

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 NOTICE OF EX PARTE COMMUNICATION

Pursuant to Rule 8.4 of the Commission's Rules of Practice and Procedure, the Center for Energy Efficiency and Renewable Technologies (CEERT), Natural Resources Defense Council (NRDC), Sierra Club California (Sierra Club), and California Environmental Justice Alliance (CEJA) hereby give joint notice of the following ex parte communication.

The communication occurred at 10:00 a.m. on Friday, August 8, 2014. The communication was oral and written and took place at the Commission's offices at 505 Van Ness Avenue, San Francisco, California 94102.

Sara Steck Myers, attorney for CEERT, initiated the communication with Commissioner Carla Peterman.¹ Also present at the time of the communication was Julie Fitch, Chief of Staff to Commissioner Peterman. Further present at the time of the communication were the following: Sierra Martinez, Legal Director, California Energy Project for NRDC; David Zizmor, Staff Attorney at the Environmental Law & Justice Clinic, Golden Gate University School of Law, and Shana Lazerow, Staff Attorney at Communities for a Better Environment, both attorneys for CEJA; and William Rostov, Earthjustice, attorney for Sierra Club California.

¹ This meeting was an equal time meeting pursuant to Rule 8.3(c)(2), for which timely notice of the granting of this meeting was served and the certificate of service filed on August 5, 2014.

Ms. Myers began the meeting by stating that, on August 4, 2014, CEERT, NRDC, Sierra Club, CEJA, Vote Solar, and Clean Coalition, had timely filed Joint Comments in opposition to the Proposed Decision that was issued in this Long Term Procurement Plan (LTPP) Rulemaking (R.) 12-03-014 on July 15, 2014, denying Petitions for Modification (PFMs) of Decision 14-04-003 (Track 4 (local need due to San Onofre Nuclear Generating Station (SONGS) retirement)). According to Ms. Myers, by denying these PFMs, one filed jointly by Sierra Club, CEJA, and Vote Solar and the other jointly by CEERT, NRDC, Environmental Defense Fund, and Clean Coalition, the Proposed Decision had erred by failing to recognize and apply both the facts and law that support and require greater transparency and public process in the review of the “procurement plans” submitted by San Diego Gas and Electric Company (SDG&E) in response to D.14-04-003.

Ms. Myers stated that the legal failings of the Proposed Decision and the “process” used to review and authorize SDG&E’s plans were further evidenced by actions taken within days of the Proposed Decision’s issuance. Namely, first, the Energy Division, on July 18, within three days of the Proposed Decision, approved, *in camera*, “modified” plans that had not been made publicly available prior to that approval, and, second, SDG&E, on July 21, immediately filed Application (A.) 14-07-009 for approval of a bilaterally negotiated 20-year power purchase agreement of 600 MWs from the gas-fired Carlsbad Energy Center. Ms. Myers described how neither SDG&E’s plan, even as “modified” to provide cosmetic changes, or its application complies with the directive in D.14-04-003 that requires this 600 MWs to be procured through a

competitive, all-source request for solicitation (RFO), to include preferred resources (energy efficiency, demand response, and renewable generation).

To that end, Ms. Myers asked for the Proposed Decision to be reversed and the Joint PFMs granted to require, before any procurement is undertaken by SDG&E, a Tier 3 Advice Letter for submission, review, and approval of SDG&E's procurement plans or, in the alternative, a 15-day formal notice and comment period prior to Energy Division approval of any plan. In addition, Ms. Myers stated that the Proposed Decision granting the Joint PFMs should also make clear that competitive procurement for the authorized 600 MWs should include consideration of phased or incremental all-source RFOs to fill that need.

On this point, Ms. Lazerow advised that the Independent Evaluator, in its report that was included in SDG&E's testimony in support of A.14-07-009, had also raised concerns about SDG&E's decision to meet the full 600 MW procurement authorization with the single bilateral agreement with Carlsbad since that decision had not been guided by any market test or evaluation results prior to negotiating the Carlsbad contract. In this regard, Ms. Lazerow confirmed that the Independent Evaluator had specifically suggested alternatives to SDG&E, such as using a solicitation as a market test, phasing in the individual units over a longer period of time to allow sufficient time to assess the market, or contracting for a portion of the 600 MWs, leaving in reserve up to 200 MWs to be filled by preferred resources.

In addition, Mr. Lazerow stated that a petition had been circulated by Vote Solar, Sierra Club, CEJA, Clean Coalition, Environmental Defense Fund, Environment

California, Union of Concerned Scientists, CREDO, and 350.org, a summary of which

Ms. Lazerow read as follows:

“Dear California Public Utilities Commissioners,

“We strongly urge the Commission to reject SDG&E’s application to build 600 MW of new natural gas generation. This unnecessary investment in fossil power would come at a major cost to energy customers, public health and our climate. Clean energy options should be given an opportunity to compete to meet the energy needs of SDG&E ratepayers through an open procurement process.”

Ms. Lazerow stated that, as of that date, this petition had received over 16,000 signatures.

Mr. Rostov and Mr. Zizmor further detailed how SDG&E’s plans, the process used to review and approve those plans, and, in turn, the Proposed Decision all conflicted with D.14-03-004. In particular, Mr. Rostov described the Decision’s specific requirements for an all-source RFO to meet at least part of the 600 MW authorization and compliance with the Commission’s Loading Order. Mr. Rostov stated that the Proposed Decision, by denying the Joint PFMs, was authorizing action contrary to D.14-03-004, as borne out by the filing of A.14-07-009, and must be reversed. Mr. Zizmor and Ms. Lazerow also noted San Diego’s commitment to clean energy as demonstrated by the draft climate plan that requires the City of San Diego to rely on 100% renewable electric generation by 2035.

Mr. Rostov further stated that the 600 MW local “need” did not factor in transmission upgrades or additions that had now been approved by the California Independent System Operator (CAISO). Mr. Rostov indicated that these transmission upgrades would reduce any local need significantly in the first place. In fact, according to Mr. Rostov, this circumstance was another reason why it was inappropriate for the

Commission to approve a 20-year procurement contract for all 600 MWs from a single gas-fired project at this time.

Mr. Rostov also provided a copy of an editorial jointly written by the Sierra Club and The Utility Reform Network (TURN), which appeared in the San Diego Union-Tribune on August 1, 2014, and is attached hereto as Attachment A. That editorial, entitled “SDG&E Proposal Bypasses Clean Energy Sources,” states that the SONGS “replacement strategy” adopted in D.14-03-004 calls for a competitive bidding process open to all resources, which would also ensure that “SDG&E customers get a fair shake” and which did not contemplate a procurement (the 600 MW Carlsbad PPA) that represents a “blatant disregard” of the Commission’s orders in D.14-04-003.

Mr. Martinez emphasized that, not only had there been no public process or vetting of SDG&E’s plan, but, if A.14-07-009 were allowed to proceed with approval of the Carlsbad PPA targeted for December 2014, there would be no opportunity for any competitive RFO to meet even a portion of this need. Mr. Martinez noted that, while SDG&E’s “modified” plan and application referenced the possibility of an all-source RFO, no such RFO could be conducted and concluded before SDG&E’s requested approval of A.14-07-009, even as a “market test” of the cost-effectiveness of meeting the full 600 MW authorization with the gas-fired Carlsbad project, and no head-to-head competition would have been permitted to see how much of this need could have been met by preferred resources. Mr. Martinez also advised that this Commission has the responsibility to authorize its jurisdictional utilities to procure resources in a manner that ensures just and reasonable rates and complies with the State’s environmental mandates, including the Loading Order and greenhouse gas emission reductions.

To obtain a copy of this notice, please contact:

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Respectfully submitted by:

August 13, 2014

/s/ SARA STECK MYERS

Sara Steck Myers
On Behalf of CEERT, NRDC,
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ATTACHMENT A

SDG&E proposal bypasses clean energy sources

By Mark Toney & Evan Gillespie 5:30 p.m. Aug. 1, 2014

More than two years after San Onofre Nuclear Generating Station broke down, customers across San Diego County are watching their wallets as San Diego Gas and Electric (SDG&E) scrambles to recover the costs related to the closure and pending decommissioning process. Never mind that SDG&E already has some of the highest rates in the nation. Last summer, SDG&E announced a 10 percent rate hike while simultaneously demanding a \$10 permanent charge to their customers' monthly bills in the Legislature. San Diegans deserve better than another expensive fiasco as their utility turns to replacing the lost power from San Onofre. Unfortunately, that seems to be where things are heading again.

Four months ago, the California Public Utilities Commission (CPUC) finalized a replacement strategy for San Onofre. When the commission authorized SDG&E to buy replacement power for San Onofre, it required SDG&E to hold an "all-source Request for Offers," allowing all energy sources to bid for all or part of the energy needs San Onofre left behind.

A competitive bidding process is an essential step toward ensuring that SDG&E customers get a fair shake. In the decision, the commission made clear that SDG&E could replace the entirety of their lost power with clean energy, but at minimum would have to run a competitive bidding to ensure that many companies, from solar energy and energy storage providers to power plant developers, would go toe to toe and drive a low-cost outcome. Furthermore, SDG&E would have to demonstrate that it has exhausted all cost-effective clean energy resources before turning to a new dirty power plant. This latter point is important as, for all the concerns many have with nuclear power, it was a pollution-free source of energy in a region plagued by dirty air.

Unfortunately, SDG&E seems to have little interest in pursuing a cost-effective replacement strategy. Rather than running a transparent bidding process, it is looking to cut a quick deal with a power plant developer, pushing for special treatment for a \$2.6 billion dirty power plant. Soon after San Onofre's retirement, SDG&E asked the CPUC to approve a contract with the Carlsbad Energy Center, a large and dirty gas-fired plant owned by NRG Energy that will add to the region's ever-growing dependence on natural gas.

SDG&E's blatant disregard of the required process is proof that it is not interested in its customers' desires. The Public Polling Institute asked affected customers how they wanted their energy to be generated. The poll showed that a strong majority wanted their homes to be powered by clean energy, not gas.

With bills going up, a transparent process that gives customers some assurance of a cost-effective replacement strategy is more important than ever. The good news is that San Diegans can still get the deal they deserve — if the CPUC steps up.

First, the CPUC should reject SDG&E's rushed proposal. We have plenty of time to get this right. The CPUC found during its review that San Diego had until 2022 to meet energy needs resulting from the shutdown of San Onofre. Second, the CPUC should re-evaluate the need for Carlsbad Energy Center in light of major new transmission projects the state's grid operator recently approved. Over the next several years, upward of \$1 billion will be spent building and upgrading transmission lines to increase the flow of power to the San Diego region. These grid investments significantly reduce the need for new generation. Customers should not be wasting a billion dollars double-paying for transmission improvements and a redundant gas plant.

Lastly, the CPUC must insist SDG&E run a transparent and competitive bidding process for the replacement power.

SDG&E's San Onofre replacement plan is just more of the same from our regulated utilities, which would prefer to cut deals with fossil fuel providers than find optimal solutions for ratepayers and the environment. The CPUC must ensure that clean, green energy is given a level playing field to compete with fossil fuels. The time is right for SDG&E to prioritize its customers and the environment over its bottom line.

Toney is executive director of The Utility Reform Network (TURN). Gillespie is director of Sierra Club My Generation Campaign.

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