

Decision 09-01-008 January 29, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric
Company (U902E) for Expedited Approval of the
Miramar Energy Facility II Project.

Application 08-06-017
(Filed June 16, 2008)

**DECISION APPROVING APPLICATION BY SAN DIEGO GAS & ELECTRIC
COMPANY FOR THE MIRAMAR ENERGY FACILITY II PROJECT****1. Summary**

This decision approves the application by San Diego Gas & Electric Company (SDG&E) for a project with Miramar Energy Facility II (MEF II) for an Engineering, Procurement and Construction contract with Wellhead Services, Inc., and a contract with General Electric for the supply of a simple cycle gas-fired combustion turbine with a capacity of approximately 46.5 megawatts to provide peaking energy and capacity. The MEF II project will interconnect to the SDG&E system via the existing Miramar substation that also serves the Miramar Energy Facility I Project unit that is on the same site and was brought on-line in summer 2005. SDG&E owns the Miramar site, as well as the turbine/generator, and offered the MEF II project to the market for a competitive bid on a turnkey basis in its 2008 Peaker Request for Offers. Upon completion, the project will be owned and operated by SDG&E. SDG&E is authorized to recover in rates the cost of constructing and operating the MEF II project, consistent with the construction-related risk and reward incentive mechanism described in this decision.

2. Background

On June 16, 2008, SDG&E filed its application for approval of the MEF II project and supported the application with testimony and exhibits, including the Commission-approved Request for Offer (RFO) Solicitation Contract Approval Request (RFO Template).¹ The June 16, 2008 application also sought expedited approval of the project by September 4, 2008 so the unit could be on-line and available to serve SDG&E's summer 2009 peak load.

The Utility Consumers Action Network (UCAN), Western Power Trading Forum (WPTF) and MMC Energy, Inc. (MMC) filed protests and the Independent Energy Producers Association (IEP) filed a response to the application. UCAN and MMC objected to SDG&E's request for expedited approval of the project. UCAN, MMC, WPTF and IEP all questioned whether SDG&E's choice of the Engineering, Procurement and Construction (EPC) contract with Wellhead was the result of a fair competitive process, or if not, whether it met the exceptions for resources chosen outside of solicitations set forth in Decision (D.) 07-12-052.

A prehearing conference (PHC) was held on August 13, 2008 and MMC and WPTF requested evidentiary hearings (EH) on the issue of whether or not SDG&E had justified its request for expedited processing of the application, as well as EHs on the topic of whether or not the choice of the MEF II project met the Commission's specifications for procurement as established in D.07-12-052. A telephonic PHC to calendar the EHs was scheduled for September 9, 2008. In

¹ SDG&E's use of the RFO Template facilitated the Commission's review of the MEF II project.

advance of that conference, parties determined that no EHs were required for resolution of the application and a briefing schedule was set.

On September 10, 2008, an Administrative Law Judge (ALJ) ruling confirmed that no EHs were necessary, established the briefing scheduling, marked submitted testimony as exhibits and admitted the exhibits into the record.

Opening briefs were received on September 30, 2008 from MMC, IEP, WPTF and SDG&E. Reply briefs were received on October 15, 2008 from IEP and SDG&E.

3. Application

SDG&E supports its application for the MEF II project on (1) Commission authorized need for new generation, (2) the competitive nature of SDG&E's 2008 Peaker RFO, and (3) the unique qualities of the MEF II project. The testimony served in support of the application includes the RFO Template that details these factors.

3.1. Need for New Resources

To begin, SDG&E states that D.07-12-052, the most recent long-term procurement plan (LTPP) decision, approved a resource need for SDG&E's bundled customers' local and system resource adequacy (RA) requirements of 133 megawatts (MW) for already approved peakers, plus up to 400 MW of additional power depending on the approval and timing on the Sunrise Powerlink transmission project (Sunrise). The decision opined that if Sunrise was approved and came on-line as anticipated, SDG&E would not need any additional power in addition to the 133 MW of approved peakers. SDG&E filed a Petition for Modification (PFM) of D.07-12-052 requesting additional procurement authority, even if Sunrise is approved, to meet its customers needs

until power is actually available from the Sunrise project. On November 6, 2008, the Commission issued D.08-11-008 which granted SDG&E's PFM for the additional 400 MW. Therefore, SDG&E's request for the 46.5 MW associated with MEF II is within the utility's approved resource need numbers.

SDG&E also has unique local resource needs whereby the utility requires new, local generation in its service territory with or without the Sunrise Powerlink. When these resource needs are considered in light of the development and on-line date uncertainties associated with other yet-to-be built/completed projects in SDG&E's portfolio, the utility wants MEF II as a resource that can be on-line by summer 2009, as a hedge against the development risks of their other projects.

3.2. 2008 Peaker Request for Offers

As SDG&E details in its RFO Template, following the summer 2006 heat storm, the utility requested, and was granted, authority to procure resources that it needed, for the time frame it anticipated.² On October 17, 2006, SDG&E issued the 2008 Peaker RFO seeking "new generating capacity resources [that] will be either turnkey projects owned by SDG&E or 25-year tolling agreements with Respondent for the life of the resource."³ To make the projects more attractive to the bidders, the utility offered specific sites under the utility's control, Miramar, Pala and Margarita, and also offered an already purchased turbine/generator as part of the bid package to developers. Offers at the Miramar site were limited to turnkey projects, since SDG&E already had a facility, Miramar Energy Facility I

² Rulemaking 06-02-013 Scoping Memo, dated September 25, 2006 at pp. 26-27.

³ SDG&E's Opening Brief, September 30, 2008, p. 5, citing the RFO Template at Section II.A (p. 14).

(MEF I), on the same property. SDG&E's witness testified that market interest in the RFO was high, and once all bids were in, the utility began the process of analyzing and comparing the merits of each entry, preparing a quantitative ranking of the bids and selecting a "short list"⁴ of developers.

In the RFO Template, SDG&E provides details of the entire RFO process, but in summary, an offer was received for Pala, but no offers were received for projects at Miramar or Margarita. SDG&E states that it then re-offered these two sites to all other developers on its short list, other than the developer for Pala. The short-list developers were offered the opportunity to reconsider an EPC contract and deliver a turnkey project to SDG&E at the Miramar site. Wellhead was the only developer to express an interest in Miramar.

SDG&E then entered into a contract whereby Wellhead would utilize the turbine/generator already contracted for by the utility. As SDG&E contends, based on its conduct in the 2008 Peaker RFO, "MEF II was offered to the market via a competitive solicitation."⁵ In addition, all parties that participated in the RFO had the option to consider utilizing the already purchased turbines.

As part of the RFO process, SDG&E utilized an Independent Evaluator (IE) and consulted with its Procurement Review Group (PRG). SDG&E's RFO Template discusses the involvement of both the PRG and IE in the RFO process, and the IE submitted a Report of the Independent Evaluator (IE Report) which is attached to the RFO Template. The IE Report by PA Consulting Group was initially prepared on May 1, 2007 for the Pala and Margarita projects, and revised

⁴ RFO Template, Exhibit 1, pp. 22-23.

⁵ SDG&E Opening Brief, p. 8.

on June 4, 2008 to include the MEF II project at Miramar. In general, the IE Report addresses the following questions: Role of the IE; Was the IOU's Methodology for Bid Evaluation and Selection Designed Fairly?; Was the Least Cost, Best Fit (LCBF) Evaluation Process Fairly Administered?; How Did the IOU Conduct Outreach to Bidders, and Was the Solicitation Robust?; Project-Specific Negotiations; Affiliate Bids and Utility-Owned Generation (UOG) Ownership Proposals; and Code of Conduct.

In regard to Miramar and MEF II, PA Consulting reviewed SDG&E's financial analysis and the Miramar selection process. From the IE's review of the Miramar documents, "the selection . . . did not disadvantage any bidder at any point in the RFO. No bidders offered to build on that site, so none were eliminated in order to contract with Miramar. Furthermore the site and turbine were offered to Wellhead Power only after the shortlist was determined and all other shortlisted bidders were made the same offer. . . . Therefore, there is no unfairness in SDG&E's selecting this UOG proposal."⁶

3.3. MEF II

From SDG&E's perspective, MEF II is the least cost, best fit, opportunity for its ratepayers. The 46.5 MW simple cycle gas-fired combustion turbine facility will connect at the 69 kilovolt voltage level to the SDG&E system with an intertie to the MEF I facility and will provide peaking energy and capacity for meeting the utility's local and system RA as well as ancillary service needs, such as black start and non-spinning or quick-start reserves.⁷ As an RA supply

⁶ RFO Template, June 16, 2008, Attachment 9, SDG&E Miramar 2, IE Template, p. 7-2.

⁷ RFO Template, Exhibit I, p. 29.

addition, the unit will be dispatchable by the California Independent System Operator (CAISO) under the RA tariff provisions.

Pursuant to the EPC contract, Wellhead will undertake the permitting, construction and testing of the project and be responsible for all pre-commercial operations permitting. During the construction period, SDG&E will provide the Miramar facility site and the turbine. Upon completion and successful passing of performance criteria, Wellhead will be relieved of its obligation under the EPC contract and once the facility is in commercial operation, SDG&E becomes the responsible owner and operator.

The total project cost for MEF II as currently projected is \$56.5 million and SDG&E's testimony indicates that is a competitive price.⁸ SDG&E's application describes the interconnection costs to physically connect MEF II to the existing Miramar substation and the transmission system upgrades required to make the full capacity of MEF II deliverable. SDG&E proposes a construction risk/reward mechanism in which: (1) shareholders take no construction risk (and have no reward opportunities) for construction costs within 5% of the \$56.5 million project cost estimate, (2) shareholders take 10% of the construction risk/reward for the band that is 5% over (or under) to 15% over (or under) the estimated project cost, and (3) cost overruns in excess of 15% of the estimated project cost are subject to recovery through a regulatory review process (and shareholders have no reward opportunities for savings resulting from actual costs being greater than 15% below the estimated project cost).

⁸ *Id.*, pp. 25-28, and SDG&E Opening Brief, p. 10.

MEF II also meets the Commission's greenhouse gas (GHG) emission performance standards (EPS) for long-term contracts entered into by the investor-owned utilities (IOUs) as established in D.07-01-039. Under the EPS, a load-serving entity may enter into a long-term commitment to take power from a peaking power project (e.g., a facility with an estimated annual capacity factor less than 60%) without meeting the more stringent emissions requirements adopted in D.07-01-039. MEF II is a peaking project that will have an annual capacity factor less than 60%, and is therefore compliant with the EPS.

In addition, since MEF I is located on the site and has been on-line since summer 2005, MEF II will be built on a brownfield site consistent with Commission established procurement priorities. By utilizing an existing site, other greenfield sites will be preserved. In addition, there are certain economics that can be realized for both MEF I and MEF II since they can share common facilities.

3.4. Rate Treatment

SDG&E projects that the total cost for MEF II will be \$56.5 million. The components of the revenue requirement include ratebase; return; depreciation; taxes; and operating and maintenance expenses (O&M). SDG&E will record and recover MEF II costs as follows: non-fuel O&M and capital-related revenue requirements will be recorded in the Non-Fuel Generation Balancing Account (NFBA) for recovery from customers and fuel costs will be charged to the Energy Resource Recovery Account (ERRA). NFBA and ERRA costs are recovered through electric commodity rates applied to bundled service customers. SDG&E will seek recovery of the MEF II revenue requirement in SDG&E's next general rate case. When construction of MEF II is complete, SDG&E will file an advice

letter with the Commission that provides an update of the final construction costs and associated revenue requirements.

4. Discussion

The gravamen of the opposition to MEF II was focused first on SDG&E's request for an expedited decision and then on the process by which SDG&E chose the MEF II project. To begin, numerous parties challenged SDG&E's request to expedite the application and seek a Commission decision by September 4, 2008 - less than three months after the application was filed on June 16, 2008. The Commission did not expedite the application, so that issue is moot.

WPTF and UCAN were concerned with the process that led SDG&E to choose MEF II, a utility-owned asset, and not necessarily with whether MEF II was the least-cost, best-fit resource for the utility. Following the electricity market crisis of 2000-2001, the paradigm for electricity procurement shifted from the competitive process envisioned under the 1996 electricity restructuring to a hybrid market whereby both the regulated utilities and the independent power producers compete to provide power facilities. The Commission has signaled in numerous decisions its commitment to pursue policies and procedures that promote competition and customer choice, while maintaining a viable and workable electricity generation sector that assures reliable service at just and reasonable rates for customers. The Commission's preference for this end state was clearly established in D.07-12-052, the decision on the three IOUs' LTPPs for 2006-2015. D.07-12-052 recognized, however, that while the Commission is developing a functional competitive energy market, California is currently operating under a hybrid market.

D.07-12-052 stated “we continue to believe in a ‘competitive market first’ approach. As such we believe that all long-term procurement should occur via competitive procurements, rather than through preemptive actions by the IOU, except in truly extraordinary circumstances.”⁹ (Emphasis in original.) The decision further explained that before a utility could bring a resource to the Commission that met the “truly extraordinary circumstances” exception, “the IOU must make a showing that holding a competitive RFO is infeasible.”¹⁰ The extraordinary circumstances were identified as Market Power Mitigation; Preferred Resources; Expansion of Existing Facilities; Unique Opportunity; and Reliability.

SDG&E alleges in its application that MEF II is the result of its 2008 Peaker RFO. However, because there were atypical circumstances surrounding the choice of MEF II “within the 2008 Peaker RFO,” SDG&E also contends that should the Commission find that the resource was chosen outside of a competitive solicitation – MEF II meets every one of the five extraordinary circumstances listed above.

The Commission has carefully weighed SDG&E’s application, supporting testimony, (including the IE’s Report) and the utility’s briefs in support of MEF II and we have some of the same concerns expressed by parties regarding the process through which the MEF II project was selected. It is clear that MEF II was not a winning bid from the 2008 Peaker RFO. In fact, the utility states that it invited bids for the Miramar site and did not receive a single bid to build a

⁹ D.07-12-052, p. 206.

¹⁰ D.07-12-052, pp. 208-209.

turnkey facility, using the turbines already owned by SDG&E. SDG&E then chronicles the steps it took utilizing other winners from the 2008 Peaker RFO, to execute the MEF II contract. While SDG&E can trace its choice of MEF II to bidders from the RFO, the relationship between the RFO and MEF II is very tenuous at best and does not give the Commission and the other parties as much assurance that the resource and price were the result of a fair, open, and vigorous competitive solicitation process as a bid selected directly out of (and contemporaneously with) an RFO solicitation.

D.07-12-052 did anticipate that there could be exceptional circumstances that would justify a utility choosing a resource outside of a competitive solicitation. However, the intervenors argued that MEF II does not meet these enumerated exceptions. On November 6, 2008, the Commission issued D.08-11-008 modifying D.07-12-052. D.08-11-008 again addressed when a utility could chose a contract outside of a competitive solicitation and stated: “While extraordinary circumstances are by definition difficult to identify a priori, our intention is to set a high bar for an “appropriate circumstance” for an IOU to circumvent the potential for private ownership by soliciting EPC bids.”¹¹

The Commission finds compelling many of the arguments presented by intervenors that MEF II does not meet the exceptions to the competitive RFO process identified by the Commission. In fact, as discussed below, we find little merit in SDG&E’s arguments regarding whether the project conforms with four of the five extraordinary circumstances enumerated in D.07-12-052 (i.e., all but the reliability exception).

¹¹ D.08-11-008, pp. 19-20.

1. **Market Power Mitigation:** “The IOU must make a strong showing that as a result of some attribute of the desired resource, a private owner would have the ability to exert significant influence over the price of its development or of the price and quantity of its output (energy, capacity, or ancillary services).”

While D.07-12-052 did not provide specific guidelines for the “strong showing” an IOU must make that private ownership of the desired resource would result in market power, generally the Commission has defined a strong showing to involve some sort of benchmarking of a specific offer price to a comparable market price.

The tight local market SDG&E describes in its application as justification that UOG is needed to mitigate market power, including the (redacted) example SDG&E cites, could be a necessary condition to the exertion of market power, but its existence in and of itself does not represent a strong showing. In fact, SDG&E’s decision to select bids out of its RFO and the IE’s support of this decision do not support the conclusion that market power conditions requiring mitigation are present in SDG&E’s service territory at this time.

2. **Preferred Resources:** “While we continue to rely on markets to deliver efficiently priced products for ratepayers, we see no reason to limit our options and intend to continue to deploy all resources available to us, including utility development and ownership, to meet California’s vital environmental policy objectives.”

While the Commission applauds (and, indeed, requires) SDG&E’s focus on procuring conventional resources that will help integrate preferred resources – and in particular, intermittent renewable generation, the utility’s attempt to extend the Preferred Resources exception to any generation resource that helps integrate preferred resources is an alarmingly broad attempt to redefine the extraordinary circumstances defined in D.07-12-052.

3. **Expansion of Existing Facilities:** “We can envision certain unique circumstances in which ratepayers would benefit from development on or expansion of an existing IOU asset that would not lend itself to the PPA project structure, but the IOU would need to make a strong showing that such development were clearly preferable to a resource that could be obtained via a competitive solicitation that would not necessarily result in utility ownership”

We note that D.08-11-008 has since eliminated this stand-alone exception, but we address here SDG&E’s position that it applied to the MEF II project because the exception was in force at the time SDG&E submitted the application.

SDG&E’s “strong showing” that the MEF II project makes use of existing facilities in a manner that is “clearly preferable to a resource that could be obtained via a competitive solicitation that would not necessarily result in utility ownership” is limited to the fact that it is located on a larger SDG&E facility that serves distribution and transmission operations and units will “share certain interconnection facilities, an on-site control room, paralleled gas compressors, etc.”¹² with the MEF I unit.

Again, SDG&E appears to be confusing a necessary condition with a strong showing – we take it as a given that UOG projects circumventing the competitive solicitation process under the expansion of existing facilities exception would have been on utility property and shared facilities with existing UOG. SDG&E’s application provides no strong showing in support of this exception beyond this necessary condition.

4. **Unique Opportunity:** “An attractively priced resource resulting from a settlement or bankruptcy proceeding (we anticipate that these opportunities will diminish over time).”

¹² SDG&E A.08-11-008, p. 46.

The “unique opportunity” SDG&E cites for the MEF II project is that “In developing the RFO milestones and timelines, it became apparent that developers would encounter schedule difficulties in meeting summer 2008 on-line dates due to the long lead time required to obtain a turbine/generator,”¹³ so SDG&E pre-purchased equipment for the project that it claims would cost more to purchase now than the purchase price. While this may be the case, this state of affairs does not remotely resemble the type of opportunity articulated in D.07-12-052 as cited above. This sort of self-fulfilling prophesy in no way represents the “high bar” the Commission has set for procurement of UOG outside of a competitive solicitation, and we do not consider the MEF II circumstances as representative of a “unique opportunity.”

5. **Reliability:** “Resources needed to meet specific, unique reliability issues (particularly under circumstances in which it becomes evident that reliability may be compromised if new resources are not developed, and the only means of developing new resources in sufficient time is via UOG.”

We concur with SDG&’s assessment that there is an acute need for local capacity in its service territory by summer 2009 given the delays associated with a number of generation projects currently under development including resources selected in SDG&E’s 2008 peaker RFO, and MEF II will provide peaking energy and capacity that will contribute to SDG&E meeting its local and system RA requirements.¹⁴

¹³ Ibid, pp. 46-47.

¹⁴ As additional positive attributes, MEF II will be on a Brownfield site (since it will be developed on a site already developed for industrial use for the Miramar I project)

We also support the goals of realizing ratepayer savings and retiring aging, inefficient plants, and recognize that the expedited development of resources may obviate the need for the CAISO to sign up some of the aging plants in SDG&E's service territory on reliability-must-run (RMR) contracts is consistent with these goals.

While this goal is not explicitly stated as a component of the Reliability exception, it represents the type of consideration of ratepayer interests that the Commission must weigh in ruling on applications such as the MEF II application. So while we appreciate parties' requests for more prescriptive definitions of these exceptions, and we endeavored in the preceding paragraphs to provide additional guidance regarding the Commission's thinking in adjudicating them, we must balance this desire for specificity with the need to not restrict our decision-making abilities with overly-narrow definitions that would not best serve ratepayers.

The Commission finds that SDG&E needs MEF II due to the local reliability need it is facing as a result of a number of delayed local area generation projects. SDG&E did attempt to get MEF II built through the 2008 Peaker RFO, and while parties can now, with hindsight, critique what the utility did or did not do concerning the site and the RFO process, the end result was no bidder bid on the MEF II project. In addition, the IE has testified that the project is fairly priced and merits approval. Therefore, while we reiterate our commitment to an open, competitive process for the selection of procurement resources, we approve SDG&E's application to build and operate the MEF II project.

Regarding the requested rate treatment for MEF II, as described earlier in the decision, SDG&E proposes a construction risk/reward mechanism in which: (1) shareholders take no construction risk (and have no reward opportunities) for construction costs within 5% of the \$56.5 million project cost estimate, (2) shareholders take 10% of the construction risk/reward for the band that is 5% over (or under) to 15% over (or under) the estimated project cost, and (3) cost overruns in excess of 15% of the estimated project cost are subject to recovery through a regulatory review process (and shareholders have no reward opportunities for savings resulting from actual costs being greater than 15% below the estimated project cost). In light of the modification to the 50/50 cost sharing requirement made in D.07-12-052, SDG&E's proposed approach is fairly consistent with the risk/reward mechanism approved by the Commission in the PG&E Gateway settlement, which we find to be a reasonable model for a mechanism of this sort, and no ratepayer advocacy group (or any party, for that matter) provided arguments against or recommended any modifications to the proposed mechanism. Consequently, we adopt the proposed mechanism, and determine that once the project is constructed and operating consistent with its design specifications, the construction costs (consistent with the adopted risk/reward mechanism) and operating costs of MEF II should be recoverable from bundled ratepayers through rates.

5. Comments on the Proposed Decision

Comments were filed on December 8, 2008 by SDG&E, WPTF and IEP. Reply comments were filed by SDG&E, WPTF and IEP on December 15, 2008.

SDG&E generally supports the Proposed Decision (PD), but asked the Commission to emphasize that MEF II is the “product of unique and extraordinary [ordinary] circumstances,”¹⁵ and that the Commission should make more transparent its application of extraordinary circumstances to communicate clearly to the market that UOG is still a viable option available to a utility. Based on SDG&E’s comments, the PD was augmented to give as clear a signal as possible that we are approving MEF II because it is needed for local reliability in its service territory, and that this constitutes the extraordinary circumstance exception to the preferred competitive solicitation protocol.

WPTF asks the Commission to reject MEF II on the same grounds that we granted motions to dismiss Pacific Gas and Electric Company’s (PG&E) application for Tesla in D.08-11-004. In Tesla, PG&E did not hold a competitive RFO, and we found that PG&E did not “adequately establish that conducting a request for offer is infeasible; a central requirement to proposing utility owned generation outside of a competitive process, as required by Decision 07-12-052.”¹⁶ As described in this decision, SDG&E’s situation differs from the PG&E/Tesla situation in a number of ways (2009 local reliability need, CAISO requirements associated with the retirement of the South Bay project, the participation of an IE, etc.), so we decline to adopt WPTF’s suggestion to reject MEF II at this stage of the proceeding.

IEP’s comments focused on the decision’s rationale for approving MEF II and suggest that the final decision identify the “extraordinary circumstance” that

¹⁵ SDG&E Opening Comments, p. 3.

¹⁶ WPTF Opening Comments, p. 4, citing D. 08-11-004, p. 2.

triggers the exceptional treatment afforded MEF II.¹⁷ IEP acknowledges that D.07-12-052 established a framework for procurement through a competitive solicitation, unless exceptional circumstances justified utility-owned generation, and that D.08-11-008 further clarified those exceptions: “certain extraordinary circumstances that are unpredictable in advance may necessitate utility ownership of generation at a particular site.”¹⁸

D.08-11-008, in modifying D.07-12-052, gave the Commission flexibility to determine when a confluence of factors justified the Commission approving a UOG project chosen other than through a competitive solicitation. That is the situation that is facing SDG&E and the Commission: SDG&E did conduct an RFO that included soliciting bids for the Miramar site, no parties bid on this project, and other projects that SDG&E had in its procurement pipeline have experienced on-line date delays. This combination of factors led to a concern on the part of SDG&E that it might not have sufficient local area capacity in place by summer 2009 to meet its bundled customers’ reliability needs. SDG&E then took the steps it outlined in its application to secure an EPC contract for its Miramar site that could be on-line by summer 2009.

We carefully reviewed and considered IEP and WPTF’s comments and although we are approving MEF II, we are also admonishing SDG&E to have adequate procedures in place to ensure that they do not again find themselves in a reliability crisis without sufficient time to follow the procurement protocols set forth in D.07-12-052. Specifically, SDG&E must institute internal mechanisms

¹⁷ IEP Opening Comments, p. 4.

¹⁸ *Id.*, p. 3, citing D.09-11-008, pp. 19-20.

that are triggered when projects run into unanticipated delays or cancellations so that the utility can conduct a “fast track” RFO and procure needed reliability resources through the competitive solicitation process. This is a subject that may be explored further in Phase II of the current 2008 LTPP, R.08-02-007, or in another appropriate proceeding.

6. Assignment of Proceeding

President Michael R. Peevey is the assigned Commissioner and Carol A. Brown is the assigned ALJ in this proceeding.

Findings of Fact

1. SDG&E has a need for the 46.5 MW from the MEF II project to serve the needs of its bundled electric customers for summer 2009.
2. SDG&E’s contract with MEF II for an EPC contract with Wellhead and General Electric to supply 46.5 MW of peaking capacity and energy is a reasonable option to meet the need for SDG&E’s bundled customers.
3. SDG&E conducted a 2008 Peaking RFO and offered the Miramar site and already purchased equipment to bidders for a turnkey project, but no offers were received.
4. Since no offers were received for a turnkey project at the Miramar site, the procedures SDG&E took to secure an EPC contract for the site were reasonable under the unique circumstances of this application.
5. SDG&E’s proposed construction risk/reward mechanism is reasonable.
6. SDG&E’s request to recover the costs of the MEF II project through bundled ratepayer rates is reasonable.

Conclusions of Law

1. The EPC contract for 46.5 MW of peaking capacity and energy, deliverable by summer 2009, on the Miramar site is reasonable and should be approved.
2. The costs of the MEF II facility should be recovered from SDG&E's bundled ratepayers.

O R D E R

IT IS ORDERED that:

1. We authorize San Diego Gas & Electric Company (SDG&E) to enter into a project with Miramar Energy Facility II (MEF II) for an Engineering, Procurement and Construction contract with Wellhead Services, Inc. and General Electric for the supply of a simple cycle gas-fired combustion turbine with a capacity of approximately 46.5 megawatts to provide peaking energy and capacity.
2. We authorize SDG&E to collect the costs of the MEF II facility through rates from its bundled ratepayers.
3. Application 08-06-017 is closed.

This order is effective today.

Dated January 29, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners