BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local Procurement Obligations.	)))))	Rulemaking 11-10-023 (Filed October 20, 2011)

RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY (U-902-E) TO *APPLICATION FOR REHEARING OF THE ENERGY PRODUCERS AND USERS COALITION AND THE COGENERATION ASSOCIATION OF CALIFORNIA*

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Pursuant to Rule 16.1(d) of the Commission's Rules of Practice and Procedure, San Diego Gas & Electric Company ("SDG&E") files its Response to the *Application for Rehearing of the Energy Producers and Users Coalition and the Cogeneration Association of California* ("*EPUC/CAC Application*") filed July 30, 2014, in the above-docketed matter. SDG&E submits the *EPUC/CAC Application* should be denied both on procedural grounds and for lack of merit.

A. The *EPUC/CAC Application* Fails the Procedural Requirements of Rule 16.1 and Should Be Denied.

Rule 16.1 of the Commission's Rules of Practice and Procedure requires applications for rehearing to "set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law" identifying "a legal error, so that the Commission may correct it expeditiously." With respect to each of the two self-described "clarifications" to *Decision 14-06-050*[1] sought by the *EPUC/CAC Application,* these requirements have been completely disregarded and utterly failed. The *EPUC/CAC Application* makes no effort to describe the nature of the "legal" errors to which these parties would alert the Commission or the record errors upon which the Commission's decision might erroneously rest. Rather, the *EPUC/CAC Application* simply asserts the Commission "should" adopt two clarifications serving the narrow economic interests of the parties filing the application, all to the unfair prejudice of other parties, including SDG&E.

[1] See *Decision Adopting Local Procurement and Flexible Capacity Obligations for 2015, and Further Refining the Resource Adequacy Program,* Decision 14-06-050 in Rulemaking 11-10-023, June 26, 2014 ("*Decision 14-06-050*").

As to the first of its clarifications, the *EPUC/CAC Application* proposes the Commission add a new conclusion of law "deeming" "generic resource adequacy capacity" to be bereft of flexibility attributes. The *EPUC/CAC Application* asserts the Commission "should provide [this] default" because "[r]eliance on bilateral negotiations" "to differentiate generic Resource Adequacy capacity from flexible capacity" "*does not seem* workable or guaranteed to produce a result."[2] To SDG&E, this assertion hardly "seems" persuasive, let alone immutably true. Nothing of record in this proceeding would indicate bilateral negotiations and contracts are unworkable or doomed to the failures suggested by the *EPUC/CAC Application*. To the contrary, reliance on private negotiations and bilateral contracts has been a fundamental cornerstone of the entire California resource-adequacy program since its inception. And, important to the instant procedural context, the *EPUC/CAC Application* makes no attempt to establish any legal error arising from the Commission's policy of relying on private parties to differentiate products and obligations as a matter of contract.

As to the second of the clarifications sought by the *EPUC/CAC Application,* SDG&E has no objections to saying that parties should obey Commission orders aloud, but finds such a clarification to be superfluous. Here, the *EPUC/CAC Application* asserts the Commission should clarify that outage replacement obligations will be subject to "Commission decisions", in addition to "CAISO tariff rules and FERC orders."[3] While the assertion strangleholds the obvious, modifying *Decision 14-06-050* to warn jurisdictional entities that the Commission could invoke its regulatory authorities regarding this topic would be an idle act, and the omission of any such warning from the decision at bar, once again, hardly rises to the level of a factual or legal error which demands correction on rehearing.

SDG&E submits the *EPUC/CAC Application* fails to identify any legal or substantive error in the Commission's orders and only serves the naked self-interests of the parties filing the application. While parties appearing before the Commission are fully entitled to pursue their narrow interests, the Commission's rules require, in the context of post-decision complaints, parties to meet a higher standard as a precursor to seeking judicial review. Without any reference to any law or record evidence demonstrating adjudicatory "error" of any kind, the *EPUC/CAC Application* fails those requirements and must be denied.

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[2] See *EPUC/CAC Application,* at p.2 (emphasis added).
[3] See *EPUC/CAC Application,* at p.3.

B. The *EPUC/CAC Application* Bears Neither Legal Nor Substantive Merit.

Apart from the procedural failings of the *EPUC/CAC Application*, SDG&E submits that the first of the two clarifications sought by the parties filing the application would in fact encourage the proliferation of contractual disputes. The issuance of any fiat by the Commission "deeming" "[c]ommitments to supply resource adequacy capacity entered into prior to the date of this decision" to be limited to "generic resource adequacy capacity unless the parties otherwise agree",[4] without due regard to the terms of existing contracts the Commission would affect, will unfairly prejudice and impair valuable existing contractual rights best settled between the contracting parties. Any such effects should, at minimum, first be vetted through the taking of evidence or, as is the Commission's normal practice in these resource-adequacy proceedings, in open public workshops.

Although the *EPUC/CAC Application* indicates contracting parties could "otherwise agree" their contracts predating *Decision 14-06-050* contemplated the sale of flexible capacity as part of the sale of "generic resource adequacy capacity", SDG&E submits the *EPUC/CAC Application* plainly rewrites all prior contracts so as to omit flexibility attributes from "generic resource adequacy capacity." The record before the Commission is uncontested: both buyers and sellers expect flexible capacity to command some premium, rising over time, as compared to generic resource adequacy capacity. The *EPUC/CAC Application* is a brazen attempt to have the Commission redraft each and every bilateral agreement predating *Decision 14-06-050* so as to allow, and even encourage, sellers to dispute that they bundled flexibility attributes into resource adequacy capacity they have previously sold, and demand the economic premiums which might otherwise be unavailable to them as a matter of those prior sales. The Commission should deny the *EPUC/CAC Application* and allow, as even the *EPUC/CAC Application* implies is more appropriate, the parties to existing resource-adequacy contracts to determine their respective rights and obligations under the specific terms of existing contracts. The Commission should reject the invitation posed by the *EPUC/CAC Application* to interject itself into those private determinations by providing sellers with economic incentives to dispute settled contractual rights. At most, the Commission should defer consideration of the proposed clarification to the ongoing proceedings in this rulemaking.

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[4] See *EPUC/CAC Application,* at p.2.

While the *EPUC/CAC Application* presents its conclusion of law as a straightforward clarification, the results are hardly straightforward and the only clarity provided by the *EPUC/CAC Application* is that it will impair the rights of buyers. The Commission should reject this late, backdoor attack on existing contracts and deny the *EPUC/CAC Application*.

Respectfully submitted,

/s/ Alvin S. Pak

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