

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**9-12-14
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September 12, 2014

Agenda ID #13295
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 12-03-014:

This is the proposed decision of Administrative Law Judge David M. Gamson. 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 October 16, 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/ MARYAM EBKE for
Timothy J. Sullivan
Chief Administrative Law Judge (Acting)

TJS:sbf

Attachment

Decision **PROPOSED DECISION OF ALJ GAMSON** (Mailed 9/12/2014)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Integrate
and Refine Procurement Policies and
Consider Long-Term Procurement Plans.

Rulemaking 12-03-014
(Filed March 22, 2012)

**DECISION DENYING PROTECT OUR COMMUNITIES FOUNDATION
PETITION FOR MODIFICATION OF DECISION 14-03-004****Summary**

This decision denies a Petition for Modification of Decision 14-03-004 from Protect Our Communities Foundation regarding long-term procurement plans for local capacity stemming from the 2013 early retirement of the San Onofre Nuclear Generation Stations.

1. Background

This proceeding is the Commission's 2012 Long-Term Procurement Plan (LTPP) proceeding. Among other things, decisions have been issued in this proceeding to ensure reliability by authorizing Southern California Edison Company (SCE) to procure sufficient local capacity through 2022 in capacity-constrained local areas in California under the Commission's jurisdiction.

Decision (D.) 13-02-015 authorized SCE to procure between 1400 and 1800 Megawatts (MW) in the Los Angeles Local Reliability Area, and between 215 and 290 MW in the Big Creek/Ventura Local Reliability Area, by 2022. That decision determined that SCE's procurement must include specified amounts of

gas-fired resources, preferred resources (including renewable, energy efficiency and demand response resources) and energy storage resources.

D.14-03-004 authorized additional local procurement in southern California due to the early retirement of the approximately 2200 MW San Onofre Nuclear Generation Stations (SONGS). That decision authorized SCE to procure by 2022 between 500 and 700 MW in the Los Angeles Local Reliability Area (in addition to the amount authorized for that local area in D.13-02-015), and authorized San Diego Gas & Electric Company (SDG&E) to procure between 500 and 800 MW in the San Diego Local Reliability Area. Similar to D.13-02-015, D.14-03-004 determined that SCE and SDG&E's procurement must include specified amounts of gas-fired resources, preferred resources (including renewable, energy efficiency and demand response resources) and energy storage resources.

**2. Protect Our Communities Foundation (POC)
Petition for Modification of D.14-03-004**

On May 22, 2014, POC filed a Petition for Modification of D.14-03-004. The POC Petition seeks to modify Finding of Fact 49 of that decision to add the following language: "576 MW of naturally occurring Energy Efficiency (EE) is very likely to be in place and available to meet the SONGS area Local Capacity Requirements (LCR) by 2022."

POC claims that in calculating the LCR for the SONGS area, D.14-03-004 fails to account for 576 MW of "naturally occurring" EE savings in part based on the claim that the "naturally occurring" EE identified by National Resources Defense Council (NRDC) and the Sierra Club was "based on a California Energy Commission (CEC) staff draft forecast of uncommitted energy efficiency that came out in September 2013."

POC argues that D.14-03-004 commits a factual error in its claim that this 576 MW of “naturally occurring” EE was based on a draft report. Instead, POC claims that the 576 MW of “naturally occurring” savings do not come from the September 2013 CEC draft forecast, but from the CEC’s *Estimates of Incremental Uncommitted Energy Savings Relative to the California Energy Demand Forecast 2012-2022*, a final report issued in September of 2012.

SCE and SDG&E filed a joint response to the POC Petition on June 23, 2014. SCE/SDG&E argue that POC’s allegation that 576 MW of “naturally occurring” EE was from the September 2012 California Energy Demand Forecast 2012-2022 is wrong, and its claim is inconsistent with the evidentiary record in this case. SCE/SDG&E argue that POC is essentially arguing that D.14-03-004 did not include 576 MW of “naturally-occurring” EE in its calculations. SCE/SDG&E point to SCE’s Reply Brief at 26-28, which shows that the CEC California Energy Demand 2012-2022 Final Forecast captures any “naturally occurring” EE savings. Therefore, SCE/SDG&E argue that the Commission was right not to include additional “naturally occurring” EE in the Track 4 assumptions as “naturally occurring” EE was already properly reflected in them.

The question is whether D.14-03-004 should be modified due to an alleged factual error regarding “naturally-occurring” EE. POC claims the decision should have added 576 MW¹ of “naturally-occurring” EE (thus potentially

¹ D.14-03-004 at 35 refers to different MW figures than the 576 MW cited by POC in its Petition:

NRDC contends the energy efficiency estimates that the Independent System Operator (ISO) and SCE relied on: (i) were based on an incomplete assessment of energy efficiency potential; (ii) omitted incremental “naturally-occurring” savings that are by definition reasonably expected to occur; and (iii) incorrectly used a

Footnote continued on next page

reducing the MW need) while SCE/SDG&E claim “naturally-occurring” EE was effectively included in the calculation because it was embedded in a CEC forecast incorporated into the decision’s methodology.

Finding of Fact # 49 in D.14-03-004 states: “The energy storage targets adopted in D.13-10-040 cannot be assumed to count toward meeting the LCR need on a megawatt-for-megawatt basis. Potential amounts of demand response, energy efficiency or solar PV resources also cannot be assumed to count toward meeting the LCR need on a megawatt-for-megawatt basis.”

Nothing in POC’s Petition provides any basis for determining that Finding of Fact #49 is factually incorrect. POC wishes to add unrelated language to Finding of Fact #49. However, the record shows that SCE/SDG&E are correct that “naturally-occurring” EE actually was included in the methodology adopted by D.14-03-004. Thus, there is no factual error and no need to modify D.14-03-004 on this point.

3. Additional Issues Raised by POC

In its Petition, POC raises two additional sets of issues.

First, POC did not timely file an Application for Rehearing of D.14-03-004, but claims that it did not receive proper notice of the decision. Therefore, POC seeks to have the Commission modify the Date of Issuance of D.14-03-004 to allow an Application for Rehearing which was tendered to the Commission’s

low estimate of efficiency in SDG&E’s local area instead of the mid estimate. NRDC claims that including these additional energy efficiency savings increases the energy efficiency assumptions used in the ISO’s and SCE’s modeling by 885 MW in the SONGS study area, with 543 MW in the LA Basin and 342 MW in the San Diego local area. (footnotes omitted)

Docket Office to be filed as timely. On May 22, 2014 (the same date as for this Petition), POC also filed a Motion in this proceeding seeking the same change to the Date of Issuance of D.14-03-004. This Motion was denied by an Administrative Law Judge (ALJ) Ruling on June 6, 2014.

The specific issue raised by POC in its May 22 Motion and in the Petition is whether it received timely official notice of D.14-03-004 through the Notice of Availability (NOA), which the Commission uses to meet the requirements of Public Utilities (PU) Code Section 1731(b)(2) that the Commission notify parties to a proceeding when a decision in that proceeding is issued. POC claims that it did not receive the NOA until April 24, 2014, and thus requests that the date of issuance for D.14-03-004 should be set as April 24, 2014.

In the June 6 ALJ Ruling, the ALJ determined that POC did receive notice of and service of D.14-03-004 through the NOA at the same time as all other parties. The Ruling states at 2:

The Commission's Process Office proof of service shows that notice of D.14-03-004 was sent by U.S. mail on March 14, 2014 to the service list for R.12-03-014. The NOA includes a printed link to the Commission website location where the full decision can be found. While POC claims to have not received this NOA, it was nonetheless mailed properly and timely mailed to POC and the entire service list. The Process Office has no indication that the NOA sent to POC was returned.

On July 7, 2014, POC filed a Motion for Reconsideration of the ALJ's Ruling.² POC claims the Ruling commits a significant error of law in finding that a Notice of Availability constitutes valid notice and sufficient service to establish

an issuance date for the Decision. POC states: “While there is a Proof of Service document for the Decision itself, this Proof of Service provides no evidentiary support for the Decision’s assertion that POC was served a NOA. The cover sheet for the Proof of Service clearly refers to a full copy of the Decision, and makes no mention of a Notice of Availability.”

POC’s claim of error in the Ruling has no merit. The proof of service states that a “copy” of the decision was provided to the service list. The NOA mailed to the service list includes a printed web link to the full decision. There is no material difference between providing the service list with a printed web link to the full decision, and providing the full decision itself. In either case, the service list is provided with access to the full decision. We hereby affirm the ALJ’s June 6, 2014 Ruling.

Second, in lieu of a timely Application for Rehearing, POC enumerates a number of additional issues which it states that it would have pursued in such a filing. Rule 16.4(b) states in part: “Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.” By contrast, Rule 16.1 states in part: “The purpose of an Application for Rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.” POC should have timely filed an Application for Rehearing. It is not appropriate to use a Petition for Modification to raise issues which should have been raised in an Application for Rehearing.

² This Motion for Reconsideration is an interlocutory appeal. The Commission’s Rules have no provision for an interlocutory appeal. Nevertheless, we use our discretion to consider here the issues raised in the Motion.

Sections IV – IX of the POC Petition elaborate issues POC says it would have filed in an Application for Rehearing, had such an Application been timely filed or had the Commission granted its Motion to modify the Date of Issuance of D.14-03-004. As neither of these two circumstances hold, POC’s opportunity to raise such legal challenges has expired.

For these reasons, the POC Petition is denied.

4. Comments on Proposed Decision

The proposed decision of the ALJ in this matter 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 _____.

5. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and David M. Gamson is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. “Naturally-occurring” EE was included in the methodology adopted by D.14-03-004.
2. The proof of service for D.14-03-004 states that a “copy” of the decision was provided to the service list. The Notice of Availability mailed to the service list includes a printed web link to the full decision.
3. POC did not file a timely Application for Rehearing of D.14-03-004.

Conclusions of Law

1. There is no factual error and no need to modify D.14-03-004 regarding “naturally-occurring” EE.

2. There is no material difference between providing the service list with a printed web link to the full decision, and providing the full decision itself. In either case, the service list is provided with access to the full decision.
3. POC's claim of error in the June 6, 2014 ALJ Ruling has no merit.
4. The June 6, 2014 ALJ Ruling should be affirmed.
5. Allegations of legal error are to be considered in an Application for Rehearing, not a Petition for Modification.
6. The POC Petition should be denied.

O R D E R

IT IS ORDERED that:

1. The June 6, 2014 Administrative Law Judge's Ruling in this docket is affirmed.
2. The May 22, 2014 Protect Our Communities Foundation Petition for Modification of Decision 14-03-004 is denied.
3. Rulemaking 12-03-014 remains open.

This order is effective today.

Dated _____, at San Francisco, California.