

Decision **PROPOSED DECISION OF ALJ GAMSON (Mailed 7/15/2014)**

**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)

(See Attachment A for Service List)

**DECISION DENYING PETITIONS FOR MODIFICATION**

**1. Summary**

This decision denies two Petitions for Modification<sup>1</sup> regarding review of San Diego Gas & Electric's (SDG&E) procurement plan arising out of Decision (D.) 14-03-004:

- Petition for Modification of D.14-03-004 by Sierra Club, California Environmental Justice Alliance, and Vote Solar Initiative seeking informal comment on the SDG&E procurement plan; and
- Petition for Modification of D.14-03-004 by Natural Resources Defense Fund, Center for Energy Efficiency and Renewable Technologies, Environmental Defense Fund, and Clean Coalition seeking an Advice Letter process for SDG&E's procurement plan.

**2. Background**

This proceeding is the Commission's 2012 Long-Term Procurement Plan (LTPP) proceeding. Among other things, decisions have been issued in this

<sup>1</sup> A Petition for Modification of D.14-03-004 filed by Protect Our Communities Foundation (POC) will be addressed in a separate decision. A Petition for Modification of D.13-02-015 by Terra-Gen Power, LLC (Terra-Gen) will also be addressed in a separate decision.

proceeding to ensure reliability by authorizing Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) 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.13-02-015 also established a process for SCE to procure these resources, allowing for both bilateral contracts and an all-source Request for Offers (RFO), based on a procurement plan to be approved by the Energy Division, consistent with the parameters of D.13-02-015, before SCE could commence procurement activities. Ordering Paragraph 5 of D.13-02-015 stated:

SCE shall provide a procurement plan for all required and authorized resources in the Los Angeles Basin and Big Creek/Ventura local areas to Energy Division no later than 150 days after the effective date of this decision. SCE shall show that its proposed procurement plan is consistent with Ordering Paragraph 4. SCE shall not go forward with any public procurement process until Energy Division approves the process in writing, except that SCE may proceed with parts of its procurement plan if so authorized. SCE also shall adhere to previous Commission decisions regarding this proposed procurement process, including consultation with the Procurement Review Group and Independent Evaluators.

SCE's procurement plan was approved by the Energy Division in September, 2013. SCE has not yet filed an application for approval of any resources stemming from D.13-02-015 authority, or related authority from D.14-03-004.

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 Station. That decision authorized SCE to procure 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 SDG&E to procure between 500 and 800 MW in the San Diego Local Reliability Area, by 2022. 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.

D.14-03-004 also established a process for SDG&E to procure these resources, allowing for both bilateral contracts and an all-source RFO and required the SDG&E's procurement plans be approved by the Director of the Energy Division, consistent with the parameters of D.14-03-004, before SDG&E could commence procurement activities (including filing of any bilateral contracts for Commission approval). Ordering Paragraph 7 of D.14-03-004 states:

No later than 90 days after the effective date of this decision, San Diego Gas & Electric Company (SDG&E) shall submit a procurement plan to be reviewed and approved in writing by the Director of the Energy Division. SDG&E may propose in its procurement plan a separate, earlier application for gas-fired generation. The procurement plan shall include a proposed Request for Offers as required by Ordering Paragraph 6. SDG&E shall not commence any procurement activities until the Director of the Energy Division approves its procurement plan, which shall be reviewed consistent with this decision. The SDG&E procurement plan shall be subject to the same procurement plan requirements of Ordering Paragraphs 6, 7 and 8 in Decision 13-02-015 as were required of Southern California Edison Company. In addition, SDG&E shall provide to Energy Division all of the information listed in Attachment B to this decision. If SCE issues one or more additional Requests for Offers to

procure capacity pursuant to this decision, it shall also provide to Energy Division all of the information listed in Attachment B to this decision.

**3. Sierra Club, California Environmental Justice Alliance, and Vote Solar Initiative Petition for Modification of D.14-03-004**

On June 12, 2014, Sierra Club, California Environmental Justice Alliance, and Vote Solar Initiative jointly filed a Petition for Modification of D.14-03-004 (Sierra Club Petition). The Sierra Club Petition seeks to modify D.14-03-004 to require formal notice and comment of the proposed procurement plans SDG&E submitted for Energy Division approval under D.14-03-004, and to have the SDG&E procurement plans served on the service list to this proceeding. The Sierra Club Petition argues that notice and comment is needed to facilitate procurement plan compliance, provide transparency in procurement plan approval, and restore public confidence in the approval process for plans with significant implications for ratepayers and the environment.<sup>2</sup>

Responses to the Sierra Club Petition were filed on June 23, 2014.

POC filed in support of the Sierra Club Petition. On July 1, 2014, SCE filed a Motion to strike portions of the POC response. SCE states that POC “proposes dramatic changes to D.14-04-003 that were not envisioned in the [Sierra Club Petition].” SCE cites issues raised by POC including changes in authorized procurement levels and modifications to preclude use of bilateral contracts to meet local capacity needs. We agree that POC’s response goes far beyond the issues raised in the Sierra Club Petition. The Motion is granted. We will strike

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<sup>2</sup> The Sierra Club Petition also provides a number of comments on the SDG&E procurement plan. These comments support the argument that a comment period is necessary; the substance of comments on the procurement plan itself was best directed to Energy Division, as the reviewer of the procurement plan. In substance, the Sierra Club Petition also served as informal comments to Energy Division.

the portions of POC's response identified by SCE; what remains is POC's support for the Sierra Club Petition.

Natural Resources Defense Council (NRDC) and the Center for Energy Efficiency and Renewable Technologies (CEERT) (filing jointly) support the Sierra Club Petition as a means "to correct a deficient and non-transparent process that is serving today to exacerbate and even 'bless' conflicts between SDG&E's procurement plans and that decision's orders that govern the Track 4 procurement authorization."<sup>3</sup> SDG&E requests that the Commission deny the Sierra Club Petition on the grounds that it lacks merit and is moot given the request for informal comments issued by the Commission's Energy Division on June 17, 2014.

#### Discussion

Energy Division sent the following note to the service list for Rulemaking 12-03-014 on June 17, 2014:

Attached please find San Diego Gas & Electric Company's (SDG&E's) LTPP/Track 4 Procurement Plan (Conventional Procurement) and LTPP/Track 4 Procurement Plan (Preferred Resources), filed with the Energy Division of the California Public Utilities Commission (CPUC) on May 1, 2014.<sup>4</sup>

Decision (D.) 14-03-004 requires Energy Division approval of SDG&E's procurement plans. The Energy Division is soliciting comments from stakeholders on SDG&E's procurement plans. Comments should be submitted to the Director of the Energy Division, Edward Randolph, at [edward.randolph@cpuc.ca.gov](mailto:edward.randolph@cpuc.ca.gov) and to Lily Chow, at [lily.chow@cpuc.ca.gov](mailto:lily.chow@cpuc.ca.gov) by Tuesday, June 24th. If you have any questions, please do not hesitate to contact me.  
[Footnote not in original note.]

<sup>3</sup> NRDC/CEERT Response at 4.

<sup>4</sup> As a clarification, the SDG&E procurement plans were not "filed" with Energy Division, but provided to Energy Division in compliance with D.14-03-004.

The Sierra Club Petition seeks to modify D.14-03-004 to provide parties with the opportunity to provide informal comments on the SDG&E procurement plans. While the Sierra Club Petition states that that it requests a modification to allow “formal” comments, its proposed modification to Ordering Paragraph 7 of D.14-03-004 would provide only for informal comments as follows (proposed modification in italics):

No later than 90 days after the effective date of this decision, San Diego Gas & Electric (SDG&E) shall submit a procurement plan to be review and approved in writing by the Director of the Energy Division. *Prior to approval, Energy Division shall provide parties with an electronic copy of the procurement plan and allow at least 15 days for party comment. Party comments shall be served to all parties in this proceeding.*

Formal comments are filed with the Commission’s Docket Office and, in a ratesetting proceeding such as this one, become part of the record for an Administrative Law Judge’s (ALJ) Proposed Decision and a subsequent Commission Decision. The comments proposed in the Sierra Club Petition would not be filed and would inform the Energy Division as part of its ministerial review for compliance with D.14-03-004;<sup>5</sup> such comments do not become a part of the record in the proceeding and are thus informal, not formal, comments.

The Energy Division, through its June 17, 2014 note to the service list in this proceeding, has now provided the SDG&E procurement plans to parties and provided an opportunity for informal comment. The only significant difference between the requested modification in the Sierra Club Petition, and the process for informal comments provided by Energy Division, is that the Sierra Club

<sup>5</sup> The Energy Division also takes comments on certain Advice Letters. Such comments are also not formally filed. There is no Advice Letter associated with the SDG&E procurement plans. The Sierra Club Petition does not seek to convert the Energy Division review into an Advice Letter process. See, however, the NRDC Petition discussed herein.

Petition sought 15 days for informal comments while the Energy Division provided an informal comment period of seven days. Nevertheless, a number of parties did provide detailed informal comments to Energy Division by June 24, 2014.<sup>6</sup> [After the proposed decision was issued, Energy Division approved the procurement plans with modifications.](#)

In their joint reply comments,<sup>7</sup> Sierra Club, California Environmental Justice Alliance, and Vote Solar Initiative argue that the Energy Division informal comment process does not moot the Sierra Club Petition, because Energy Division has not provided a formal process by which parties could submit comments on the record, and the Commission could review the SDG&E procurement plans. Yet, as described above, despite using the words “formal comments” in the Sierra Club Petition, the requested modifications to D.14-03-004 would not have led to a formal comment process.

The substantive interest of the Sierra Club Petition – that the SDG&E procurement plans be made public and parties obtain the opportunity to provide comments to Energy Division -- has been substantially achieved. We deny the Sierra Club Petition as moot.

**4. Natural Resources Defense Council, Center for Energy Efficiency and Renewable Technologies, Environmental Defense Fund, and Clean Coalition Petition for Modification of D.13-02-015**

On June 23, 2014, NRDC, CEERT, Environmental Defense Fund, and Clean Coalition filed a Petition for Modification of D.14-03-004 (NRDC Petition). The NRDC Petition seeks to modify D. 14-03-004 to require SDG&E to submit its

<sup>6</sup> Informal comments were provided by: NRDC/Environmental Defense Fund/Vote Solar Initiative (jointly); Sierra Club/California Environmental Justice Alliance (filing jointly); CEERT; The Nevada Hydro Company; California Energy Storage Alliance; Office of Ratepayer Advocates; The Utility Reform Network; AltaGas Power Holdings Inc.; and POC.

<sup>7</sup> Reply comments were authorized by the ALJ pursuant to Rule 16.4(g).

proposed procurement plans submitted to the Energy Division on May 1 as a Tier III Advice Letter. The NRDC Petition argues that “requiring SDG&E to file its procurement plans as a Tier III Advice Letter creates a notice and comment procedure with sufficient time to provide meaningful input and enables Commissioners to weigh in on SDG&E’s procurement plans, which will have significant implications for ratepayers and the environment.”<sup>8</sup> The NRDC Petition further argues that the Energy Division’s informal comment process (discussed above) “does not provide adequate notice or opportunity to be heard, does not create a public, formal record on shortcomings of these plans, and does not present the Commission with an opportunity to correct the procurement plans.”<sup>9</sup>

On June 30, 2014, SDG&E responded in opposition to the NRDC Petition. SDG&E argues that no statute, rule, regulation or decision obligates the Commission to require approval of SDG&E’s procurement plans, provided to Energy Division pursuant to D.14-03-004, via an advice letter process. SDG&E contends that the procedure adopted by the Commission in D.14-03-004 provides for review of SDG&E’s procurement plans by Energy Division and makes clear that no procurement pursuant to D.14-03-004 may be undertaken by SDG&E absent a determination that its procurement plans comply with D.14-03-004. SDG&E further contends that there is no evidence that Energy Division is not able to conduct an adequate review of SDG&E’s procurement plans or to seek corrections necessary to ensure consistency with the D.14-03-004.

### Discussion

Per D.13-02-015, SCE provided its procurement plan to Energy Division in a timely manner and the procurement plan was approved by Energy Division (in

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<sup>8</sup> NRDC Petition at 2.

<sup>9</sup> NRDC Petition at 3-4.

a letter signed by the Director of the Energy Division) in August 2013.

Significantly, D.13-02-015 did not make SCE's procurement plan available to the public, nor provide a process for public comment (except for the limited members of the Procurement Review Group).

As can be seen from comparing Ordering Paragraph 5 of D.13-02-015 and Ordering Paragraph 7 of D.14-03-004, the requirements for Energy Division approval of SDG&E's procurement plans are very similar to those for SCE's procurement plan. Given that the SCE procurement plan was reviewed and approved as provided in D.13-02-015 without modification of that decision, the question is whether different treatment – review by the full Commission through a Resolution – is necessary for SDG&E.

The NRDC Petition essentially argues that the rationale for different treatment for the SDG&E procurement plans is that it is controversial in two ways. First, the NRDC Petition contends that the SDG&E procurement plans do not comply with D.14-03-004 in various ways. However, questions regarding compliance with Commission decisions are well within the purview of Energy Division. As discussed above, upon request, Energy Division has taken extra steps not required by D.14-03-004 to make the SDG&E procurement plans available to the service list and to seek informal comment on the SDG&E procurement plans. It is entirely consistent with D.14-03-004 that Energy Division should be able to determine compliance with that decision, especially with additional public input.

The NRDC Petition contends that Energy Division may decide not to require SDG&E to modify its procurement plans to achieve consistency with D.14-03-004. However, in Ordering Paragraph 7 of D.14-03-004, Energy Division is explicitly given the charge to review the SDG&E procurement plans

“consistent with this decision.” There is no basis for speculation that Energy Division will not perform its duty. [In fact, Energy Division did review informal comments and require revisions to the procurement plans before approving them.](#)

The NRDC Petition also argues that an Advice Letter and Resolution is necessary to allow Commission review of the SDG&E procurement plans because of potentially controversial outcomes; i.e., that the procurement which may result from the plans will be controversial. This contention involves questions of whether SDG&E will seek to procure certain gas-fired resources versus certain preferred resources.

This concern is misplaced. Ordering Paragraph 7 of D.14-03-004 expressly states that “SDG&E shall not commence any procurement activities until the Director of the Energy Division approves its procurement plan.” Further, Ordering Paragraph 8 of D.14-03-004 requires SDG&E to file an application seeking Commission approval of “any and all contracts entered into as a result of the procurement process authorized by this decision.”<sup>10</sup> As SDG&E points out, the application approval process entails careful review of any proposed contract and the procurement method by the Commission and stakeholders, and often involves litigation of contested issues. Approval of SDG&E’s procurement plans by Energy Division, once they are deemed to be consistent with D.14-03-004, does not infringe on the due process rights of parties to contest any specific procurement contracts or methods proposed by SDG&E in forthcoming applications.

<sup>10</sup> Also note that Ordering Paragraph 7 of D.14-03-004 also allows SDG&E to “propose in its procurement plan a separate, earlier application for gas-fired generation.” SDG&E did propose such a separate, earlier application in one of its two procurement plans provided to Energy Division.

D.14-03-004 determined that additional procurement in the SDG&E territory was necessary for long-term reliability purposes, and determined the appropriate mix of resources to be procured for this purpose. Providing an Advice Letter and Resolution process for review of the SDG&E procurement plans would unnecessarily slow down the review process of the procurement plans and delay subsequent procurement applications, while providing no additional benefit to the public. Parties will have ample opportunity to review and litigate any forthcoming SDG&E procurement application(s) arising out of D.14-03-004.

For these reasons, the NRDC Petition is denied.

## **5. 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 \_\_\_\_\_.~~ August 4, 2014, by the proponents of the two petitions, and reply comments were filed on August 11, 2014 by SDG&E.

After the proposed decision was issued, Energy Division issued its approval of the conventional portion of SDG&E's procurement plan on July 17, 2014, and the preferred portion on July 22, 2014. On July 21, 2014, SDG&E filed an Application for a bilateral contract to build a 600 MW gas-fired power plant in Carlsbad (A.14-07-009) to fill part of the need identified by D.14-03-004.

In their comments on the proposed decision, the Petitions' proponents note that portions of the SDG&E preferred resources procurement plan were edited by Energy Division before Energy Division approval. Energy Division's edits to

the preferred plan occurred after seeking informal comments on the procurement plans, and appear to reflect concerns raised in such comments (concerns also raised in the two Petitions). Of specific note are the following modifications (additions underlined, deletions strikethrough):

SDG&E will issue an all-source Request for Offers (“RFO”) ~~for preferred resources in~~ in the third quarter of 2014 ~~(the “Preferred Resources~~ to solicit a minimum of 500 MW and up to 800 MW of local capacity (the “All Source RFO”). SDG&E will target at least 175 MW of preferred resources and 25 MW of energy storage as specified in D.14-03-004. Bilateral contracting may reduce the total procured through the All Source RFO.

The Petitions’ proponents at 5 argue that these edits mean that, in combination with SDG&E’s recently-filed Carlsbad Application, “under the process contemplated by the Procurement Plans approved by Energy Division, there is no possibility of a solicitation that allows clean and fossil fuel resources to actually compete for any megawatts of authorized procurement.”

In its reply comments to the proposed decision, SDG&E states that if the Carlsbad application is not approved by the Commission, SDG&E will look to the RFO to fill its 500-800 MW procurement authorization. SDG&E’s reply comments are consistent with the plain language of the approved SDG&E preferred resources procurement plan. That plan, as quoted above, shows that the all-source RFO will include between 500 and 800 MW of local capacity. While SDG&E has now applied to fill 600 MW of local capacity with the Carlsbad plant (also consistent with the edited language of the approved preferred resources procurement plan), there is no assurance that this Application will be approved by the Commission. Thus, during the pendency of the Carlsbad application and in the event that it is not approved by the Commission, SDG&E is committed by its approved procurement plan to seek offers for any resource to fill up to 800

MW. The only set-aside (consistent with D.14-03-004) is for 200 MW of preferred resources; in other words, preferred resources may bid in any or all portions of the RFO. Thus, the Petitions' proponents' arguments are not persuasive and the proposed decision is not modified.

## **6. Assignment of Proceeding**

Michel Peter Florio is the assigned Commissioner and David M. Gamson is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. The POC response to the Sierra Club Petition raises issues beyond the scope of issues raised in the Sierra Club Petition.
2. The Sierra Club Petition seeks to modify D.14-03-004 to provide SDG&E's procurement plans to the service list and to provide parties with the opportunity to provide informal comments to the Energy Division on the SDG&E procurement plans.
3. The Energy Division, through its June 17, 2014 note to the service list in this proceeding, provided the SDG&E procurement plans to parties and provided an opportunity for informal comment.
4. Per D.13-02-015, SCE provided its procurement plan to Energy Division in a timely manner and the procurement plan was approved by Energy Division (in a letter signed by the Director of the Energy Division) in September 2013.
5. It is the function of Energy Division to determine if the SDG&E procurement plans are in compliance with D.14-03-004.
6. SDG&E is required by D.14-03-004 to file one or more applications for approval of any procurement pursuant to D.14-03-004, consistent with one or more procurement plans approved by the Director of the Energy Division.

7. Providing an Advice Letter and Resolution process for review of the SDG&E procurement plans would slow down the review process of the procurement plans and delay subsequent procurement applications.

### **Conclusions of Law**

1. The July 1, 2014 SCE Motion to Strike Portions of the POC response should be granted.
2. The Sierra Club Petition is moot and should be denied.
3. The Commission's application approval process entails careful review by the Commission and stakeholders of any proposed contracts and the procurement method.
4. Approval of SDG&E's procurement plans by the Director of the Energy Division, once they are deemed to be consistent with D.14-03-004, does not infringe on the due process rights of parties to contest any specific procurement contracts or methods proposed by SDG&E in subsequent applications.
5. The NRDC Petition should be denied.

## **O R D E R**

### **IT IS ORDERED** that:

1. The July 1, 2014 Southern California Edison Company Motion to Strike Portions of the June 23, 2014 Protect Our Communities Foundation Response to the Joint Petition for Modification of Decision 14-03-004 is granted.
2. The June 12, 2014 Joint Petition for Modification of Decision 14-03-004 is denied.
3. The June 23, 2014 Joint Petition for Modification of Decision 14-03-014 is denied.

4. Rulemaking 12-03-014 remains open.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

## **Attachment A**

### **R.12-03-014 Service List**

\*\*\*\*\* SERVICE LIST R1203014\*\*\*\*\*

Last Updated on 14-JUL-2014 by: JVG

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