



FILED

06-17-13
04:59 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company and San Diego Gas and Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3.

Investigation 12-10-013
(Filed October 25, 2012
Irvine, CA)

And Related Matters.

Application 13-01-016
Application 13-03-005
Application 13-03-013
Application 13-03-014

**COMMENTS OF COALITION TO DECOMMISSION SAN ONOFRE
AND WOMEN'S ENERGY MATTERS ON PROPOSED DECISION
OF ALJ DUDNEY AND ALJ DARLING**

June 17, 2013

Martha Sullivan, Organizer
Coalition to Decommission San Onofre
2354 Carmel Valley Rd.
Del Mar, CA 92014
858/945-6273
marthasullivan@mac.com

Barbara George
Women's Energy Matters
P.O. Box 548
Fairfax CA 94978
415/755-3147
wem@igc.org

Pursuant to California Public Utilities Commission (“Commission”) Rule of Practice and Procedure 14.3, the Coalition to Decommission San Onofre (CDSO) and Women’s Energy Matters (WEM) respectfully provide these comments on the Proposed Decision of ALJ Dudney and ALJ Darling Authorizing Energy Division to Retain Technical Consultants.

I. INTRODUCTION

The Proposed Decision would authorize the Director of the Energy Division to retain one or more technical consultants to advise the Commission, its staff and the assigned Administrative Law Judges in this proceeding. Costs of the consultant services not to exceed \$150,000 to be paid proportionately by San Onofre Nuclear Power Plant owners, Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E), who will establish a SONGS Technical Assistance Memorandum Account to record the costs of these consultant services, for which SCE and SDG&E may seek recovery in rates via advice letter.

The Proposed Decision cites one example of technical assistance the Commission, its staff and the assigned ALJs require in order to properly evaluate the issues of this Investigation: “complex nuclear engineering and safety (e.g., causes of the steam generator damage and repair/replacement proposals in Phase 3).”

The Proposed Decision states that the “Commission will send approved invoices related to the consultants to SCE and SDG&E for payment of costs incurred under the contract(s).”

II. DISCUSSION

A. Procurement of Consultant Services

The Proposed Decision provides no information about how the Director of the Energy Division will retain these technical consultants in compliance with State contracting laws and regulations¹, as well as the Commission’s own procedures put in place to ensure compliance with said state laws and regulations. We point to the

¹ **CALIFORNIA GOVERNMENT CODE**, Chapter 2: State Acquisition of Goods and Services; Article 2: Approval of Contracts [10295 -10299]; Article 4: Contracts for Services [10335 – 10381]

Commission's recent "Request for Qualifications for Consultants to work on Electric and Gas Projects, When Needed, in the State of California" for the "Preparation of California Environmental Quality Act Documents", issued pursuant to the Commission's General Order 163A.²

This RFQ lays out a schedule of approximately five months from publication of the RFQ to the establishment of a Qualified Consultant List, from which consultants will be contracted for specific projects. This RFQ also lays out extensive Conflict of Interest standards and disclosure requirements, and specifies selection criteria by which prospective consultants will be evaluated, including Conflict of Interest.

The controversy over the "causes of the steam generator damage" is well-publicized and documented, and on May 13, 2013, the U.S. Nuclear Regulatory Commission's (NRC) Atomic Safety & Licensing Board ruled that an adjudicatory License Amendment Hearing process is required in order to adequately evaluate these issues in the public interest. In light of this, *it is imperative that the Commission retain consultant services which are demonstrably independent of SCE, SDG&E, the nuclear power industry and the NRC, and that the acquisition of these consultant services be transparent to ensure such independence.*

Therefore, the Proposed Decision must be modified to specify the process for procurement of these consultant services, including Conflict of Interest Standards and Selection Criteria comparable to those the Commission requires for other technical consultant services, such as those most recently published in RFQ No. 12PW5057; *and recirculated for comment.* Alternatively, the resulting RFQ or Request for Proposal (RFP), including the conflict of interest and selection criteria, must be provided to the parties in this Proceeding for a comment period of at least 20 days.

B. Recovery of Costs for Technical Assistance

The Proposed Decision states that "The utilities may recover these costs in the STAMA in rates after filing a Tier 1 Advice Letter"; and orders this in Ordering Paragraph 6. These costs are a result of actions taken by SCE and SDG&E which are the subject of this Investigation, and should NOT be recovered in rates unless the Commission specifically determines it is warranted to do so after Phase 3 of this

² RFQ No. 12PW5057

Investigation is completed regarding the reasonableness of SCE's Steam Generator Replacement Project expenditures. As Assigned Commissioner Florio and ALJ Darling stated in the Scoping Memo for this Investigation:

"The Commission will examine the causes of the outages, the utilities' responses, and the future operation of the SONGS units as part of a review of SCE's actions, and *to assess what costs, if any, are appropriate for recovery from ratepayers.*" (Ruling of 1/28/13 at p. 2, emphasis added.)

Therefore, the Proposed Decision must be modified to delete this provision from the first full paragraph on Page 3 and from Ordering Paragraph 6.

C. Payment of Consultant Invoices

The Proposed Decision states that "SCE and SDG&E *should* pay these Commission-approved invoices in proportion to their ownership of SONGS ..." (emphasis added). With no procurement process for these consultant services specified in the Proposed Decision, this statement raises the question of by whom the consultants will be contracted – will the contract be between SCE and SDG&E and the consultants? If the contract will be between the State of California, with the Commission as its agent, and the consultants, how can payment of said consultants pursuant to said contract be made by SCE and SDG&E, who are not parties to said contract? As detailed in Section A, foregoing, this Proposed Decision must be modified to specify the procurement process for these consultant services, which shall include the Conflict of Interest Standards and Selection Criteria comparable to other solicitations of technical consultant services by the Commission. And the Proposed Decision must be modified to delete reference at Page 3 to payment of these consultants directly by the utilities which are the subject of this Investigation, to eliminate the potential for conflict of interest.

III. CONCLUSION

We believe the technical consultants are a good idea. It is surprising that the Commission waited until now to propose them. CDSO and WEM will oppose efforts to cut corners and engage people who would be less independent and therefore provide inadequate and non-credible advice to the Commissioners, the staff and the ALJs in this Investigation.

It is further surprising that the Proposed Decision would preemptively allow SCE and SDG&E to recover the costs of these technical consultants in rates, given that the primary purpose of this Investigation is to determine how much of the costs related to SCE's defective replacement steam generators should be left on the ratepayers' backs. Such recovery is necessarily a function of the decisions rendered by the Commission in this Investigation. Have we not had enough of defaulting to ratepayers to pay costs before determining whether such assignment is warranted by the facts?

In closing, CDSO and WEM respectfully point out that in this Proposed Decision, the Commission acknowledges the need for technical assistance to enable it, its staff and the ALJs to properly evaluate the issues of this Investigation. *This need is present whether the Commission completes this Investigation or considers whether a proposed settlement agreement is in the public interest and should be adopted.*

As required by Rule 14.3, please find appended "a subject index listing the recommended changes to the proposed or alternate decision, a table of authorities and an appendix setting forth proposed findings of fact and conclusions of law."

Respectfully Submitted,

/s/ Martha Sullivan

Martha Sullivan, Organizer
Coalition to Decommission San Onofre
2354 Carmel Valley Rd.
Del Mar, CA 92014
858/945-6273
marthasullivan@mac.com

/s/ Barbara George

Barbara George
Women's Energy Matters
P.O. Box 548
Fairfax CA 94978
415/755-3147
wem@igc.org

June 17, 2013

Subject Index listing the recommended changes to the proposed or alternate decision

Payment of Consultant Invoices: “And the Proposed Decision must be modified to delete reference at Page 3 to payment of these consultants directly by the utilities which are the subject of this Investigation, to eliminate the potential for conflict of interest.”

Page 4

Procurement of Consultant Services: “the Proposed Decision must be modified to specify the process for procurement of these consultant services, including Conflict of Interest Standards and Selection Criteria comparable to those the Commission requires for other technical consultant services, such as those most recently published in RFQ No. 12PW5057; *and recirculated for comment*. Alternatively, the resulting RFQ or Request for Proposal (RFP), including the conflict of interest and selection criteria, must be provided to the parties in this Proceeding for a comment period of at least 20 days. “

Page 3

Recovery of Costs for Technical Assistance: “the Proposed Decision must be modified to delete this provision from the first full paragraph on Page 3 and from Ordering Paragraph 6.”

Page 4

Table of Authorities

Commissioner/ALJ Rulings

I.12-10-013: Scoping Memo and Ruling, 1/28/13

CALIFORNIA GOVERNMENT CODE

Chapter 2: State Acquisition of Goods and Services

Article 2: Approval of Contracts [10295 -10299]

Article 4: Contracts for Services [10335 – 10381]

Appendix 1: Proposed Findings of Fact and Conclusions of Law

Findings of Fact:

2. In retaining said technical consultants, the Director of the Energy Division must comply with all applicable provisions of the California Public Contracts Code and regulations and rules promulgated therefrom.
3. The Commission has employed Conflict of Interest Standards and Selection Criteria in its procurement of technical consultants in accordance with its General Order 163A.
4. Such Conflict of Interest Standards and Selection Criteria provide a suitable and readily available model for establishing the same in the retention of technical consultants in this proceeding.
5. The scope of this Investigation includes assessing what costs, if any, are appropriate for recovery from ratepayers.

Conclusions of Law:

[Insert before current CoLs 1 and 2]

1. The Director of the Energy Division shall comply with all applicable provisions of the California Public Contracts Code and the regulations and rules promulgated therefrom.

[Add following current CoLs 1 and 2, re-numbered 2 and 3]

4. The treatment of the expenses so recorded will be determined by the Commission in assessing what costs, if any, associated with the San Onofre outages, are appropriate for recovery from ratepayers.