

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**1-03-14
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January 3, 2014

Agenda ID #12687
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 13-06-015

This is the proposed decision of Administrative Law Judge Hallie Yacknin. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's February 5, 2014 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.3(c)(4)(B).

/s/ DOROTHY H. DUDA, for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:dc3

Attachment

Decision **PROPOSED DECISION OF ALJ YACKNIN** (Mailed 1/3/2014)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric
Company (U902E) to Fill Local Capacity
Requirement Need Identified in D.13-03-029

Application 13-06-015
(Filed June 21, 2013)

(See Appendix for List of Appearances)

**DECISION GRANTING SAN DIEGO GAS & ELECTRIC COMPANY
AUTHORITY TO ENTER INTO A PURCHASE POWER TOLLING
AGREEMENT WITH PIO PICO ENERGY CENTER, LLC**

1. Summary

This decision grants San Diego Gas & Electric Company authority to enter into a purchase power tolling agreement with Pio Pico Energy Center, LLC and to recover the costs of the agreement, subject to a cost cap, through its local generation charge on an equal per kilowatt-hour basis by customer class.

This proceeding is closed.

2. Background

By Application (A.) 11-05-023, San Diego Gas & Electric Company (SDG&E) sought authority to enter into a power purchase tolling agreement (PPTA) with the Pio Pico Energy Center (Pio Pico), a 305 megawatt (MW)

generating facility, for a 20-year term starting in May 2014.¹ In resolving that application, the California Public Utilities Commission (Commission) identified a remaining need for up to 298 MW beginning in 2018 to meet SDG&E's local capacity requirement, and denied SDG&E authority to enter into the Pio Pico PPTA without prejudice to a new application for approval of the Pio Pico PPTA if amended to match the timing of the identified need. (*See* Decision (D.) 13-03-029.)

SDG&E brings this renewed application for approval of the Pio Pico PPTA, amended as follows:

- The amended PPTA has a start date of June 1, 2017, instead of May 27, 2014.
- The term of the PPTA is 25 years, instead of 20 years.
- The amended PPTA requires Pio Pico to become operational by September 1, 2015; SDG&E and Pio Pico intend to enter into a resource adequacy contract for deliveries starting in 2016 until commencement of the PPTA start date. SDG&E will separately seek Commission approval for the resource adequacy contract.

The issues to be determined, as identified in the scoping memo, are as follows:

1. Need: Is the PPTA needed to meet the local capacity requirement as identified in D.13-03-029?
2. Reasonableness of terms and conditions of the PPTA.
3. Reasonableness of SDG&E's ratemaking and cost allocation proposals.

¹ Pio Pico's operation of the Pio Pico Energy Center is subject to all applicable local, state and federal safety rules and regulations.

Evidentiary hearing was held on October 14, 2013. Parties filed opening briefs on November 8, 2013, and reply briefs on November 20, 2013, upon which the record was submitted.²

3. Need

3.1. Is the PPTA needed to meet the local capacity requirement as identified in D.13-03-029?

There is no reasonable dispute that the PPTA would provide resources to meet the local capacity requirement identified in D.13-03-029: D.13-03-029 identifies a need for up to 298 MW of additional local capacity starting in 2018, and the PPTA could meet this need.

Sierra Club and California Environmental Justice Alliance (CEJA) argue that the PPTA is not reasonable because some or all of the identified need could be met with demand response or energy storage resources. This argument constitutes an impermissible collateral attack on D.13-03-029's determination that SDG&E should procure up to 298 MW of local generation capacity to come on-line beginning in 2018.

3.2. Should the Commission defer consideration of this application pending the need determination in the 2012 Long-Term Procurement Plans (LTPP)?

Sierra Club and CEJA point out that several intervening events since the issuance of D.13-03-029 might affect the assessment of local area need, including the closure of the San Onofre Nuclear Generating Station (SONGS), the latest California Energy Commission (CEC) forecast of behind-the-meter rooftop solar,

² The Office of Ratepayer Advocates' (ORA) November 8, 2013, motion to file the confidential version of its opening brief under seal is granted for three years from June 1, 2017, pursuant to D.06-06-066.

and the issuance of D.13-10-040 setting a 165 MW energy storage procurement target for SDG&E for 2020. Sierra Club and CEJA also point out that, although D.13-03-029 assumed that the Cabrillo II combustion turbines would be retired in 2013, SDG&E has since negotiated an agreement to allow them to remain in service for a limited period. Utility Consumers Action Network (UCAN) argues that there is no need for the Commission to act on this application at this time because Pio Pico does not yet have a permit from the Environmental Protection Agency to start construction. Sierra Club, CEJA and UCAN therefore recommend that the Commission postpone acting on this application until it updates its determination of need for new resources to meet SDG&E's local capacity requirement in "Track 4" of Rulemaking (R.) 12-03-014, the LTPP for the 2012 procurement planning cycle and, presumably, approve or deny this application based on that updated need determination. We are not persuaded to discard the need determination made in D.13-03-029 as part of the 2010 LTPP³ in favor of a yet-to-be-made need determination in the 2012 LTPP.

It is not evident that the intervening events since the issuance of D.13-03-029 eliminate or reduce the need that was found in that decision. While Sierra Club and CEJA contend that future Commission action in response to the SONGS closure may eliminate Pio Pico as a reasonable or necessary solution for meeting the Local Capacity Requirements (LCR) need, it is at least equally possible that the SONGS closure creates an additional need for Pio Pico. As for

³ The issue of SDG&E's LCR need over the planning horizon 2011 through 2020 was transferred from the 2010 LTPP proceeding (R.10-05-006) to A.11-05-023 by joint ruling of the assigned Commissioners to the respective proceedings. (Joint Assigned Commissioners' Ruling, R.10-05-006/A.11-05-023, and January 18, 2012.)

the limited continued operation of the Cabrillo II combustion turbines, the fact that they will remain in service for a limited period does not meaningfully inform the issue of whether there is a need for additional local capacity beginning in 2018.

Furthermore, the Commission's planning and procurement process identifies need and authorizes procurement to meet it on a biannual basis. It is axiomatic that our biannual need determinations are transitory and subject to revision; that is not a reason to deviate from our long-term procurement planning process. Absent an unforeseen emergency situation that requires a patent response, which is not the case here, the public interest in regularly conducting and acting on a sound analysis of long-term need for procurement outweighs the unavoidable risk that the future will not exactly adhere to our well-considered forecasts.

3.3. Should the Commission defer consideration of this application until 2016 to await updated information on whether Encina will be retired?

The Utility Reform Network (TURN) points out that D.13-03-029's need determination is premised on the assumption that the Encina once-through cooling generation units would retire in 2018 and that, according to the record evidence, Pio Pico could be built in about 18 months and therefore commence construction as late as January 2016 and still meet the contract's June 1, 2017, start date. TURN therefore recommends that the Commission postpone acting on this application until 2016 to see if the evidence at that time still indicates that the Encina generation units will retire by the end of 2017 or, in the alternative, order SDG&E to share in any excess capacity costs that may result from Pio Pico if the Encina generation units are not retired.

We reject this recommendation. As discussed above, the public interest in the regulatory certainty afforded by adhering to our long-term planning and procurement process outweighs the speculative risk that the future will not exactly adhere to our well-considered forecasts.

3.4. Should the Commission reject the need determination made in D.13-03-029?

Protect Our Communities (POC) challenges the validity of D.13-03-029's need determination because it is based on a California Independent System Operator's (CAISO) power flow study that evaluated mitigation measures needed to maintain zonal and local reliability in the event of the outage of a portion of the Sunrise transmission line followed by the non-simultaneous loss of a portion of the Southwest Powerlink transmission line (an "N-1-1" contingency). POC argues that D.13-03-029 did not make a finding of fact, conclusion of law or ordering paragraph with respect to the reasonableness of the N-1-1 contingency and that, therefore, the Commission may not rely on D.13-03-029's need determination to address that issue and to consider new evidence that is relevant to that issue.

POC's argument is an impermissible collateral attack on the Commission's conclusion that the CAISO's modeling assumptions are reasonable, as well as erroneous (*see* D.13-03-029, Conclusion of Law 5).

4. Reasonableness of terms and conditions of the PPTA

4.1. Cost

4.1.1. Reasonableness

The original Pio Pico PPTA was one of three winning offers in SDG&E's 2009 Request for Offers (RFO). The bid ranking price of the amended PPTA is more favorable (i.e. lower) than the bid ranking price of the original PPTA due to

the delay in the start date and a ten-fold decrease in the transmission interconnection cost estimates since SDG&E initially evaluated it.

It is unlikely that issuing a new RFO would provide any price advantage to ratepayers, as market evidence shows that power plant costs have increased slightly since 2009. Furthermore, it is unlikely that issuing a new RFO would result in timely procurement to meet the identified need for new LCR generation capacity beginning in 2018, as the expected timeframe to complete a procurement process from issuance of an RFO to commercial operation of the selected resources is at least five years.

Because the amended PPTA remains competitive relative to the results of SDG&E's 2009 RFO, and because it is unlikely that issuing a new RFO would result in a competitive and timely alternative for meeting the identified LCR need, we find the cost of the Pio Pico PPTA to be reasonable.

Sierra Club and CEJA argue that, without having conducted an RFO that specifically targets the local capacity reliability area, SDG&E cannot know whether some or all of the need could be met with preferred renewable resources.⁴ However, of the renewable projects that had been proposed in SDG&E solicitations since the 2009 RFO, only 12 potentially are in the local area and, taken together, they would only minimally contribute to the 298 MW need. Furthermore, many of these projects have already been cancelled, are not seeking full deliverability status to count towards CAISO local capacity requirements,

⁴ Sierra Club and CEJA also argue that the potential for renewable procurement to meet SDG&E's LCR need is particularly strong because SDG&E's LCR need should be revised significantly downward. This argument constitutes an impermissible collateral attack on D.13-03-029's determination of SDG&E's LCR need.

and a number of them seek deliverability on the same paths and thus may not all be able to achieve local status. It is therefore unlikely that issuing a new RFO would result in local renewable generation projects that could significantly contribute to the 298 MW need.⁵

Sierra Club and CEJA argue that the value of the PPTA is diminished by new proposed federal regulations of carbon pollution that will directly implicate and limit Pio Pico's operations. Specifically, on September 20, 2013, the Environmental Protection Agency submitted for publication in the Federal Register a proposed rule that would require combustion turbines to meet carbon dioxide rates of less than 1100 lb/MWh or 1000 MMBtu, depending on their heat input. (*Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units*, EPA-HQ-OAR-2013-0495.) This argument is speculative, as the proposed rule is subject to the federal rulemaking process, where it will undergo comment and possible revision.⁶

⁵ Sierra Club and CEJA also argue that recent CEC forecasts that rooftop solar will provide 100 MW more peak capacity than assumed in D.13-03-029 is evidence that these claims of renewable scarcity are unfounded. To the extent that Sierra Club and CEJA mean to suggest that the increased forecast of rooftop solar reduces SDG&E's LCR need, this argument again constitutes an impermissible collateral attack on D.13-03-029's determination of SDG&E LCR need. To the extent that Sierra Club and CEJA mean to suggest that an RFO may result in rooftop solar generation projects to fill the LCR need, there is no evidence to suggest that a utility might procure rooftop solar; to the contrary, rooftop solar generation is more effectively a demand-side resource from the utility's perspective.

⁶ Sierra Club and CEJA argue that the proposed rule, once finalized, will apply to Pio Pico as a "new source" because Pio Pico has not "commenced construction," while Pio Pico counters that it has already "commenced construction" as that term is defined in the New Source Performance Standards (40 C.F.R. § 60.2). We do not reach that issue other than to note that the applicability of any new federal regulations to Pio Pico is disputed.

4.1.2. Cost cap

ORA proposes, and we adopt, SDG&E's revised transmission upgrade cost estimate, identified in Exhibit 23-C, as a cap on the actual transmission upgrade costs that SDG&E may recover from ratepayers.⁷ As the revised transmission upgrade cost estimate is one of the key drivers of the price competitiveness of the amended PPTA, adopting this cost cap will ensure that ratepayers receive the value upon which we have determined the amended PPTA to be reasonable.⁸

SDG&E argues that it is "standard practice" to allow cost recovery in excess of estimated costs if the estimates were done in good faith with the best available information at the time. To the contrary, the practice of limiting rate recovery of costs to good-faith estimates can be found in statute: Public Utilities Code Section 1005.5 requires the Commission, in authorizing a utility to construct new plant, to limit the utility's rate recovery to the estimated reasonable cost of such construction. This practice and the principle upon which it is based are equally appropriate with respect to requests for authority to enter into a power purchase agreement.

4.2. Discrepancy between identified need and Pio Pico size

Sierra Club and CEJA argue that the PPTA is not reasonable because the Pio Pico generating facility is 305 MW while D.13-03-029 authorized SDG&E to

⁷ Exhibit 23-C is confidential and sealed from public disclosure by ALJ ruling. (RT 126-127, 136.) We hereby clarify that, pursuant to D.06-06-066, confidential treatment for Exhibit 23-C and all other market sensitive information that has been sealed shall expire three years from June 1, 2017.

⁸ We note that the revised estimate is made with 80% of the design completed, it includes a 50% contingency on the cost to install a series reactor, and it includes a 30% overall contingency.

procure only 298 MW. This argument is unpersuasive for three reasons: First, notwithstanding the nameplate capacity of the Pio Pico generating facility, the monthly capacity payment under the PPTA is based on a contract capacity of 300 MW. (Ex. 1-C, Appendix E (PPTA, Appendix 9.2).)⁹ As a matter of ratepayer cost, therefore, the risk of overcapacity is only 2 MW. Second, pursuant to the PPTA, the Pio Pico generating facility may achieve commercial operation at as low as 95% of its expected contract capacity, i.e., by operating at as low as 290 MW. (Ex. 1-C, Appendix E (PPTA, Appendix A at A-3).) As this suggests, there is no assurance (or contractual requirement) that the Pio Pico generating facility have an actual operating capacity equal to its nameplate capacity. Finally, it is not apparent and no party suggests that a generating facility can be designed for exactly 298 MW. For all these reasons, it is reasonable to approve the PPTA for the 305 MW Pio Pico generating facility notwithstanding the identified need is 298 MW.

4.3. Increase in term from 20 to 25 years

Sierra Club and CEJA argue that the increase in the term of the PPTA from 20 years to 25 years is not reasonable because it creates an additional five years of commitment to a fossil fuel facility even as California increasingly deploys preferred resources in moving toward a near-zero emission strategy for the energy sector. This argument is unpersuasive. Pio Pico will assist in the deployment of preferred resources by providing peaking and load-following generation that will complement intermittent renewable resources. In addition, Pio Pico will immediately and over time displace less efficient and higher

⁹ We find that the information disclosed in this summary discussion does not require

Footnote continued on next page

emitting gas-fired plants. The increase in the PPTA's term from 20 to 25 years does not conflict with California's movement toward a near-zero emission strategy.

4.4. June 1, 2017, versus January 1, 2018, start date

Although D.13-03-029 directed SDG&E to procure local generation capacity beginning in 2018, the amended PPTA provides for SDG&E to begin purchasing power in June 2017. Although SDG&E sought a later start date, Pio Pico refused on the basis that delaying construction to achieve the later start date could affect its viability in light of increased development and financial risks. On balance, we find that the cost of purchasing power beginning seven months before the forecasted need is outweighed by the benefit of having this PPTA available when the need begins.

5. Reasonableness of SDG&E's ratemaking and cost allocation proposals

SDG&E seeks authority to record the costs of the amended PPTA in its Local Generation Balancing Account and to recover those costs through a Local Generation Charge from all bundled service, direct access, and community choice aggregation customers on an equal per kilowatt-hour basis by customer class pursuant to Pub. Util. Code § 365.1(c)(2)(A), and consistent with the Cost Adjustment Mechanism (CAM) as provided in D.11-05-005, which implements the statute. Pub. Util. Code § 365.1(c)(2)(A) mandates that the Commission allocate costs for local area reliability needs to all customers. As our approval of

confidential treatment.

the amended PPTA is for purposes of meeting local reliability criteria, we find that CAM treatment is appropriate and reasonable.

Direct Access Customer Coalition and the Alliance for Retail Energy Markets (DACC/AREM) argue that the Commission should defer the question of whether CAM treatment is appropriate for the Pio Pico PPTA until it comprehensively addresses the issue of whether CAM treatment is appropriate for new utility procurement that is required to replace SONGS power. DACC/AREM insist that the fact that SDG&E and Pio Pico intend to enter into a resource adequacy contract for deliveries starting in 2016 until commencement of the PPTA June 1, 2017, start date to replace SONGS power proves that the power associated with the remainder of the PPTA is also to replace SONGS power. These arguments are without merit. The Pio Pico PPTA is required to meet the LCR need identified in D.13-03-029, which did not assume any need to replace SONGS power. Costs for local area reliability need are properly allocated to all customers pursuant to statute. (Pub. Util. Code § 365.1(c)(2)(A).) Whether or not a contract for power deliveries commencing before the PPTA's June 1, 2017, start date is need for resource adequacy and, if so, whether it is subject to CAM treatment is beyond the scope of this proceeding.

San Diego Energy District Foundation argues against the CAM on principle as a general matter, without addressing its applicability to the PPTA. San Diego Energy District Foundation's argument constitutes an impermissible collateral attack on D.11-05-005 and, indeed, on Pub. Util. Code § 365.1(c)(2)(A) itself.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Hallie Yacknin is the assigned Administrative Law Judge and presiding officer in this proceeding.

7. Comment on Proposed Decision

The ALJ's proposed decision was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____. The Commission hereby adopts the ALJ's proposed decision.

Findings of Fact

1. Pio Pico's operation of the Pio Pico Energy Center is subject to all applicable local, state and federal safety rules and regulations.
2. The PPTA will provide resources to meet the LCR need for 298 MW beginning in 2018 as determined in D.13-03-029.
3. The original PPTA was one of three winning offers in SDG&E's 2009 RFO.
4. The bid ranking price of the amended PPTA is more favorable (i.e. lower) than the bid ranking price of the original PPTA due to the delay in the start date and a ten-fold decrease in the transmission interconnection cost estimates since SDG&E initially evaluated it.
5. It is unlikely that issuing a new RFO would result in a competitive and timely alternative for meeting the identified LCR need.
6. Because the monthly capacity payment under the PPTA is based on a contract capacity of 300 MW, the risk of overcapacity relative to the LCR need of 298 MW is only 2 MW in terms of ratepayer cost.
7. There is no assurance (or contractual requirement) that the Pio Pico generating facility have an actual operating capacity equal to its nameplate capacity.

8. There is no evidence that a generating facility can be designed for exactly 298 MW.

9. Pio Pico will assist in the deployment of preferred resources by providing peaking and load-following generation that will complement intermittent renewable resources, and will immediately and over time displace less efficient and higher emitting gas-fired plants.

10. Although SDG&E sought a later start date than June 2017, Pio Pico refused on the basis that delaying construction to achieve the later start date could affect its viability in light of increased development and financial risks.

11. The Pio Pico project obtained CEC certification on September 12, 2012. (2011-AFC-1.) The CEC's certification process is a certified regulatory program under the California Environmental Quality Act and, as such, conditions certification on mitigation of the project's significant environmental and safety impacts.

Conclusions of Law

1. Absent an unforeseen emergency situation that requires a patent response, the public interest in regularly conducting and acting on a sound analysis of long-term need for procurement outweighs the unavoidable risk that the future will not exactly adhere to our forecasts.

2. The cost of the Pio Pico PPTA, with transmission upgrade costs capped at the amount of SDG&E's revised cost estimate shown in Exhibit 23-C, is reasonable.

3. It is reasonable to adopt SDG&E's revised transmission upgrade costs as a cap on the transmission upgrade costs that SDG&E may recover from ratepayers.

4. Sierra Club, CEJA and POC's arguments challenging the LCR need determination in D.13-05-029 constitute impermissible collateral attacks.

5. It is reasonable to approve the PPTA for the 305 MW Pio Pico generating facility notwithstanding the identified need is 298 MW.
6. The increase in the PPTA's term from 20 to 25 years does not conflict with California's movement toward a near-zero emission strategy.
7. On balance, the cost of purchasing power beginning seven months before the forecasted need is outweighed by the benefit of having this PPTA available when the need begins.
8. As our approval of the amended PPTA is for purposes of meeting local reliability criteria, CAM treatment is appropriate and reasonable.
9. San Diego Energy District Foundation's argument challenging the CAM constitutes an impermissible collateral attack on D.11-05-005 and Pub. Util. Code § 365.1(c)(2)(A).
10. ORA's November 8, 2013, motion to file the confidential version of its opening brief under seal should be granted for three years from June 1, 2017, pursuant to D.06-06-066.
11. Pursuant to D.06-06-066, confidential treatment for all market sensitive information that has been sealed by ALJ ruling should expire three years from June 1, 2017.
12. All pending motions that are not otherwise granted in this order should be deemed denied.

13. This decision should be effective today.
14. Application 13-06-015 should be closed.

O R D E R

IT IS ORDERED that:

1. San Diego Gas & Electric Company is authorized to enter into a Power Purchase Tolling Agreement with the Pio Pico Energy Center, LLC for a 25-year term starting in June 2017.
2. San Diego Gas & Electric Company is authorized to record the costs of the Power Purchase Tolling Agreement with the Pio Pico Energy Center, LLC, with transmission upgrade costs capped at the amount of SDG&E's revised cost estimate as shown in Exhibit 23-C, in its Local Generation Balancing Account for recovery on a non-bypassable basis from all customers.
3. The Office of Ratepayer Advocates' November 8, 2013, motion to file the confidential version of its opening brief under seal is granted for three years from June 1, 2017.
4. Pursuant to D.06-06-066, confidential treatment for all market sensitive information that has been sealed by ALJ ruling shall expire three years from June 1, 2017.
5. All pending motions that are not otherwise granted in this order are deemed denied.
6. Application 13-06-015 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX

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END OF APPENDIX