

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED
04-26-13
04:59 PM

Application of San Diego Gas & Electric
Company (U902E) For Authority To
Implement Optional Pilot Program To Increase
Customer Access To Solar Generated
Electricity.

A.12-01-008
(Filed January 17, 2012)

**REPLY BRIEF
OF DIVISION OF RATEPAYER ADVOCATES
ON LEGAL ISSUES**

I. INTRODUCTION

The Division of Ratepayer Advocates (DRA) files this reply brief responding to other parties' arguments on questions posed in Administrative Law Judge (ALJ) Angela Minkin's Ruling of March 13, 2013. The Ruling asks whether San Diego Gas & Electric Company's (SDG&E) proposed "connected . . . to the sun" (CTTS) program complies with relevant law. In this brief, DRA:

- 1) Asserts that CTTS may improperly impose costs on bundled ratepayers;
- 2) Suggests modification that would keep the costs and revenues of the CTTS program out of SDG&E's bundled rates in order to maintain ratepayer indifference; and
- 3) Recommends that the Commission apply the Renewable Portfolio Standard's (RPS) *de minimis* principle in this proceeding.

II. DISCUSSION

A. CTTS Must Comply with the Principle of Ratepayer Indifference

In its Opening Brief, SDG&E states that it will recover CTTS program costs from subscribers and not other ratepayers to maintain ratepayer indifference.¹ However, as discussed below, in two ways, SDG&E's proposal may run contrary to this principle.

¹ *Opening Brief of San Diego Gas & Electric Company on Policy and Legal Matters*, filed April 8, 2013 (SDG&E opening brief) at 15-16. See also Workshop Day 1 presentation <http://www.sdge.com/sites/default/files/regulatory/SDG%26E%20Presentation%20-%20ctts%20Workshop%201.pdf>, slide 6.

1. The Commission Should Determine Whether CTTS Meets the *De Minimis* Principle

First, SDG&E will count unsubscribed CTTS energy towards its RPS requirements and recover the cost of that procurement from bundled ratepayers. While SDG&E and others characterize this risk to bundled ratepayers as minor,² structuring the program with a ratepayer backstop violates the principle of bundled ratepayer indifference.

One obvious solution to this problem is to have CTTS comply with the RPS statute and program rules, including the *de minimis* principle in Public Utilities Code §399.15(f).³ It is immaterial that the Commission has not yet determined what magnitude of rate increase is deemed to be *de minimis*, as TURN notes.⁴ The *de minimis* requirement is already in the RPS statute, and thus is the law of this state, so to the extent the RPS statute applies here, any program that violates the principle and causes more than a *de minimis* bundled ratepayer expense is unlawful. If, in fact, TURN is correct, then the Commission should wait to adopt CTTS until it adopts a rate impact limitation provision and fleshes out the *de minimis* rule in the RPS proceeding. DRA understands that work on a rate impact limitation provision is scheduled for July-September of this year in the RPS proceeding.⁵

Thus, the best approach would be to define and apply the *de minimis* principle in the context of CTTS so SDG&E and the other parties know what standard applies to this case. SDG&E acknowledges that the entire 20 MW of the program potentially could be subject to the ratepayer backstop. SDG&E further states: “if somehow SDG&E exceeded the cushion by the entire 20 MW on SDG&E’s total procurement costs, the effect on rates would likely be found *de minimis*.”⁶ DRA submits it is unlikely the Commission would ever find 20 MW to be *de minimis* in the context of a small IOU like SDG&E, but it is impossible to test SDG&E’s premise without defining what level of rate increase is *de minimis* for this case.

² SDG&E Opening Brief at 5; The Utility Reform Network (TURN) Opening Brief at 6.

³ The PG&E Green Option settlement raises the same policy issues: see *Joint Motion of Pacific Gas and Electric Company, The Utility Reform Network, Coalition of California Utility Employees, the Black Economic Council, National Asian American Coalition, Latino Business Chamber of Greater L.A., Sierra Club California, and California Clean Energy Committee to Adopt Settlement*, filed April 11, 2013 in A.12-04-040, available at <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=64025690>.

⁴ TURN Opening Brief at 5.

⁵ R.11-05-005 *Second Amended Scoping Memo and Ruling of Assigned Commissioner*, filed January 9, 2013, available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M042/K155/42155692.PDF>, at 7.

⁶ SDG&E Opening Brief at 10.

In determining the overall rate impact, the cost of over-procurement is not simply the cost of the RPS-eligible energy. As more variable resources are added to the grid, a greater amount of flexible capacity will be required in order to maintain grid reliability. Thus far the Commission has declined to adopt a “renewable integration” cost adder that is greater than zero, but analysis regarding the magnitude of renewable integration costs is still ongoing. The Commission and stakeholders are determining what level of flexible capacity is needed to meet the challenge of intermittent and variable resources in the Resource Adequacy proceeding (R.11-10-023). Thus, the future costs of flexible capacity/renewable integration are as yet unknown. Nevertheless, it would be unwise to assume a cost of zero for renewable integration for the life of the resources that SDG&E would procure under the CTTS program. Instead, SDG&E should provide a reasonable estimate for use in determining whether the CTTS program meets the *de minimis* standard.⁷

2. Using Ratepayer Funded Personnel and Equipment to Support CTTS Would Violate the Indifference Principle

Second, SDG&E will use ratepayer-funded personnel, equipment and other rate-based resources to administer the program, but does not address how to ensure CTTS compensates bundled ratepayers for this use.⁸ Further, during the second day of workshops, SDG&E explained that it was not requesting cost recovery for incremental program administration expenses, but would instead use funds previously approved in SDG&E’s last general rate case proceeding.² DRA raised the concern that such treatment risked shifting the cost of shared resources from CTTS participants to non-participating ratepayers. Thus far, SDG&E’s filings in this proceeding are silent regarding how incremental program administration costs would be recovered from CTTS participants.

⁷ On April 22, 2013 DRA sent a data request to SDG&E regarding incremental costs of the program; DRA anticipates that SDG&E will provide responses to those questions by May 6, 2013.

⁸ A.12-01-008 *Brief of the Marin Energy Authority*, filed April 8, 2013, at 9 (“SDG&E’s ratepayer-funded infrastructure, staffing, and resources could be utilized to promote, market, and otherwise support the proposed pilots.”).

² SDG&E provided a rough estimate of CTTS program administration costs. See Workshop Day 3 presentation <http://www.sdge.com/sites/default/files/regulatory/SDG%26E%20Presentation%20-%20ctts%20Workshop%203.pdf>, slide 12 (showing costs as a 20 year present value revenue requirement of \$3.5 million, escalated and fully loaded).

One straightforward way to maintain ratepayer indifference would be to keep all costs associated with the CTTS program out of bundled rates. The Commission found such a practice appropriate in Decision (D.) 12-12-037, where it ordered the utility to establish cost and revenue tracking mechanisms as a means to ensure that non-participating ratepayers would bear no cost or risk from a new program.¹⁰ The Commission can and should do the same here.

B. Voluntary Programs Should be Consistent With RPS program Rules

While SDG&E claims it may be able to bank or sell excess CTTS energy in the event of over-procurement,¹¹ banking or resale may not fully compensate bundled ratepayers.¹² Current energy SDG&E procures for CTTS may be more expensive than energy it would purchase in the future. If it banks this more expensive energy as part of the RPS program, it will cost ratepayers more than if it simply buys RPS-eligible megawatts when they are required under the RPS program. In this case, non-participating ratepayers will pay more, and more immediately, than they otherwise would have paid.

III. CONCLUSION

DRA appreciates SDG&E's efforts and engagement with stakeholders in designing two pilots that would enable its ratepayers to subscribe to a greater amount of renewable energy than RPS requires. DRA provides the foregoing recommendations to ensure that the CTTS maintains non-participating ratepayer indifference. To the extent CTTS procurement relies on non-participating ratepayers to provide the backstop for unsubscribed energy, such CTTS procurement must comply with RPS program rules, including the *de minimis* rule.

¹⁰ D.12-12-037, Ordering Paragraph 3.

¹¹ SDG&E Opening Brief at 8.

¹² In implementing the RPS program, the Commission has recognized the need to consider factors such as the impact on ratepayers and costs. *See, e.g.*, D.13-01-041.

Respectfully submitted,

/s/ SARAH R. THOMAS
SARAH R. THOMAS
Staff Counsel

Attorney for the Division of Ratepayer
Advocates

505 Van Ness Avenue
San Francisco, CA 94102
Phone: 415-703-2310
Fax: 415-703-2262
Email: srt@cpuc.ca.gov

April 26, 2013