

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)

**COMMENTS OF
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES
TO ENERGY DIVISION ON SDG&E TRACK 4 PROCUREMENT PLANS**

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

Attorney for
CENTER FOR ENERGY EFFICIENCY AND
RENEWABLE TECHNOLOGIES

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I. CEERT PROTEST TO ENERGY DIVISION COMMENT PROCESS

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).”¹ By D.14-03-004, the Commission, among other things, authorized San Diego Gas and Electric Company (SDG&E) “to procure between 500 and 800 MW by 2022 to meet local capacity needs stemming from the retired [SONGS].”² 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.”³

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.”⁴ 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

¹ D.14-03-004, at p. 8.

² D.14-03-004, at p. 2.

³ Id.

⁴ Id., at p. 4.

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.”⁵

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.⁶ 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).

The failure of this non-transparent review and approval process to ensure compliance with Commission procurement directives and policies in D.14-03-004 has now been demonstrated by SDG&E’s Track 4 procurement plans submitted to the Energy Division only on May 1, 2014. The non-compliance of those plans with the directives of D.14-03-004 have been demonstrated and detailed in (1) a Joint Petition for Modification filed by Sierra Club California, California Environmental Justice Alliance, and Vote Solar in R.12-03-014 (LTPP) on June 12, 2014 (June 12 Joint PFM), (2) a Joint Petition for Modification filed by Natural Resources Defense Council (NRDC), CEERT, Environmental Defense, and Clean Coalition in R.12-03-014 (LTPP) on June 23, 2014 (June 23 Joint PFM), and (3) the Joint Response in Support of the June 12 Joint PFM filed by NRDC and CEERT in R.12-03-014 on June 23, 2014 (Joint Response). CEERT incorporates by reference those formal filings in these “informal” comments and fully

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

⁶ 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.

supports a modification of D.14-03-004 to, at the least, require SDG&E to submit its Track 4 plans by Tier 3 Advice Letter to permit full public comment and review by the Commission before those plans are approved as the means for SDG&E to meet any Track 4 need.

The process that is *not acceptable* for the critical purpose of ensuring compliance by SDG&E with D.14-03-004, however, is the one initiated by Energy Division, following the filing of the June 12 Joint PFM, that is limited to “informal” comments to two Commission staff. Namely, *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 (Lily Chow) to the service list in this proceeding in the afternoon of June 17, 2014. By that email, the Energy Division, for the first time, distributed 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.⁷ 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 a subsequent email from Ms. Chow sent on June 20, 2014, Energy Division rejected 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.”⁸

⁷ June 17 Energy Division Electronic Email, emphasis added.

⁸ June 20 Energy Division Electronic Email.

These statements of Energy Division’s responsibility in reviewing SDG&E’s procurement plans and its reliance on participation in a long-distant, future application to suffice for due process are erroneous and misplaced. Even as the ALJ’s Ruling sent subsequently by electronic mail makes clear, Energy Division’s “responsibility” regarding the SDG&E Track 4 Procurement Plans is not simply to determine whether SDG&E “has met requisite *conditions to submit* a procurement application” (emphasis added), but, with reference to the actual language of D.14-03-004:

“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.”⁹

Of great concern for CEERT is that Energy Division has established an informal process for comments that is based on 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.

⁹ June 18 ALJ’s Ruling by Electronic Email.

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 meeting. The former, again, is part of a discretionary, closed-door process that *excludes and limits* public review.

Finally, 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 is inappropriate and unsupported by 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. Further, 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.

Thus, while CEERT submits these informal comments today (June 24, 2014) to Energy Division as directed by Energy Division’s email to the R.12-03-014 (LTPP) service list, CEERT does so under protest without changes to that process. Specifically, CEERT instead asks that all comments submitted in response to the Energy Division today be made part of the formal record in R.12-03-014 (LTPP) and that those comments serve as an initial basis (with future public comments allowed) for the Commission to issue a further decision in R.12-03-014 (LTPP) to do all of the following: direct SDG&E to revise its plans consistent with D.14-03-004, grant the pending Joint PFMs to require SDG&E to submit those revised plans by Tier 3 Advice Letter,

and withhold authority to procure pursuant to those plans unless and until the Commission issues a Resolution on that Tier 3 Advice Letter.

II. CEERT POSITION ON SDG&E TRACK 4 PROCUREMENT PLANS

A. CEERT Supports NRDC/EDF/VoteSolar June 24 Comments to Energy Division

Today, NRDC, EDF, and Vote Solar Initiative (VSI) have submitted to Energy Division their Joint Comments on SDG&E's Proposed LTPP Track 4 Procurement Plans (Joint NRDC/EDF/VSI Comments). CEERT fully supports and agrees with NRDC/EDF/VSI urging Energy Division to (1) direct SDG&E to improve its proposed Track 4 Preferred Resources Procurement Plan to capture all cost-effective preferred resources, (2) reject SDG&E's proposed Conventional Plan for failing to meet the requirements of D.14-03-004 and the State's Loading Order, and (3) require SDG&E to submit a new Track 4 procurement plan that fills the 300 MW to 600 MW of "any resources" authorized by D.14-03-004 through an all-source RFO and that also accounts for reductions in need resulting from recently approved transmission upgrades.¹⁰

Again, however, CEERT asks that these directions to SDG&E to come in the form a formal Commission decision that further requires the revised procurement plans to be submitted by SDG&E by a Tier 3 Advice Letter filing, with any resulting procurement being conditioned on approval of those plans by Commission Resolution, as requested in the June 23 Joint PFM. In addition, CEERT has additional objections to SDG&E's Track 4 Preferred and Conventional Procurement Plans for their exclusion of large-scale pumped storage in violation of D.14-03-044. That issue is discussed below.

B. SDG&E's Track 4 Preferred Resources and Conventional Procurement Plans Do Not Comply with D.14-03-004 By Failing to Include Large-Scale Pumped Storage Resources.

¹⁰ NRDC/EDF/VSI Joint Comments, at p. 1.

By D.14-03-004, the Commission specifically directed how “large-scale (50 MWs or more) pumped storage projects” were to be treated in Track 4 procurement. In this regard, D.14-03-004 found that D.13-10-040, which adopted an “Energy Storage Framework,” had *excluded* large-scale pumped storage projects from the adopted targets, reasoning that ““the sheer size of pumped storage projects would dwarf other smaller emerging technologies; and, as such would inhibit the fulfillment of market transformation goals.””¹¹ However, D.14-03-004 confirms that this exclusion was predicated in D.13-10-040 on ““this LTPP Track 4 proceeding”” serving ““as the venue for providing a procurement mechanism for large-scale pumped or bulk storage, especially since that technology would have particular application in terms of addressing ‘local reliability impacts of a potential long-term outage at the SONGS.’””¹²

Understanding the distinction between the “energy storage anticipated by D.13-10-040” (smaller storage projects) and the capabilities of large-scale pumped storage to address LTPP/Track 4 “procurement efforts,” D.14-03-004 specifically found as follows:

“As discussed herein, we require SCE and SDG&E to procure MW ranges of certain types of resources. Each utility should solicit all resources as required by this decision, and may propose for approval any set of resources which can meet the LCR need in its portion of the SONGS service area consistent with the authorized resource ranges herein. Within the categories that include preferred resources, bulk energy storage and large pumped hydro facilities should *not* be excluded. We have also set aside specific procurement amounts for energy storage. Within the energy storage category, we will limit procurement to the types of energy storage anticipated by D.13-10-040.”¹³

Thus, large-scale pumped storage is *not* part of the minimum 25 MW set-aside for energy storage required by SDG&E as part of its Track 4 procurement authorization, but instead (1) is to be included in SDG&E’s broader “minimum requirement” for Preferred Resources of 175 MW and (2) is certainly among the “any resource” types from which the additional procurement of

¹¹ D.14-03-004, at p. 100, citing D.13-10-040, at pp. 30, 34.

¹² D.14-03-004, at p. 100, citing D.13-10-040, at p. 33.

¹³ D.14-03-004, at p. 102; emphasis added.

300 to 600 MWs is to be procured by SDG&E in an *all resource Request for Offers (RFO)*.¹⁴

Yet, SDG&E's Preferred Resource or its Conventional Procurement Plans do *not* make any reference to bulk or large-scale pumped storage and, in fact, *limit* any storage procurement to the 25 MW set aside, based on D.13-10-040 and which, by virtue of D.14-03-004, extends only to those smaller storage resources included in that Energy Storage Procurement Framework targets.¹⁵

In the case of SDG&E's Preferred Resources Procurement Plan, the exclusion of large-scale pumped storage is a clear violation of D.14-03-004. In the case of SDG&E's Conventional Procurement Plan, compounded by SDG&E's decision *not to issue an all-source RFO*, SDG&E's exclusion of large-scale pumped storage is a huge missed opportunity and conflicts with the Commission's and this State's climate change goals.¹⁶ As the record in Track 4 indicates, large-scale pumped storage is an "enabling technology" that has the "right characteristics" to provide "very effective mitigation" in meeting a local capacity requirement in the absence of SONGs.¹⁷ In fact, as CEERT stated in its Comments on the Proposed Decision on which D.14-03-004 is based, "the record in this proceeding can be used to properly define bulk storage as a '*preferred conventional*' resource," with "many of the characteristics of preferred resources," especially from a climate change perspective, while also having "a long and well established history of supplying local capacity and other valuable reliability services to California's grid."¹⁸

¹⁴ D.14-03-004, at pp. 4, 102; Ordering Paragraph 2, at pp. 143-144.

¹⁵ SDG&E LTPP/Track 4 Procurement Plan (Preferred Resources) (May 1, 2014), at p. 8; SDG&E LTPP/Track 4 Procurement Plan (Conventional Procurement), at pp. 1-3.

¹⁶ D.14-03-004, at p. 100.

¹⁷ *Id.*, at pp. 7 (footnote 3), 101.

¹⁸ CEERT Opening Comments on Track 4 Proposed Decision (March 3, 2014), at p. 11.

These circumstances make clear that SDG&E's Preferred Resources and Conventional Procurement Plans do *not* comply with D.14-03-004 in their *exclusion* of bulk or large-scale pumped storage from these plans. SDG&E must be required to revise these plans to expressly include this valuable resource both in its 175 MW Preferred Resources procurement *and* as part of an all-source RFO to meet the 300-600 MW of its "additional Track 4 authorization." To do otherwise fails to comply with the letter and intent of D.14-03-004.

III. CONCLUSION

CEERT strongly urges the Commission to take the following actions: (1) Require SDG&E to revise both its Track 4 Preferred Resources and Conventional Procurement Plans to be compliant with D.14-03-004 and (2) require SDG&E to submit its revised Track 4 procurement plans pursuant to a Tier 3 Advice Letter filing, with procurement authority subject to approval of those plans through a Commission Resolution on that filing. In terms of revisions to the plans, CEERT strongly urges the Commission to direct SDG&E to revise its two plans to correct the errors identified in the CEERT Comments herein and the NRDC/EDF/VSI Comments also filed today.

Respectfully submitted,

June 24, 2014

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

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