

**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)

**RESPONSE OF SAN DIEGO GAS AND ELECTRIC COMPANY
(U 902 E) TO PETITION FOR MODIFICATION OF
DECISION 14-03-004 SEEKING TIER III ADVICE LETTER FILING
REQUIREMENT**

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**I.
INTRODUCTION**

Pursuant to Rule 16.4(f) of the Rules of Practice and Procedure of the California Public Utilities Commission (the “Commission”), San Diego Gas & Electric Company (“SDG&E”) provides this response to the *Joint Petition for Modification of Decision 14-03-004 Seeking Tier III Advice Letter Filing for SDG&E’s Proposed Procurement Plans* (“PFM”) filed by the Natural Resources Defense Council, Center for Energy Efficiency and Renewable Technologies, Environmental Defense Fund and Clean Coalition (together, the “Joint Parties”) in the above-captioned proceeding. SDG&E respectfully requests that the Commission deny the PFM on the grounds that it lacks merit and is moot given the request for informal comments issued by the Commission’s Energy Division on June 17, 2014.

**II.
DISCUSSION**

In Decision (“D.”) 14-03-004 (the “Track 4 Decision”), the Commission authorized SDG&E to procure local resources to meet local capacity requirement (“LCR”) need resulting from the retirement of the San Onofre Nuclear Generating Station (“SONGS”). Specifically, the Track 4 Decision authorizes SDG&E to procure through an all-source request for offers (“RFO”)

or through bilateral negotiations between 500 and 800 Megawatts (“MW”) of electrical capacity in its territory to meet long term local capacity requirements by the end of 2021.^{1/} Such procurement must include at least 25 MW of energy storage resources as part of 200 MW of preferred resources consistent with the Loading Order of the Energy Action Plan.^{2/}

The Track 4 Decision directs SDG&E to submit for review and approval by the Director of the Commission’s Energy Division a procurement plan (the “Track 4 Procurement Plan”) explaining how it will procure the resources authorized by the Track 4 Decision.^{3/} It is important to note that this Track 4 Procurement Plan does not supplant SDG&E’s Commission-approved AB 57 Long-Term Procurement Plan (“LTPP”), nor does it guarantee that applications SDG&E may file in the future requesting approval of procurement contracts with specific resources will be granted by the Commission. The Track 4 Procurement Plan outlines SDG&E’s strategy for procuring the resources authorized in the Track 4 Decision. The decision permits SDG&E to submit the conventional gas-fired resources portion of its Track 4 Procurement Plan for review in advance of submission of its full Track 4 Procurement Plan.^{4/} SDG&E has submitted the draft preferred and conventional resources portions of its Track 4 Procurement Plan to the Energy Division, and is working with Energy Division staff to address areas of concern.

While the Track 4 Decision directs SDG&E to provide its Track 4 Procurement Plan to the Energy Division for review and approval, it does not require SDG&E to seek approval through a formal advice letter process. The Joint Parties seek to modify the Track 4 Decision to

^{1/} D.14-03-004, *mimeo*, Ordering Paragraph 2.

^{2/} *Id.*

^{3/} *Id.* at OP 7.

^{4/} OP 7 of D.14-03-004 states that SDG&E’s procurement plan “shall be subject to the same procurement plan requirements of OP 6, 7 and 8 of D.13-02-015 (Southern California Edison’s (“SCE”) Local Capacity Requirement decision). OP 8 of D.13-02-015 states that “[SCE] may provide the conventional gas-fired resources portion of the procurement plan for review ahead of its full procurement plan. If Energy Division approves this portion of the plan, [SCE] may go forward with that procurement.”

require SDG&E to seek approval of its Track 4 Procurement Plan through a Tier 3 advice letter filing. The Joint Parties argue that the review process established in the Track 4 Decision “will not provide adequate notice or opportunity for stakeholders to comment on, or the Commission to review and seek corrections of, SDG&E’s procurement plans . . .,” and further that that the requested modification is necessary in light of “the discovery that SDG&E’s proposed procurement plan fails to comply with D.14-03-004 . . .”^{5/} The modified procedural requirements proposed in the PFM would apply solely to SDG&E; the PFM does not seek modification of the procedural requirements applicable to Southern California Edison Company’s (“SCE’s”) amendment of its Track 1 procurement plan.^{6/}

The procedural concerns raised by the Joint Parties regarding notice and opportunity to comment, as well as lack of Commission review, are without merit. The Commission has observed that “[d]ue process safeguards may vary depending on the circumstances, and agencies are generally free to determine the procedures to be applied.”^{7/} No statute, rule, regulation or decision obligates the Commission to require approval of SDG&E’s Track 4 Procurement Plan via an advice letter process. Indeed, Commission precedent established in D.13-02-015 supports the process adopted in D.14-03-004.^{8/} The procedure adopted by the Commission in D.13-02-015 and D.14-03-004 provides for review of SDG&E’s Track 4 Procurement Plan by the Energy Division and makes clear that no Track 4 procurement may be undertaken by SDG&E absent a

^{5/} PFM, pp. 2 and 7.

^{6/} The Joint Parties appear to envision a more stringent process for SDG&E than for SCE, but do not justify the arbitrary difference in treatment of the two utilities. For the reasons described herein, neither utility should be required to seek approval of its Track 1 or 4 Procurement Plan through a Tier 3 Advice Letter process.

^{7/} D.14-01-039, *mimeo*, p. 7, citing *Ryan v. California Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1072; *California Consumer Health Care Council, Inc. v. Department of Managed Health Care* (2008) 161 Cal.App.4th 684, 691-692.

^{8/} D.13-02-015, *mimeo*, Ordering Paragraph 5.

determination that its Track 4 Procurement Plan complies with D.14-03-004.^{9/} The Joint Parties' argument appears to be premised on the belief that the Energy Division is not able to conduct an adequate review of SDG&E's Track 4 Procurement Plan or to seek corrections necessary to ensure consistency with the Track 4 Decision, but no evidence is cited to support this view.

The assertion by the Joint Parties that approval of SDG&E's Track 4 Procurement Plan through a Tier 3 Advice Letter process is necessary to ensure that procurement ultimately undertaken by SDG&E complies with D.14-03-004 is not credible. In general, utility procurement is subject to significant scrutiny through Commission rulemaking and application proceedings, as well as through the Procurement Review Group ("PRG") process. Here, SDG&E's procurement proposals were thoroughly litigated in the LTPP proceeding and proposed contracts with specific resources will be submitted for Commission approval through separate, formal application filings. As noted above, approval of SDG&E's Track 4 Procurement Plan does not guarantee that applications SDG&E may file in the future requesting approval of procurement contracts with specific resources will be granted by the Commission. The application approval process entails careful review of the proposed contract and the procurement method by the Commission and stakeholders, and often involves litigation of contested issues. Thus, the notion that procurement by SDG&E, pursuant to its Track 4 authorization or otherwise, will escape public review is not supported by fact. An *additional* layer of stakeholder review in the form of a Tier 3 Advice Letter approval process is not warranted and will not serve the public interest.

^{9/} D.14-03-004, *mimeo*, Ordering Paragraph 7 ("SDG&E shall not commence any procurement activities until the Director of the Energy Division approves its procurement plan, which shall be reviewed consistent with this decision.").

Requiring formal stakeholder review of SDG&E's Track 4 Procurement Plan would inject harmful and unnecessary delay into the procurement process. The Track 4 Decision acknowledges that time is of the essence in procuring new resources to respond to the unavailability of SONGS;^{10/} the Energy Division review process established in D.13-02-015 and D.14-03-004 strikes a reasonable balance between the desire to provide guidance concerning procurement strategy and the need to move forward expeditiously with procurement required to ensure local reliability. As noted above, SDG&E is working with the Energy Division to understand concerns and to incorporate feedback received regarding SDG&E's draft Track 4 Procurement Plan. Thus, the Joint Parties' assertion that the review process adopted in the Track 4 Decision will deprive the Commission of the ability to "review and seek corrections of" SDG&E's Track 4 Procurement Plan is directly contradicted by the plain language of the Decision as well as by the facts surrounding development of SDG&E's Track 4 Procurement Plan.^{11/} Accordingly, the procedural arguments advanced by the Joint Parties should be rejected.

The Joint Parties also claim that SDG&E's draft Track 4 Procurement Plan is inconsistent with D.14-03-014 in several respects, and assert that this necessitates modification of the Track 4 Decision to require a Tier 3 Advice Letter filing.^{12/} However, the "fact" cited by the Joint Parties to support their PFM – *i.e.*, the alleged non-compliance of SDG&E's Track 4 Procurement Plan with D.14-03-004 – is in reality a legal conclusion. It is a potential outcome that the Track 4 Decision addressed by providing that if SDG&E's Track 4 Procurement Plan was deemed to be inconsistent with the Track 4 Decision, it would not be approved by the Energy Division Director, and that SDG&E could not undertake Track 4 procurement in the absence an approved

^{10/} See, e.g., *id.* at p. 110.

^{11/} See PFM, p. 7.

^{12/} *Id.* at p. 2.

Track 4 Procurement Plan.^{13/} Thus, in a circumstance of non-compliance such as that alleged by the Joint Parties, the Track 4 Decision would operate to preclude Track 4 procurement by SDG&E. As such, no modification of the Track 4 Decision is required in order to ensure the outcome intended by the Commission. It should be noted, as discussed above, that SDG&E is working with Energy Division staff to ensure that its Track 4 Procurement Plan *is* consistent with the Track 4 Decision. In short, SDG&E recognizes that its Track 4 Procurement Plan must comply with D.14-03-004 and is committed to achieving that objective.

As the Joint Parties concede, the proposal to adopt a formal review process for SDG&E's Track 4 Procurement Plan was already considered and rejected by the Commission in D.14-03-004.^{14/} The Joint Parties fail to present adequate justification for modification of the Track 4 Decision to require a Tier 3 Advice Letter approval process. The mere fact that the Joint Parties would have preferred a different outcome in the proceeding does not provide a reasonable rationale for modifying the Track 4 Decision. The Track 4 Decision strikes an appropriate balance between the desire for oversight of the procurement process and the need for timely procurement to ensure local reliability. The review process adopted in Track 4 is consistent with the Commission's authority and with precedent established in D.13-02-015, and does not require modification. Finally, in light of the Energy Division's solicitation on June 17, 2014 of informal comments from stakeholders – comments relied upon and cited to by the Joint Parties in their PFM^{15/} – the suggestion that parties have been prevented from providing their input to the Commission regarding SDG&E's Track 4 Procurement Plan is not credible. Given this development, the PFM is plainly moot. For this reason, and for those described above, the Commission should deny the PFM.

^{13/} D.14-03-004, *mimeo*, Ordering Paragraph 7.

^{14/} PFM, p. 7.

^{15/} *Id.* at pp. 4-5, Attachment A.

**III.
CONCLUSION**

For the reasons set forth herein, the Joint Parties PFM should be denied.

Dated this 30th day of June, 2014 in San Diego, California.

Respectfully submitted,

/s/ Aimee M. Smith

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