

Protect Our Communities Foundation
4452 Park Boulevard, Suite 209, San Diego, California 92116
(760) 715-0407

June 24, 2014

Via electronic mail

Edward Randolph
Lily Chow
Energy Division
California Public Utilities Commission
edward.randolph@cpuc.ca.gov
lily.chow@cpuc.ca.gov

RE: Informal Comments of the Protect Our Communities Foundation on
SDG&E's Procurement Plans

Mr. Randolph and Ms. Chow:

Pursuant to ALJ Gamson's email dated June 18, 2014, the Protect Our Communities Foundation ("POC") submits the following Comments on SDG&E's LTPP/Track 4 Procurement Plan (Conventional Procurement) and SDG&E's LTPP/Track 4 Procurement Plan (Preferred Resources), (jointly, the "Procurement Plans").

For the reasons detailed below, SDG&E's plans violate D.14-03-004 and statutory requirements and as such must be rejected. Moreover, Energy Division's informal process for reviewing the Procurement Plans violates the due process rights of POC and other stakeholders. POC objects to this informal process and joins other parties in requesting that the Energy Division halt this informal process.

I. SDG&E'S PROCUREMENT PLANS VIOLATE D.14-03-004 AND STATUTORY REQUIREMENTS

a. *SDG&E's Procurement Plans do not require an all-source RFO as required by D.14-03-004*

The Decision requires that SDG&E procure "some or all" of the authorized capacity through an all-source Request for Offers ("RFO"). Ordering Paragraph 6 states:

6. San Diego Gas & Electric Company (SDG&E) shall issue an all-source Request for Offers (RFO) for some or all capacity authorized by this decision in Ordering Paragraph 2. The RFO shall include the elements specified by Ordering Paragraph 4 of Decision (D.) 13-02-015, in addition to any RFO requirements not delineated herein but specified by previous Commission procurement decisions (including D. 07-12-052) and the authorization and requirements of this decision.¹

In violation of this clear requirement, SDG&E has submitted plans that would procure the full 800 MW authorized without conducting an all-source RFO.² Instead, SDG&E would procure 600 MW through a bilateral contract,³ and 200 MW (25 MW of energy storage and 175 MW of other preferred resources) through a limited-source "preferred resources" RFO.⁴ POC agrees with the observation of California Environmental Justice Alliance (CEJA), Sierra Club, Vote Solar, the Natural Resources Defense Council (NRDC), and the Environmental Defense Fund (EDF) in their informal comments dated June 6, 2014, and in the Petition for Modification filed by CEJA Sierra Club, Vote Solar ("Joint Parties") on June 12, 2014, that such a "preferred resources" RFO is, by definition, not an "all-source" RFO as required by the Decision.⁵ By placing conventional generation and preferred resources in separate "bins" and by failing to hold

¹ D.14-03-004, Ordering Paragraph 6, at p. 144

² Although SDG&E's procurement plan states that the proposed bilateral contract with the Carlsbad Energy Center is for 600 MW, in a footnote SDG&E admits that actual contract would be for 633 MW. Footnote 15 of SDG&E's LTPP/Track 4 Procurement Plan (Conventional Procurement) states: "The proposed resource has a nominal capacity of 600 MW. Since the amount of available capacity from a combustion turbine varies according to ambient conditions at the plant site, capacity payments are capped at 633 MW." This 633 MW maximum capacity, combined with the 200 MW of mandatory energy storage and preferred resources procurement, brings SDG&E's total procurement to 833 MW, 33 MW over SDG&E's 800 MW maximum procurement authorized in D.14 -03-004.

³ SDG&E LTPP/Track 4 Procurement Plan (Conventional Procurement), at p. 3.

⁴ SDG&E LTPP/Track 4 Procurement Plan (Preferred Resources).

⁵ Joint Petition for Modification, at p. 27.

an all-source RFO for any of the required procurement, SDG&E has further violated the basic purpose of requiring an RFO – allowing preferred resources to compete directly with conventional resources on a fair basis.⁶

c. SDG&E's Procurement Plans violate the Loading Order

The Decision requires that all procurement comply with the Loading Order. The Loading Order requires that utilities first procure energy efficiency and demand side resources, followed by renewable resources, and only then may utilities procure conventional electricity.⁷ The Decision acknowledges its “statutory mandate to implement procurement-related policies to protect the environment” under Pub. Util. Code Section 454(b)(9)(C), which requires that utilities must first meet their unmet resource needs through all available energy efficiency and demand reduction resources that are cost-effective, reliable, and feasible.”⁸ The Decision further acknowledges a long line of Commission decisions holding that utility procurement must be consistent with the Commission’s Loading Order,⁹ and states that “We maintain our commitment to the Loading Order in this decision.”¹⁰

Consistent with the loading order, the Decision requires that “all resources that can meet the specified requirements should be able to compete on a fair basis”¹¹ and that procurement to meet any resource authorization be “consistent to the extent feasible with the Loading Order.”¹²

The Decision finds that preferred resources could meet SDG&E’s need. The Decision

⁶ D.14-03-004 at p. 112

⁷ D.14-03-004 at p. 14

⁸ D.14-03-004 at pp. 13-14

⁹ D.14-03-004 at p. 14

¹⁰ D.14-03-004 at p. 16

¹¹ D.14-03-004 at p. 112

¹² D.14-03-004 at p. 16

concludes that SDG&E has a need of 500 MW to 800 MW,¹³ and authorizes SDG&E to procure up to 800 MW to meet this identified need.¹⁴ It requires that *at least* 200 MW of this procurement come from energy storage and preferred resources.¹⁵ It further requires that the remaining capacity (up to 600 MW) “be procured through any set of resources appropriate to meet LCR needs in the SDG&E territory, consistent to the extent feasible with the Loading Order of the Energy Action Plan.”¹⁶ The Decision authorizes SDG&E to procure up to 100% of new local capacity through preferred resources.¹⁷ In authorizing SDG&E to procure up to 100% of new capacity in preferred resources, the Decision recognizes the possibility that preferred resources will be cost-effective, reliable, and feasible options for meeting SDG&E’s full 800 MW authorization.

POC agrees with the Joint Parties¹⁸ that, by submitting procurement plan that seeks to procure (at least) 600 MW of gas-fired capacity through a bilateral contract, SDG&E has violated the loading order. POC agrees that SDG&E’s proposed procurement plans foreclose competition and participation by clean energy solutions by predetermining the selection of a polluting, greenhouse gas intensive, fossil fuel facility.

d. SDG&E’s Procurement Plans ignore recently approved transmission projects

POC agrees with the Joint Parties¹⁹ that SDG&E’s Procurement Plans should be updated to include the new resources approved in CAISO’s most recent Transmission Plan.

During the course of the Track 4 proceeding, parties raised several potential reactive

¹³ D.14-03-004, Conclusion of Law 36, at p. 139 쉼□η

¹⁴ D.14-03-004, Ordering Paragraph 2, at pp. 143-144

¹⁵ Id.

¹⁶ D.14-03-004 at p. 97

¹⁷ D.14-03-004 at p. 2

¹⁸ Joint Petition for Modification, at pp. 2-3

¹⁹ Joint Petition for Modification, at pp. 3-4 쉼□η

power and transmission projects that would, if approved, significantly reduce San Diego’s local area need. The Decision specifically recognized that “[i]f some level of new transmission resources is identified in the 2013/2014 TPP which would reduce LCR needs in the SONGS service area by 2022 (for example, the Mesa Loop-In project), the total amount of overall procurement needed in the SONGS service area would be reduced.”²⁰

On March 25, 2014, only 10 days later after the Commission voted on D.14-03-004, CAISO’s Board approved the 2013-2014 Transmission Plan. As noted by the Joint Parties, the Transmission Plan approves the following three new projects:

- An additional 450 MVAR of dynamic reactive support at San Luis Rey, which has a proposed in-service date of June 2018, and is expected to reduce LCR need by between 100 and 200 MW;
- An Imperial Valley Flow Controller, which has a proposed in-service date of May 2017, and is expected to reduce LCR need between 400 and 840 MW; and
- The Mesa Loop-In Project, which has a proposed in-service date of December 2020, and is expected to reduce LCR need by 300 to 640 MW.²¹

SDG&E’s Procurement Plans must be updated to reflect CAISO’s approval of these new transmission and reactive power projects. Now that these projects have been approved by CAISO, they are no longer “uncertain.” The Procurement Plans must be modified to recognize the approval of these projects and reduce LCR accordingly.

POC further agrees with the Imperial Irrigation District that SDG&E’s Procurement Plans are part of an interconnected set of policy decisions that broadly affect transmission

²⁰ D.14-03-004 at p. 116

²¹ See CAISO 2013-14 TPP at p. 108, available at <http://www.caiso.com/Documents/Board-Approved2013-2014TransmissionPlan.pdf>.

planning and reliability in Southern California,²² and that SDG&E's failure to acknowledge newly approved transmission resources will disrupt coordinated transmission planning in the region.²³ This will create an arbitrary result and will waste ratepayer funds.

e. SDG&E's Preferred Resources Plan does not include Distributed Generation

POC agrees with the Joint Parties that SDG&E's proposed preferred resources plan appears to not consider distributed generation to meet its LCR need.²⁴ The Track 4 decision specifically required that SDG&E procure 25 MW of energy storage and 175 MW in other preferred resources.²⁵ Preferred resources, by definition, include Distributed Generation. The Decision did not authorize SDG&E to pick and choose which preferred resources to consider. As such, SDG&E's procurement plan must be revised to clearly allow for the consideration of Distributed Generation.

f. SDG&E's Preferred Resources Plan does not commit to soliciting "at least" 200 MW

POC agrees with the Joint Parties' concern that SDG&E's procurement plans do not clearly commit to procuring at least 200 MW of preferred resources in addition to what it is already procuring in other dockets.²⁶ D.14-03-004 clearly states that the 200 MW renewable procurement requirement is in addition to all other resources being considered.²⁷ POC agrees with NRDC and CEERT NRDC that "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,

²² Response of the Imperial Irrigation District to the Joint Petition for Modification, at p. 200-01

²³ Id. at pp. 2-3

²⁴ Joint Parties Petition for Modification at pp. 4-5

²⁵ D.14-03-004, Ordering Paragraph 2, at pp. 143-144

²⁶ Joint Petition for Modification at p. 5

²⁷ D.14-03-004 at pp. 96-97 200-01

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.”²⁸

II. THE INFORMAL PROCESS VIOLATES THE DUE PROCESS RIGHTS OF POC AND OTHER STAKEHOLDERS

In his June 18, 2014 email to the R.12-03-014 service list, ALJ Gamson explained that SDG&E’s Procurement Plans were being considered in two separate but related processes: (1) the formal ALJ process related to the Joint Parties’ June 12, 2014 Petition to Modify; and (2) the “informal” Energy Division process related to the SDG&E Procurement Plan. For the reasons set forth below, the “informal process” violates POC’s and other parties’ due process rights.

a. The Procurement Plans were not noticed and served on the parties in either a transparent or a timely fashion

SDG&E’s Procurement Plans are dated May 1, 2014, and were presumably submitted to the Energy Division on that date. SDG&E did not serve the Procurement Plans to the parties to R.12-03-014 on May 1, 2014. Neither SDG&E nor the Energy Division provided parties with any notice that the Procurement Plans had been filed. POC was not made aware of SDG&E’s Procurement Plans until June 6, 2014, when POC was served the Joint Parties’ Informal Comments on the Plans. POC did not receive a copy of the Plans until June 17, 2014, when the Energy Division distributed copies of the Plans to the R.12-03-014 service list. To date, POC has not received any notice or service of the plans from SDG&E. This entire ad hoc and private informal review violates POC’s and other parties’ due process rights.

²⁸ See SDG&E/CEERT Response to Joint Petition for Modification, at p. 4.

b. Parties have not been given sufficient time to submit informal comments

The deadline for Comments on SDG&E's procurement plans in the Energy Division's informal process is June 24, 2014. Parties were first informed of this deadline in ALJ Gamson's June 18, 2014 email. Thus, parties were provided notice of the deadline less than five business days before comments were due. The Plans themselves were distributed on June 17, 2014, giving parties just six business days to review them before comments were due. Numerous parties, including POC, contacted the Energy Division to request additional time. The Energy Division denied these requests without justification or explanation provided.

Further, in its June 20, 2014 email, the Energy Division noted that a separate, undefined yet to be started review concerning SDG&E's procurement application would be conducted through a formal process. This separate and future process will include already-signed procurement contracts and cannot correct the errors identified by the petitions for modification that have already been filed by the parties in this proceeding. The Energy Division's promise is merely to allow parties to comment only when the procurement horse has already been let out of the barn.

c. The Energy Division's informal process lacks statutory basis and clear process

The purported purpose of the Energy Division's informal process is to approve or deny SDG&E's Procurement Plans. This is a significant regulatory decision with a clear impact on ratepayers. Despite the significance of the regulatory decision being made, the informal process does not have any basis in statute or the Commission's rules of Practice and Procedure. Parties have not been provided any information as to the legal basis for the process, nor have parties been provided even basic information regarding how the process is conducted, what (if any) rules govern the process, what rights the parties have in the process, how decisions are to be

made, or what kind of access SDG&E has to decision makers at the Energy Division. The process has been conducted on an ad-hoc basis without even the most basic procedural protections for parties.

POC agrees with NRDC and CEERT as to the complete inadequacy of the “after-the-fact ‘service’ of these plans, weeks after their submission to the Energy Division, with an impossible fast-track ‘informal’ comment process” and agrees that this “adds to concerns of closed-door, isolated, and discretionary decision-making by Energy Division where an ‘approval’ decision may already have been made.”²⁹

Moreover, the parties have been provided inadequate and conflicting advice as to the scope of the Energy Division’s review of SDG&E’s flawed procurement plans. As noted by NRDC and CEERT,³⁰ in his June 18th, ALJ Gamson stated that the “Energy Division process may or may not moot the Petition” and that the Proposed Decision on the Joint Petition for Modification “may determine that the Petition is moot in light of the Energy Division provision for informal comments.” ALJ Gamson’s email provided no explanation as to how an official Petition for Modification, filed in accordance with the clear procedure set forth in the Commission’s Practice and Procedure, could be mooted by comments submitted in an informal, closed-door, ad-hoc Energy Division process with no procedural rules. In contrast, the June 20th email from Energy Division noted that its review was “limited to determining whether SDG&E has met the requisite conditions to submit a procurement application.”

Making substantive regulatory decisions in a closed-door process without any clear legal basis or procedural framework is inconsistent with both the parties’ due process rights and the Commission’s statutory mandate, and the Commission may not determine that a formal Petition

²⁹ NRDC and CEERT Petition Response to Proposed Decision for Modification at p. 7

³⁰ NRDC and CEERT Response to Petition for Modification at p. 6

for Modification, filed pursuant Rule 16.4 is mooted by the fact that parties have been allowed to submit comments in an informal process on an expedited basis.

III. CONCLUSION

For the reasons set forth above, the Commission must reject SDG&E's Procurement Plans and halt the consideration of any future Procurement Plans through the Energy Division's informal process.

Respectfully,

/s/

David A. Pepper, Esq.
Attorney
Protect Our Communities Foundation
4452 Park Boulevard, Suite 209
San Diego, CA 92116

Cc: Service List for R.12 -03-014