

Decision PROPOSED DECISION OF ALJ GAMSON (Mailed 7/29/2014)

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 TERRA-GEN POWER, LLC PETITION FOR
MODIFICATION OF DECISION 13-02-015**

1. Summary

This decision denies the June 3, 2014 Terra-Gen Power, LLC Petition for Modification of Decision 13-02-015 regarding use of locational effectiveness factors in Southern California Edison Company's Request for Offer.

2. 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 (LA) Basin Local Reliability Area (LRA) by 2022, focused in the West LA portion of the LA Basin LRA. D.13-02-015 also authorized SCE to procure 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 a letter signed by its Director) on September 4, 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 Stations (SONGS). That decision authorized SCE to procure between 500 and 700 MW in the Los Angeles LRA (in addition to the amount authorized for that local area in D.13-02-015) by 2022. D.14-03-004 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 required SCE to consider locational effectiveness factors (LEFs) in its RFO to determine where new resources should be sited. The California Independent System Operator (CAISO) calculates LEFs for transmission planning purposes to provide an indication (under a specific set of assumptions about demand, supply resources, and the status of the transmission system) of how effective a proposed supply resource will be in resolving the most severe transmission constraint and the circumstances, or “contingencies,” that will stress that constraint.

Ordering Paragraph 4 of D.13-02-015 delineates elements that any RFO issued by SCE pursuant to that Order shall include (in addition to any RFO requirements specified by previous Commission procurement decisions and the authorization and requirements elsewhere in D.13-02-015). Ordering Paragraph 4, subparagraphs 4(a), 4(c) and 4(l) of D.13-02-015 specifies the following relevant required elements for SCE’s RFO.

4(a): The resource must meet the identified reliability constraint identified by the California Independent System Operator (ISO).

4(c): The consideration of costs and benefits must be adjusted by their relative effectiveness factor at meeting the California ISO identified constraint.

4(l): Use of the most up-to-date effectiveness ratings.

3. The Terra-Gen Petition

On June 3, 2014, Terra-Gen Power, LLC (Terra-Gen) filed a Motion for party status in this proceeding. On June 11, 2014, the Administrative Law Judge (ALJ) sent an e-mail to the service list granting Terra-Gen party status solely for

the purposes of participating in activities related to its Petition for Modification. This decision confirms the ALJ's Ruling.

On June 3, 2014, Terra-Gen filed a Petition for Modification (Terra-Gen Petition) of D.13-02-015.¹ The Terra-Gen Petition essentially seeks to require SCE to use specified LEFs in evaluating responses to its RFO pursuant to its approved procurement plan stemming from D.13-02-015.

The Terra-Gen Petition seeks to modify Ordering Paragraph 4(a) and 4(l) to read (modifications italicized):

4(a): The resource must meet the identified reliability constraint identified by the California Independent System Operator (ISO) *as of the date the RFO is issued.*

4(l): Use of the most up-to-date effectiveness ratings *as of the date the RFO is issued.*

In addition, the Terra-Gen Petition requests that the Commission order a "short pause" in the SCE RFO process and ask the CAISO to provide revised LEFs for each of the substations listed in the SCE procurement plan, and order SCE to use the results of the CAISO's nodal analysis in the manner described in the procurement plan.

In addition or alternatively, the Terra-Gen Petition seeks that the Commission (1) affirm, consistent with Ordering Paragraph 4(c), that effectiveness factors should be used to adjust the valuation of a proposed project, but should not be used as an eligibility requirement to eliminate otherwise viable projects from submitting final bids, and (2) conduct a public workshop where the CAISO would be invited to explain its assumptions and LEF calculations, SCE

¹ Per Rule 16.4(d), Terra-Gen in its petition has adequately explained why it could not have filed the Petition for Modification within one year of the date of D.13-02-015.

would explain how it proposes to use LEFs in its bid evaluation, and the Commission can respond by providing specific guidance on how LEFs should be used in bid evaluation in the procurement process.

Terra-Gen argues that D.13-02-015 includes language that is susceptible to misinterpretation and that has apparently been misinterpreted by SCE to create what is in effect a new eligibility requirement for continued participation in the RFO solicitation. As a result, Terra-Gen argues that the fairness and transparency of the RFO solicitation process has been compromised.

According to Terra-Gen (and not disputed in the record), SCE's procurement plan included a listing of the CAISO's calculation of LEFs for the identified contingency for 27 substations in the West LA subarea plus the San Onofre substation. The subsequent RFO arising from the procurement plan was issued on September 12, 2013 and was open to bidders with projects within the West LA subarea. The transmittal letter for the RFO listed 27 acceptable high voltage substations in the West LA subarea for proposed projects (the same 27 substations listed in the procurement plan). Terra-Gen states that its bids in the RFO were submitted on the assumption that eligibility requirements set forth in the RFO documents would not change after bids were submitted.

After D.14-03-004 was issued, the CAISO revised its LEF study and SCE updated its RFO evaluation criteria to include this new information. Terra-Gen argues that SCE's apparent decision to change the eligibility requirements for conventional resources in its procurement process has resulted in the elimination from further consideration of projects located outside of the newly created southwest zone, which means that projects located in roughly two-thirds of the West LA subarea – the original target of the procurement authorized in D.13-02-015 – are no longer deemed eligible. Terra-Gen contends that SCE seems

to have transformed one of several qualitative factors in the assessment of the value of a bid into a threshold criterion that will determine whether the other elements of a project's value will even be considered. By elevating LEFs to a threshold criterion, Terra-Gen argues that SCE contradicts the instructions of Ordering Paragraph 4 and gives LEFs much greater weight in bid evaluation than is warranted.

4. Responses to the Terra-Gen Petition

Responses to the Terra-Gen Petition were filed on June 20, 2014.

California Wind Energy Association supports the Terra-Gen Petition and asks the Commission to affirm that effectiveness factors should be used to adjust the valuation of a proposed project, but should not be used as an eligibility requirement to eliminate otherwise viable projects from submitting final bids.

The CAISO opposes the Terra-Gen Petition, contending that Terra-Gen is essentially requesting that the Commission ignore the clear language of D.13-02-015 that directed SCE to consult with the CAISO and use, as part of the RFO process, "the most up-to-date effectiveness ratings." Further, the CAISO claims that Terra-Gen prefers that the SCE RFO process ignore the SONGS retirement and associated significant change in network topology considered by the Commission in D.14-03-004 (regarding SONGS capacity replacement) and by the CAISO in its 2013 - 2014 transmission planning process.

SCE opposes the Terra-Gen Petition. SCE argues that using the most up-to-date CAISO LEFs is consistent with minimizing new capacity needs and therefore customer costs. SCE contends that Terra-Gen would have the Commission utilize LEFs that CAISO developed assuming continued operation of SONGS, which could result in development of new resources at ineffective locations with SONGS permanently closed. SCE also notes that its approved

procurement plan specifies that SCE will use the up-to-date information on LEFs from the CAISO.

Nevada Hydro supports the Terra-Gen Petition.²

California Energy Storage Association (CESA) opposes the Terra-Gen Petition. CESA disagrees with Terra-Gen that the LEFs used in this instance when the RFO was issued had to be used because SCE stated in the RFO that LEFs would be updated by the CAISO at some point during the bid-evaluation process.

Western Power Trading Forum (WPTF) takes no position on the Terra-Gen Petition, but provides commentary. WPTF believes the Terra-Gen Petition identifies an unintended consequence of imprecise language in Ordering Paragraph 4 of D.13-02-015. WPTF believes this lack of precision has created a situation where SCE has exercised discretion in modifying bid evaluation metrics well after establishing the initial short list. WPTF comments that it believes SCE's action in adopting the later standard contained in the CAISO updated Transmission Plan is understandable and WPTF believes the utility should not be criticized for its actions. WPTF does not agree that the LEFs used at the outset of the RFO must be used, because SCE was clear at the outset that the LEFs would be updated by the CAISO during the course of the bid-evaluation process. WPTF's understanding is that all bidders had this information equally.

² Nevada Hydro further requests that the Commission modify Ordering Paragraph 12 of D.14-03-004 to require SCE to modify its procurement plan so that resources in portions of the LA Basin beyond the West LA subarea may also be procured to meet incremental local capacity needs identified in this decision. This request is beyond the scope of the Terra-Gen Petition and will not be considered here.

Furthermore, WPTF does not dispute that SCE had the right to make the interpretation it did, given the imprecision in the Decision.

However, WPTF comments that it is clearly unfair to bidders to change the rules of an RFO after its issuance. WPTF believes that circumscribing the rules of eligibility is particularly objectionable, as it is unlikely that Terra-Gen or other generators similarly situated would have invested time and money into responding to the RFO had they known that their location would preclude them from being considered for final selection.

Discussion

Ordering Paragraph 10 of D.13-02-015 states:

Southern California Edison Company shall work with the California Independent System Operator to determine a priority-ordered listing of the most electrically beneficial locations for preferred resources deployment.

Ordering Paragraph 4, subparts a), c) and l), of D.13-02-015, show that the Commission intended that SCE in its RFO may use updated information provided by the CAISO to determine where it should focus its procurement efforts within the West LA subarea. This is exactly what Terra-Gen alleges SCE has done. However, Terra-Gen seeks to modify D.13-02-015 to prevent SCE from using more recent information than was available at the time SCE issued its RFO.

Regardless of who the “winners and losers” might be if Terra-Gen’s proposed modification is granted, the question before us is whether there is a public interest rationale for making the change Terra-Gen requests. There are a number of reasons for not modifying D.13-02-015 as requested.

First, the intent of D.13-02-015 was to not micromanage SCE’s RFO as to exactly where SCE should prioritize procurement in the West LA subarea. Instead, the decision provided that SCE and the CAISO should confer to

determine the best procurement locations, based on analytical factors related to long-term reliability. In this way, we provided general direction to SCE, but did not overly constrain SCE. Terra-Gen does not contend that SCE's evaluation criteria would result in projects selected outside the West LA subarea, but that it may result in projects selected within a limited portion of the West LA subarea. It is clear that projects in a portion of the West LA subarea are still within the West LA subarea. Terra-Gen's proposal would unnecessarily and unreasonably constrain SCE and its consultation with the CAISO, based on the perception of the results of such consultation.

Second, the decision clearly states that this inquiry should use "the most up-to-date effectiveness ratings." Terra-Gen seeks to narrowly apply sub-paragraph 4(l) to apply only to the RFO as originally issued, contending that this is what the Commission intended. Terra-Gen is incorrect. Because an RFO process may take well over a year, the Commission intended to provide SCE with the means to adapt to changed circumstances on technical matters.

Indeed, a major reliability event occurred in southern California while the RFO was in process - the early retirement of SONGS. In D.14-03-004, we required SCE to use the results of its RFO from D.13-02-015 to procure additional resources to replace SONGS capacity; because the RFO process could accommodate new technical information, it was not necessary to direct SCE to update its RFO to account for new locational effectiveness factors. Therefore, it is not reasonable to modify the phrase "the most up-to-date" to cause a more narrow interpretation, so as to set a hard and fast cut-off date for locational effectiveness factors, and thus to ignore significant changes affecting reliability.

Third, there is no evidence that SCE misled interested bidders in its RFO. It is not disputed that SCE stated that locational effectiveness factors were subject

to change in its procurement plan, which was approved per D.13-02-015 by Energy Division as consistent with that decision. It would be unfair to bidders to retroactively change the decision and the procurement plan based on perceived outcomes.

It is possible that certain losing bidders (and potentially other non-bidders) may be able to show that SCE's decisions with regard to its RFO were not consistent with D.13-02-015 or Commission policies such as least-cost/best-fit procurement. It is also possible that parties may be able to show that the results of the RFO are not consistent with the public interest in ensuring long-term reliability and/or protecting the environment. Such entities will have the opportunity to make a showing to this effect once SCE files an Application for approval of procurement contracts stemming from its RFO.

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. Terra-Gen filed comments on the Proposed Decision (PD) on August 18, 2014. Terra-Gen claims the PD errs because it misunderstands and consequently misrepresents the central point of Terra-Gen's petition: that LEFs were improperly transformed from one of several quantitative factors used to value bids in SCE's RFO to a threshold criterion that eliminated some projects from further consideration regardless of the value of their other attributes. The CAISO filed reply comments on August 25, 2015 reiterating its early comments on the Petition that changes to LEFs were made by the CAISO in response to impacts on power flows related to the closure of SONGS. SCE also filed reply comments challenging Terra-Gen's comments about the PD.

The PD specifically cites Terra-Gen's requests to change certain Ordering Paragraphs of D.13-02-015 and/or to effect other changes to that decision regarding eligibility requirements for proposed projects. The PD discusses the rationale for not modifying D.13-02-015 as sought by Terra-Gen, including the intent to not micromanage SCE's RFO process and not to constrain SCE in its required consultation with the CAISO. Terra-Gen continues to seek intervention into both of these processes, and has not shown that the PD errs. We will not modify the PD based on Terra-Gen's comments.

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. SCE's approved procurement plan included a listing of the CAISO's calculation of locational effectiveness factors in the West LA subarea.
2. SCE updated locational effectiveness factors after consultation with the CAISO subsequent to D.14-03-004.
3. SCE's use of updated locational effectiveness factors will result in proposed procurement in the West LA subarea.
4. Modification of D.13-02-015, Ordering Paragraph 4, to cause a more narrow interpretation as proposed by Terra-Gen would set a hard and fast cut-off date for locational effectiveness factors and reliability analysis, and ignore significant changes affecting reliability subsequent to D.13-02-015.
5. Terra-Gen's proposal would unnecessarily constrain SCE and its consultation with the CAISO regarding locational effectiveness factors.
6. There is no evidence that SCE misled interested bidders in its RFO vis-à-vis consideration of locational effectiveness factors.

Conclusions of Law

1. SCE's actions with regard to locational effectiveness factors in its RFO process have been consistent with D.13-02-015 and SCE's approved procurement plan.
2. It is not reasonable or in the public interest to modify D.13-02-015, Ordering Paragraph 4, so as to cause a more narrow interpretation.
3. The Terra-Gen Petition should be denied.

O R D E R

IT IS ORDERED that:

1. The Terra-Gen Power, LLC June 3, 2014 Motion for party status is granted solely for the purposes of participating in activities related to its June 3, 2014 Petition for Modification in this proceeding.
2. The June 3, 2014 Terra-Gen Power, LLC Petition for Modification of Decision 13-02-015 is denied.
3. This proceeding shall remain open.

This order is effective today.

Dated _____, at San Francisco, California.