

HSY/cla 11/30/2012



FILED

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902E) for Authority to Enter into Purchase Power Tolling Agreements with Escondido Energy Center, Pio Pico Energy Center and Quail Brush Power.

Application 11-05-023
(Filed May 19, 2011)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING MOTION FOR PARTY STATUS**

By motion filed November 27, 2012, Quail Brush Genco, LLC (Quail Brush) seeks party status. The motion is denied.

There is no question that Quail Brush has an interest in the proceeding as counterparty to one of the contracts that are the subject of the application. However, Quail Brush offers no explanation for its failure to act on its interest by participating in the proceeding in a timely fashion. Quail Brush states that it has relied on San Diego Gas & Electric Company (SDG&E) to represent its interests to date, but that, in light of the proposed and alternate proposed decisions (which deny the application with respect to the Quail Brush contract), it now wishes to participate directly on its own behalf. However, Quail Brush makes no showing that, in light of the proposed and alternate proposed decisions or any other interceding event, SDG&E no longer represent its interests.

Quail Brush states that it should be allowed to intervene at this late juncture because developers have been permitted to do so in the past. In the single example that Quail Brush references, the administrative law judge granted

the motion for party status upon finding that it raised no unique procedural or due process concerns. Here, Quail Brush's untimely intervention raises procedural and due process concerns. Quail Brush's motion includes disputable, material factual assertions regarding Quail Brush's financing ability and the impact of a Commission decision on Quail Brush's certification proceeding currently pending before the California Energy Commission, and makes disputable, material factual inferences regarding whether the contracts are consistent with SDG&E's procurement plan and the impact of a Commission decision on developers who rely on utility procurement plans. These disputable, material factual assertions and inferences could have and should have been supported by record evidence sponsored by a witness for Quail Brush. Allowing Quail Brush to intervene at this late date to offer up such assertions and inferences, without the opportunity for discovery and cross-examination by other parties, would be prejudicial.

I remind Quail Brush that, notwithstanding this ruling, it is an "interested person" pursuant to Rule 8.1(d) of the Commission's Rules of Practice and Procedure and any communications with decision makers are governed by the restrictions and requirements for *ex parte* communications under Article 8 of those rules.

IT IS SO RULED.

Dated November 30, 2012, at San Francisco, California.

/s/ HALLIE YACKNIN
Hallie Yacknin
Administrative Law Judge