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*Via electronic mail*

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**Re: Comment on SDG&E's Proposed Procurement Plans Under LTTP Track 4 (D.14-03-004)**

Mr. Randolph and Ms. Chow:

In response to Energy Division's request for comments, the California Environmental Justice Alliance (CEJA) and Sierra Club write to set forth why Energy Division cannot lawfully approve San Diego Gas & Electric's (SDG&E's) proposed procurement plans absent significant revision.<sup>1</sup> Energy Division does not have authority to approve a plan that is inconsistent with the plain language of the Commission's Decision. The severe inconsistencies that CEJA and Sierra Club have identified must be cured before the proposed procurement plans are approved. In addition to the points raised here, CEJA and Sierra Club support the discussion in Joint Comments submitted by NRDC, Vote Solar and EDF.

In addition to being inconsistent with the Commission's Decision, SDG&E's proposed procurement plans also contravene both State and Commission policies and goals by failing to allow preferred resources to compete against fossil fuel generation. If SDG&E's procurement plans are approved as proposed, SDG&E will procure 900 MW of fossil fuel resources (including the 300 MW Pio Pico facility) and potentially no new preferred resources to meet the local area needs that the Commission identified. As Southern California Edison's Track 1 solicitation demonstrated, preferred resources are available and can compete with dirty fossil fuel

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<sup>1</sup> CEJA and Sierra Club also incorporate by reference our prior letter, submitted to Energy Division jointly with Vote Solar, Environmental Defense Fund (EDF) and Natural Resources Defense Council (NRDC) on June 6, 2014.

generation to fill unmet needs.<sup>2</sup> In contrast, SDG&E's proposed procurement plan would foreclose competition from clean energy resources and mark a significant and needless step backward in California and San Diego's decarbonization efforts.<sup>3</sup>

Moreover, CAISO recently approved two highly viable transmission upgrades in the greater San Diego region, 450 MVAR of dynamic reactive support at San Luis Rey, which has an in-service date of June 2018, and the Imperial Valley Flow Controller, which has an in-service date of May 2017. These projects will reduce need in the San Onofre Area by 500-1040 MW at a cost of \$135-380 million. These substantial reductions in local need were *not* accounted for in the need determination in D.14-03-004. The benefits of a third recently approved project, the \$464-614 million Mesa Loop-In, were acknowledged in the Decision but severely discounted because the project had not yet been approved at the time D.14-03-004 was issued. Although the Decision requires consideration of new transmission approvals in determining requested procurement, SDG&E's plan ignores these upgrades and seeks the maximum 600 MW procurement authorization rather than the 300 MW authorized minimum.

SDG&E's proposed any resource procurement plan will result in costly overprocurement that will limit future opportunities for additional deployment of preferred resources. Indeed, SDG&E's electricity rates are already among the highest in the nation.<sup>4</sup> The proposed overprocurement would needlessly raise rates even further. The plan is inconsistent with the Decision and harms ratepayers and the environment in contravention of the Commission's statutory duties.<sup>5</sup> Energy Division should reject SDG&E's proposed procurement plans and require SDG&E to submit plans that meaningfully comply with the Decision and the Loading Order and account for the significant reductions in local area need that will result from recently approved transmission projects.

Notably, the Carlsbad gas plant SDG&E seeks to bilaterally procure would be composed of six LMS100 units. Since each unit provides a 100 MW of capacity, an LMS100 gas plant can be built in 100 MW increments.<sup>6</sup> Once the benefits of recently approved transmission projects have been accounted for to determine the appropriate procurement authorization level and all cost-effective preferred resources are used to fill need, if SDG&E still believes that there is a remaining need, it could consider filling it with a smaller facility with fewer LMS 100 units. Allocating the entire 600 MW to fossil fuels at this juncture is premature, unnecessary, and inconsistent with D.14-03-004.

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<sup>2</sup> See D.14-03-004 at p. 112, n. 227 ("We are aware that SCE's Track 1 RFO received a robust response from potential suppliers of various types of resources.")

<sup>3</sup> See, e.g., [http://www.sandiego.gov/planning/genplan/cap/pdf/draft\\_climate\\_action\\_plan\\_dec\\_2013.pdf](http://www.sandiego.gov/planning/genplan/cap/pdf/draft_climate_action_plan_dec_2013.pdf) (Draft Climate Plan calling for 100% renewables by 2035).

<sup>4</sup> See JEA, Comparison of Residential Electric Rates (Apr. 2013), available at [http://publicpower.com/pdf/rates/jea/2013/jea\\_res\\_survey\\_april\\_2013.pdf](http://publicpower.com/pdf/rates/jea/2013/jea_res_survey_april_2013.pdf) (ranking SDG&E rates third highest among surveyed utilities).

<sup>5</sup> D.14-03-004 at p. 13 ("the Commission has a statutory duty to ensure that customers receive reasonable services at just and reasonable rates, and to protect the environment from deleterious impacts from utility facilities under our jurisdiction.").

<sup>6</sup> Preferred resources could also be procured in increments.

## DISCUSSION

### **I. Energy Division Does Not Have Authority to Approve a Plan Inconsistent with the Commission's Decision.**

In D.14-03-004, the Commission provided the Energy Division explicit directions for its review of SDG&E's procurement plan, stating: "The SDG&E procurement plan **shall** meet the procurement plan requirements as required for SCE in D.13-02-015, and **be consistent with this decision.**"<sup>7</sup> The Commission did not give the Energy Division authority to approve a plan that is inconsistent with its Decision. The Energy Division is an arm of the California Public Utilities Commission whose function is to "ensure compliance with Commission decisions and statutory mandates."<sup>8</sup> If Energy Division approves a plan inconsistent with D.14-03-004, it will be an action beyond the authority granted to it in the Decision and a failure to proceed in the manner required by law. Pursuant to Section 1757 of the California Public Utilities Code, the Energy Division, as part of the Commission, does not have authority to proceed in a manner in excess of its power or jurisdiction.<sup>9</sup>

Furthermore, the 2012 LTPP was initiated based upon the Commission's rulemaking authority pursuant to Rule 6.1 of the Commission's Rules of Practice and Procedure. "A regulation adopted by an administrative agency under its rulemaking authority has the force and effect of law."<sup>10</sup> The Commission must follow its own decisions and requirements. *See, e.g. Southern California Edison Co. v. Public Utilities Commission*, 140 Cal. App. 4<sup>th</sup> 1085, 1106-07 (2006) (PUC failed to proceed in the manner required by law by violating its own rules). Here, the Commission explicitly limited Energy Division's authority to only reviewing whether the proposed procurement plan was consistent with the Decision. If Energy Division approves a plan that is inconsistent with the Decision, it will be failing to proceed in a manner required by law.

### **II. SDG&E's Proposed Procurement Plans Are Inconsistent with D.14-03-004.**

In D.14-03-004, the Commission authorized SDG&E to procure 300 to 600 MW from any resource and at least 200 MW from preferred resources and energy storage. With regard to "any resource" procurement, D.14-03-004 requires that: SDG&E "shall issue an all-source Request for Offers for some or all capacity"; the procurement be "consistent to [the] extent feasible with the Loading Order"; and total procurement can be lowered toward minimum levels in the event of approval of transmission projects that reduce local capacity needs. The

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<sup>7</sup> D.14-03-004 at p. 113 (emphasis added).

<sup>8</sup> CPUC, Energy Division Guiding Statements, *available at* <http://www.cpuc.ca.gov/NR/rdonlyres/FA487637-C15F-4569-B72D-50235885049E/0/energyguidingstatements09.pdf>.

<sup>9</sup> SDG&E is also required to follow Commission decisions. Section 702 of the California Public Utilities Code requires that: "Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees." Due to the numerous inconsistencies of the proposed plans with the Decision, SDG&E also appears to be violating this provision.

<sup>10</sup> *Southern California Edison Co. v. Public Utilities Commission*, 140 Cal. App. 4<sup>th</sup> 1085, 1106 n. 3(2006) (citing cases).

Commission clearly summarized its requirement that SDG&E’s RFO needs to be an all-source RFO that allows all resources to compete:

For SDG&E, we also will require an all-source RFO as part of its Track 4 solicitation process, in addition to allowing bilateral contracts. The RFO shall meet the same requirements as for SCE in Ordering Paragraph 4 of D.13-12-015. We will require SDG&E to show that it has a specific plan to procure at least the minimum level of resources authorized by this decision, consistent with this decision’s requirements for specific resource categories. We agree with parties’ comments that all resources that can meet the specified requirements should be able to compete on a fair basis. An RFO is an effective method to accomplish this goal.<sup>11</sup>

SDG&E’s proposed procurement plan for its “any resource” authorization, which it tellingly names a “Conventional Procurement” plan, demonstrates a stunning disregard for the requirements of D.14-03-004. Under its proposed plan, SDG&E will not issue an all-source RFO to meet any of its “any resource” authorization or even attempt to comply with the Loading Order. The procurement plan also ignores the recent approval of three transmission projects that collectively reduce local capacity needs in the San Onofre area by 800 – 1680 MW. Instead, SDG&E proposes to fill the entirety of its 600 MW “any resource” authorization through a bilateral contract with the proposed Carlsbad gas plant.

With regard to the preferred resource and energy storage procurement, D.14-03-004 requires that SDG&E procure “at least” 200 MW and SDG&E’s procurement should be incremental to existing programs. Contrary to these requirements, SDG&E’s proposed preferred resource plan proposes to procure only “up to” 200 MW of preferred resources and to count existing programs for meeting its preferred resource procurement requirement.

**A. Any Resource Procurement Plan.**

**1. SDG&E’s Proposed Plan Violates D.14-03-004’s Requirement to Issue an All-Source RFO to Meet “Some or All” of the Any Resource Capacity Authorization.**

Ordering Paragraph 6 of D.14-03-004 unequivocally requires that: “San Diego Gas & Electric (SDG&E) *shall* issue an all-source Request for Offers for some or all capacity authorized by this decision.”<sup>12</sup> Because a preferred resource or energy storage only solicitation is by definition, not an all-source request, Ordering Paragraph 6 can only be legitimately interpreted to apply to SDG&E’s “any resource” authorization. In direct contravention of this requirement, SDG&E’s procurement plan does not contemplate an all-source RFO to meet *any* of the capacity authorized by the Track 4 Decision. While D.14-03-004 does allow bilateral procurement, bilateral procurement cannot be utilized to meet the entirety of the any resource authorization. Accordingly, SDG&E’s plan runs afoul of D.14-03-004 and should be rejected.

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<sup>11</sup> R.12-03-014, at p. 112.

<sup>12</sup> D.14-03-004, at p. 144 (Ordering Paragraph 6) (emphasis added). The plain language of this paragraph clearly applies to procurement of capacity.

To meet the requirements of D.14-03-004, the procurement plan must be revised to require the solicitation of at least part of SDG&E's any resource authorization through an all-source RFO.

## **2. SDG&E's Conventional Procurement Plan Is Inconsistent with the Decision's Requirement to Follow the Loading Order.**

In addition to violating Ordering Paragraph 6, SDG&E's proposed bilateral procurement is inconsistent with the repeatedly emphasized requirement in D.14-03-004 that a plan to meet the "any resource" authorization must comply with the Loading Order. D.14-03-004 requires SDG&E to ensure that "all resources that can meet the specified requirements should be able to compete on a fair basis"<sup>13</sup> and that procurement to meet the any resource authorization be "consistent to[the] extent feasible with the Loading Order."<sup>14</sup> Ordering Paragraph 8 further provides that SDG&E must show how any contracts meet the following criteria:

- "Consistency with the Loading Order, including a demonstration that it has identified each preferred resource and assessed the availability, economics, viability and effectiveness of that supply in meeting LCR need;" and
- "A demonstration of technological neutrality, so that no resource was arbitrarily or unfairly prevented from bidding in . . . SDG&E's solicitation process. To the extent that the availability, viability and effectiveness of resources higher in the Loading Order are comparable to fossil-fueled resources, . . .SDG&E shall show that it has contracted with these preferred resources first."

Contrary to these requirements, SDG&E's plan precludes consideration of preferred resources to meet its "any resource" authorization. Instead, SDG&E decided unilaterally, without even conducting a solicitation to determine what preferred resources are available, that it would fill its 600 MW "any resource" authorization with a bilateral contract with the Carlsbad facility. Far from being technologically neutral, SDG&E's "any resource" procurement plan is designed to preclude competition and participation by low carbon solutions by predetermining the selection of a polluting, greenhouse gas intensive, fossil fuel facility. These multiple failures are inconsistent with the requirements of the Track 4 Decision and further call for Energy Division to reject SDG&E's procurement plan.

## **3. SDG&E's Failure to Consider Recently Approved Transmission Projects Is Inconsistent with D.14-03-004.**

The any resource procurement plan fail to account for highly viable transmission projects approved after D.14-03-004 was issued that function to substantially reduce local need in the San Diego area. Because D.14-03-004 was approved prior to finalization of CAISO's 2013-2014 Transmission Plan ("2013-2014 TPP"), potential benefits of proposed transmission improvements in lowering local capacity needs could not be ascertained with certainty at the time the Decision was issued. However, D.14-03-004 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

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<sup>13</sup> D.14-03-004, at p. 112.

<sup>14</sup> *Id.* at 97.

overall procurement needed in the SONGS service area would be reduced.”<sup>15</sup> To accommodate this uncertainty, D.14-03-004 built in flexibility in future procurement by authorizing a minimum and maximum range in the any source procurement authorizations. In the event transmission projects were approved that would reduce local capacity needs, the Decision provided that “some combination of this would occur: a) procurement at or near the minimum levels authorized in this decision; b) less procurement or no procurement authorized in future LTPP proceedings; and c) less of a need to delay retirements of OTC plants.”<sup>16</sup>

On March 25, 2014, CAISO’s Board approved the 2013-2014 TPP. The TPP approved three transmission upgrades that will significantly lower LCR need in the SONGS area. The approved transmission projects include:

- 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;
- The Imperial Valley Flow Controller, which has a proposed in-service date of May 2017, and is expected to reduce LCR need by 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.<sup>17</sup>

These transmission projects, which lower LCR need by between 800–1680 MW, are expected to cost between \$559 and \$994 million.<sup>18</sup> The first two projects listed, the dynamic reactive support and the Imperial Valley Flow Controller, were not considered at all in the Track 4 Decision. The Mesa Loop-In Project was only estimated to have a 10-20% likelihood of being implemented, and therefore greatly discounted. Thus, these transmission projects, which have now been approved by CAISO, serve to significantly reduce the need below the values estimated in the Track 4 Decision.

In seeking its maximum procurement authorization, SDG&E’s plan fails to account for the benefits of these projects, resulting in significant over-procurement and additional unneeded burden to ratepayers. Energy Division should require SDG&E to account for these approved transmission projects and approve all resource procurement only at minimum authorized levels.

#### **4. SDG&E’s Request to Procure a 600-MW Fossil Fuel Facility for 2017 Is Inconsistent with D.14-03-014.**

SDG&E’s claim that Carlsbad is needed to address local need emerging in 2018 is inconsistent with D.14-03-004 and is not a credible basis for approval. The Track 4 Decision determined the need in the SDG&E territory in 2022: “[t]he first task at hand in Track 4 is to

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<sup>15</sup> D.14-03-004, at p. 116.

<sup>16</sup> D.14-03-004, at pp. 116-117.

<sup>17</sup> See CAISO 2013-14 TPP at p. 108, available at <http://www.caiso.com/Documents/Board-Approved2013-2014TransmissionPlan.pdf>.

<sup>18</sup> See CAISO 2013-14 TPP at p. 108, available at <http://www.caiso.com/Documents/Board-Approved2013-2014TransmissionPlan.pdf>.

determine a reasonable and prudent LCR need amount for the SONGS service area by 2022.”<sup>19</sup> Consistent with this time frame, the Commission analyzed the availability of resources in 2022. Thus, the Commission’s LCR determination was based on the need forecast from 2022 and the Commission ultimately authorized SDG&E to procure resources by 2021, not before. Indeed, approval of a 2017 start-date for Carlsbad would mean that ratepayers would begin paying for 600 MW of capacity four years prior to the Commission’s determination of when it would be needed.<sup>20</sup> This is inconsistent with the Decision and should be rejected.

Even assuming need could emerge by 2018, transmission solutions have now been approved and will be on-line within this timeframe.<sup>21</sup> As set forth above, two transmission improvements approved by CAISO, the Imperial Valley Flow Controller and dynamic reactive support at San Luis Rey, have in-service dates of May 2015 and June 2018 respectively, and would collectively reduce need by between 500 and 1040 MW. In addition, preferred resource and energy storage can also be rapidly deployed if needed.

Preferred resources have not been given the opportunity to compete in an all-source RFO in the San Diego area because SDG&E has not issued an all-source RFO in at least the last five years.<sup>22</sup> Moreover, because procurement and deployment can occur incrementally, preferred resource solutions offer superior ratepayer value to any purported near-term need than early operation of a 600 MW gas plant. Preferred resources should be allowed to compete in an all-source RFO as envisioned by the Commission’s Track 4 Decision.

## **B. Preferred Resource Procurement Plan.**

### **1. SDG&E’s Failure to Commit to Soliciting At Least 200 MW Is Inconsistent with D.14-03-004.**

SDG&E’s preferred resource procurement plan states SDG&E will solicit bids “up to 200 MW” even though the Track 4 Decision requires SDG&E to solicit “at least” 200 MW.<sup>23</sup>

### **2. SDG&E Does Not Include Distributed Generation in Its Proposed Preferred Resource Solicitation.**

SDG&E’s proposed preferred resource plan also appears to not consider soliciting distributed generation (DG) to meet its LCR need.<sup>24</sup> DG is an important resource that can meet LCR needs and should be considered. The Track 4 Decision did exclude DG from potentially meeting LCR need. In fact, the Decision cites testimony from CAISO admitting that DG is a

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<sup>19</sup> D.14-03-004, at p. 27.

<sup>20</sup> In its preferred resource plan, SDG&E admits that the Track 4 decision has a deadline of December 31, 2021 and states that it plans to procure resources that will meet that 2021 date. It is unclear why SDG&E is delaying the on-line dates for preferred resources when it believes that its need is urgent.

<sup>21</sup> In addition, as the Decision points out, the retirement dates for the OTC units could be delayed if there was an urgent need.

<sup>22</sup> Indeed, Carlsbad bid into that RFO and was rejected, suggesting that Carlsbad is a costly resource that would lose in a competitive bidding process.

<sup>23</sup> Compare SDG&E Preferred Resources Procurement Plan at 2 with D.14-03-004 at p. 97.

<sup>24</sup> SDG&E Preferred Resources Procurement Plan at p. 9.

load modifier.<sup>25</sup> Since DG can modify and reduce load, SDG&E should consider it here.

**3. SDG&E Inappropriately Proposes to Subtract Other Preferred Resource Programs from the At Least 200 MW Preferred Resource Authorization. It Is Unclear Whether SDG&E Intends to Solicit Any Preferred Resources.**

In its procurement plan, SDG&E states: “SDG&E is also aware of certain preferred resource procurement programs that were not included in the CAISO Track 4 Studies” that it would potentially count toward its Track 4 preferred resource procurement obligation.<sup>26</sup> As an initial matter, this statement raises serious issues about whether the Track 4 Decision relied on the best information available to make its need determination. Moreover, the Commission specifically rejected SDG&E’s proposed approach and stated in D.13-03-004 that SDG&E must procure *additional* preferred resources to meet its LCR need: “it is our intent that SDG&E *should also* pursue significant percentages of procurement to replace SONGS through preferred resources, energy storage and consistency with the Loading Order.”<sup>27</sup>

As the language above points out, although SDG&E can use other procedural vehicles for procurement, it must procure preferred resources *in addition to* what it is already procuring in other dockets. SDG&E’s plan is inconsistent with this requirement and should be rejected. The preferred resources procurement plan also contemplates reducing preferred resource procurement by taking credit for reductions in peak demand that may be achieved through rate design reform.<sup>28</sup> Because procurement is an active solicitation for resources, it cannot be met through passive pricing policies. To the extent rate reform reduce peak demand, this should function to reduce any resource procurement to its authorized minimum.<sup>29</sup>

For all of the above reasons and the additional reasons set forth in concurrent comments by NRDC, EDF and Vote Solar, Energy Division must reject SDG&E’s proposed procurement plans as inconsistent with D.14-03-004. If you have any questions, please contact Deborah Behles at [dbehles@ggu.edu](mailto:dbehles@ggu.edu) and (415) 369-5336 or Matt Vespa at [matt.vespa@sierraclub.org](mailto:matt.vespa@sierraclub.org) and (415) 977-5753.

Sincerely,



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<sup>25</sup> D.14-03-004 at p. 64.

<sup>26</sup> SDG&E Preferred Resources Procurement Plan at p. 9.

<sup>27</sup> D.14-03-004 at pp. 96-97.

<sup>28</sup> SDG&E Preferred Resources Procurement Plan at p. 5.

<sup>29</sup> D.14-03-004 at pp. 116-17.



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Cc: Service List R.12-03-014