision-maker in ensuring that SDG&E’s Track 4 procurement plans actually *comply* with the requirements and orders of D.14-03-004. It is not simply a matter that SDG&E timely submitted “something” to Energy Division that should allow Energy Division to “approve” SDG&E moving forth to procure resources. As noted above, the “application” referenced in Energy Division’s email is one that will come months after the fact and actually include procurement contracts signed by SDG&E pursuant to its plans. That is too long to wait and impossible to serve as the basis, even for the Commission, to correct errors that were embedded in those plans to begin with.

**IV.  
THE COMMISSION SHOULD ADOPT A REASONABLE  
AND APPROPRIATE PROCESS FOR THE REVIEW AND  
APPROVAL OF BOTH OF SDG&E’S TRACK 4 PLANS.**

The *only* reasonable resolution of the current “review” process for SDG&E’s Track 4 Procurement Plans is to grant the June 12 Joint PFM to permit a public, formal comment process on those plans, as modified by today’s June 23 Joint PFM filed by NRDC, CEERT, EDF, and Clean Coalition, which would achieve both that comment process and needed Commission review of these plans (to ensure compliance with D.14-03-004) as part of a Tier 3 Advice Letter filing. Thus, pursuant to the June 23 Joint PFM, the Commission should modify page 114 and Ordering Paragraph 7 of D.14-03-004 to require SDG&E to submit these plans by Tier 3 Advice Letter with the applicable review and approval process required by General Order 96-B.

In addition, NRDC and CEERT respectfully request that, at the least and regardless of any outcome on the Joint PFMs, the Commission hold an all-party meeting to discuss SDG&E's Track 4 procurement plans, needed revisions, and next steps. Such a meeting will help further the transparency of this process.

## V. CONCLUSION

NRDC and CEERT strongly support the central request of the June 12 Joint PFM for the Commission to “modify D.14-03-004 to allow for formal notice and comment related to SDG&E’s proposed procurement plans.”<sup>19</sup> As described and supported by the June 12 Joint PFM, this “modification is justified following discovery of multiple fatal inconsistencies of SDG&E’s proposed procurement plans with the requirements of D.14-03-004” and is, therefore, “needed to facilitate procurement plan compliance, provide transparency in procurement plan approval, and restore public confidence in the approval process for plans with significant implications for ratepayers and the environment.”<sup>20</sup>

NRDC and CEERT, however, strongly believe that a further modification is required to effectuate a meaningful change in this process. To that end, NRDC and CEERT respectfully request that the Commission also grant the Joint Petition for Modification of D.14-03-004, filed and served today (June 23 Joint PFM) by NRDC, CEERT, EDF, and Clean Coalition, to require SDG&E to submit its Track 4 proposed procurement plans through a Tier 3 Advice Letter to permit public review and approval of those plans by the Commission. As detailed in the June 23 Joint PFM, that “increased process is warranted given the large cost and environmental implications of SDG&E’s procurement plans, and particularly given the number of inconsistencies (e.g. failing to issue an all-source RFO, failing to comply with the Loading

---

<sup>19</sup> June 12 Joint PFM, at p. 9.

<sup>20</sup> Id., at p. 1.

Order, failing to consider CAISO-approved transmission upgrades, etc.) between SDG&E's plan and the Decision's [D.14-03-004] ordering paragraphs.<sup>21</sup>

Finally, no matter what outcome is reached on any of the pending Joint PFMs, NRDC and CEERT urge the Commission to notice and hold an all-party meeting to address SDG&E's Track 4 Procurement plans, both as to process and substance, as soon as possible. Such a step will greatly improve the transparency of this process.

Respectfully submitted,

June 23, 2014

/s/ SARA STECK MYERS  
SARA STECK MYERS  
ON BEHALF OF

SIERRA MARTINEZ  
Natural Resources Defense Council  
111 Sutter Street  
San Francisco, CA 94104  
Telephone: (415) 875-8240  
[smartinez@nrdc.org](mailto:smartinez@nrdc.org)

SARA STECK MYERS  
Law Offices of Sara Steck Myers  
122-28<sup>th</sup> Avenue  
San Francisco, CA 94121  
Telephone: (415) 387-1904  
Facsimile: (415) 387-4708  
Email: [ssmyers@att.net](mailto:ssmyers@att.net)

MARIA STAMAS  
Natural Resources Defense Council  
111 Sutter Street  
San Francisco, CA 94104  
Telephone: (415) 875-8240  
[mstamas@nrdc.org](mailto:mstamas@nrdc.org)

Attorney for  
CENTER FOR ENERGY EFFICIENCY AND  
RENEWABLE TECHNOLOGIES

Attorneys for  
NATURAL RESOURCES DEFENSE  
COUNCIL

Dated: June 23, 2014

---

<sup>21</sup> June 23 Joint PFM, at p. 4.