



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Application of San Diego Gas & Electric
Company (U 902 M) for Approval of The SDG&E
Solar Energy Project

Application 08-07-017
(Filed July 11, 2008)

**JOINT REPLY BRIEF OF SAN DIEGO GAS & ELECTRIC COMPANY
(U 902 M), UTILITY CONSUMERS ACTION NETWORK, WESTERN POWER
TRADING FORUM AND CALIFORNIANS FOR RENEWABLE ENERGY FOR
ADOPTION OF SETTLEMENT AGREEMENT**

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Dated: November 23, 2009

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**I.
INTRODUCTION AND SUMMARY OF ARGUMENT**

A. Introduction

Pursuant to Rule 13.11 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure and the Rulings of the Presiding Administrative Law Judge (“ALJ”), San Diego Gas & Electric Company (“SDG&E”) hereby submits on behalf of itself and the Utility Consumers’ Action Network (“UCAN”), Californians For Renewable Energy (“CARE”) and the Western Power Trading Forum (“WPTF”) (collectively “Settling Parties”) this Reply Brief in the above-captioned proceeding (the “Reply Brief”) in response to the briefs of the Division of Ratepayer Advocates (“DRA”) and the Independent Energy Providers (“IEP”).

The Settling Parties have in their testimony and pleadings entered into the record of this proceeding addressed and rebutted the concerns and arguments put forward by IEP and DRA in opposition to the Commission’s adoption of the Settlement Agreement (“SA”). Neither party offers any new arguments in their opening briefs. Therefore, the Settling Parties offer only a limited number of comments in response thereto.

Essentially, both IEP and DRA each offer separate policy views in arguing whether the Commission should approve the Settling Parties’ SA.

IEP correctly supports the SA’s fundamental policy of utility ownership of solar generation through the use of the competitive regime described by the SA to achieve, for ratepayers, the most competitive prices for solar energy dedicated to SDG&E’s distribution grid. Unfortunately, IEP inappropriately criticizes certain compromise elements of the SA on grounds

which are unsupported by the evidentiary record. IEP has offered neither testimony nor witnesses to the Commission in support of its positions. Consequently, IEP's arguments cannot be properly considered by the Commission. Moreover, IEP's arguments are erroneous and should be rejected, if considered.

DRA, on the other hand, urges the Commission to reject the SA out of hand on the sole "policy" ground that the SA describes a utility solar generation program that does not look like the one approved by the Commission for Southern California Edison. In so doing, DRA ignores the intrinsic merits of SDG&E's Solar Energy Project ("SEP"), as improved by the Settling Parties, ignores the unique nature of the SEP as an SDG&E specific program, and fundamentally ignores the competition endorsed by the diverse group of Settling Parties who encourage such innovation. DRA's wholesale rejection is, at a minimum, consistent with DRA's policy of opposing all utility solar projects. It opposed the SCE program that was approved by the Commission. Now it opposes the Settling Parties' proposal on the ironic basis that it doesn't mirror the SCE proposal which DRA had also opposed. When the merits of its argument are considered, the Commission will find that DRA's arguments are extremely narrow, short-sighted and must be rejected.

II. IEP'S ARGUMENTS MUST BE REJECTED

A. The SA Provides for True Solar Price Competition

IEP states on p. 3 of its brief, that:

"...because SDG&E's SEP, as modified by the SA, appears to be a unique experimental attempt to promote the competitive outcomes sought by the Commission, and in the light of the relatively modest progress made so far toward achieving the state's Renewable Portfolio Standard (RPS) goals, IEP does not oppose the SA in this unique context, as a step toward competition."

Up to that point, the Settling Parties and IEP are aligned. However, IEP goes on to complain, in essence that the actual "step towards real competition" as embodied by the Settling Parties in the SA shouldn't be taken because the results might make the solar markets *too* competitive. IEP laments that it is not competition between its members as Independent Power Providers ("IPPs") and SDG&E would be undermined because SDG&E would not be required to provide its costs and how they will be determined to IEP members in advance of any actual competition between SDG&E and one or more IPPs. It is important to note that IEP offers no

evidentiary support of its contention; it is a conjecture-based argument unsupported by any qualified market participant or economist.

The Settling Parties did present testimony that pointed out that true competition as envisioned in through SA would ensure that the IPPs who chose to compete and win a real competition would provide their lowest project prices without reference to any stated cost or price. IEP argues that fair competition must have SDG&E provide its costs first. However, asking prospective suppliers to bid only against a stated cost or price instead of against other competitive suppliers runs the significant risk that ratepayers will never be offered a supplier's lowest price, thus defeating the purpose of true competition envisioned in the SA, which is to discover the supplier's lowest price. The Commission should not restrict competition in the manner requested by IEP.

B. Phase II Aggregation Should be Approved

IEP opposes the SA's requirement that projects of less than 5 MW be aggregated into a single PPA on the grounds that aggregation will result in developers possibly violating anti-trust laws, that the number of potential providers will be reduced and that those that compete will have increased costs due solely to the aggregation requirement.¹

Although IEP had the opportunity to present the Commission with filed testimony and witnesses to prove the truth of these assertions, IEP failed to do so. By failing to do so, each of the Settling Parties was denied the opportunity to cross examine IEP on the merits of these assertions. As a consequence of IEP's failure to present such evidence, the Commission has nothing in the record on which to judge the merits of these putative "facts" to compare with the economies of scale and transactional efficiency of aggregation advocated by the Settling Parties. The Commission has no way of knowing whether they are true or merely cut out of whole cloth. IEP's arguments against aggregation must be rejected due to this lack of any substantive support.

C. Debt Equivalence is Appropriate for a Unique Competitive Program

IEP opposes the SA's endorsement of an adder to SDG&E's rate of return through the approval of debt equivalence for PPAs ("DE")². This issue has been well briefed and argued in the existing record. The Settling Parties succinctly reiterate their support of DE. However, IEP did not provide any authoritative testimony to support its contention.

¹ IEP Opening Brief at pp. 6-7.

² Id at p.7.

First and foremost the Settling Parties anticipate success for the SEP as modified by the SA. In so doing, the Settling Parties recognize that the recovery of additional incremental revenues will be necessary to cover the equity re-balancing of SDG&E's capital structure. This is one of many components of the SA as an integrated whole crafted by the Settling Parties to expeditiously move the entire SDG&E Solar Energy Project forward and is not intended to be precedent setting.

Second, the Settling Parties submit that the SA creates the very type of innovative competitive solar power program the Commission should encourage. Providing for equity rebalancing for this program at its inception signals, in this instance, the Commission's support for competitive innovation by ensuring that equity rebalancing will not be a hindrance to the SEP's successful implementation. The Settling Parties recommend that DE for SDG&E's SEP should be adopted by the Commission as the integral part of the settlement.

III. DRA'S OPPOSITION IS UNFOUNDED

A. DRA's Comparison of the SA to Edison's Solar Program is Unwarranted.

DRA grounds much of its opposition to the SA on an unwarranted comparison of the SA to selected portions of the solar energy program approved by the Commission for Southern California Edison {"Edison"} in Docket A.08-03-015. The use of such a limited and highly selective comparison as the basis for rejection of the SA is unwarranted, inappropriate and may mislead the Commission, as the program approved for Edison and the program described by the SA are wholly incomparable in size, scope, competitive structure, technology innovation and purpose, as shown below.

DRA's logical syllogism can be summarized thusly: DRA opposed the SCE solar program but the Commission adopted it over DRA's objections. DRA now posits that the only utility solar program that can be approved must mirror the SCE program. This slavish commitment to precedent, while perhaps legally defensible, results in bad policy. Adoption of DRA's stance would preclude any programs that might be different from or better than the SCE solar program. DRA's arguments should be rejected for five reasons.

First, DRA provided the Commission no evidence to show that modification of the SA in the selective manner it advocates is prudent and superior to the SA. DRA merely argues that those selected elements of the Edison program of which it approves should be adopted for SDG&E because DRA so asserts.

Second, DRA fails to show how its Edison-based selective changes in the SA will help meet the SA's overall objective of true competition for innovative solar projects in SDG&E's service territory.

Third, the objectives of the SEP as modified by the SA differ from the Edison solar program in the following (five) significant ways:

- The SEP provides competition that will result in true market prices that will reflect advances in worldwide equipment manufacturing efficiencies and regional installation experience instead of having an established price;
- The SEP recognizes the value of distributed generation capacity and the benefit of delivering during summer afternoon peak conditions;
- The SEP is PV technology agnostic, allowing all types of installations, rather than just flat rooftop;
- The SEP does not expose SDG&E and its customers to substantial long-term roof leases; and
- SDG&E ownership is on existing utility controlled property where PV would be an ancillary benefit, eliminating the potential for long term site conflicts where the utility could be in a compromised position.

DRA's arguments fail to recognize these different objectives. They are not critiqued or assessed by DRA; instead they are simply ignored on the basis that they aren't the SCE program.

Fourth, DRA applies attributes of the Edison program to SEP where there is poor correlation because of the differences in the programs. For example, DRA seeks to set SDG&E program administrative cost by prorating the amount of Edison's costs based upon the ratio of maximum installed capacity for utility ownership. The two programs have fundamental differences, two critical ones being that SDG&E owned PV will be land based and located on its property, not on rooftops owned by third parties. While avoiding long term lease costs, unlike the Edison program, SDG&E must do upfront permitting, the cost for which is a large portion of the requested administration/implementation costs. This cost is avoided in the Edison program.

Limiting the SEP implementation budget to \$800,000 precludes SDG&E from permitting sites to satisfy the UOG portion of the program, to say nothing of the other functional administrative requirements. Any reduction to those amounts requested in the SA endangers successful implementation.³

Additionally, it is important to note that in its July 2008 Application, SDG&E presented a range of prices based upon SCE's Solar Photovoltaic Program and the CSI database to reflect installed costs (i.e. \$4000/kW to \$7000/kW). SDG&E subsequently derived a levelized TOD adjusted estimate of \$351 to \$652/MWh (DRA Data Request_8-19-08 part 1 of 2, Question 1). In its Opening Brief, the DRA seeks a cap of \$260/MWh. While SDG&E strongly urges unfettered market competition and pricing, it notes that using the dc to ac conversion factor of 0.9 (CEC-AC) instead of the 0.67 conversion factor used by SDG&E results in a levelized cost of \$261/MWh at the low range.

The illustrative low and high range of installed costs presented by SDG&E was but a snapshot in time as the unit cost of energy is highly variable based on the assumptions used for panel efficiency, long term degradation, balance of facility losses, and inverter efficacy, generally termed the dc to ac conversion factor.

Further to this point, the SEP, as enhanced by the SA, is truly market based and therefore, better ensures that the benefits of lower costs will be available to SDG&E's customers as the marketplace expands here in California and the U.S. DRA's concern that CSI installed cost could go up is counterintuitive to expectations. Nonetheless, the SEP as modified by the SA does not pretend to be able to predict future market prices.

Finally, to be consistent, if the Commission takes DRA's recommendation to modify the SA to conform to the Edison solar program, then the size of SDG&E's program would have to be doubled, from the 26 MW provided in the SA to 52 MW in order to be the same relative size as Edison's UOG PV. DRA fails to make such a recommendation. The Settling Parties submit they do not seek such an unwarranted programmatic expansion.

³ See Exhibit 12, Rebuttal Testimony Jointly Sponsored by SDG&E, UCAN, WPTF and CARE (Collectively "Settling Parties"), at p. 8.

IV.
THE PROPOSED BUDGET FOR PHASE 1C IS REASONABLE

DRA errs in its assertion that the SA included no cost cap on Phase 1C.⁴ As stated in Supplemental Testimony, the Settling Parties proposed a cap not to exceed \$20 million for primary funding, based on the 4 MW cap in Phase 1c, which is consistent with 26MW for \$125 million scope of the SEP as modified by the SA. SDG&E testified as to its plans to submit an Advice Letter for incremental funding, if necessary, in addition to the Advice Letter outlining final scope and request for budget approval. The Settling Parties recommend that SA be adopted in its entirety, including the Phase 1 C Innovative Applications.

V.
CONCLUSIONS

For the reasons set forth above, the Settling Parties urge the Commission to approve the SEP as modified by the SA with these basis tenets:

1. Individual SEP project procurement for all phases must be based upon competitive solicitations to garner market prices;
2. Individual SEP projects must be able to be interconnected with SDG&E's distribution system without causing extraordinary or otherwise expensive system upgrades; and
3. Individual SEP projects will be those not otherwise eligible for incentive funding under the Commission's CSI.
4. Recommended modifications by IEP are based upon extra-evidentiary factual assertions and should be disregarded.
5. The recommended modifications by DRA are overly-narrow, speculative and disregard the unique objectives identified by the Settling Parties. For these reasons, the DRA modifications should be rejected.

⁴ Opening Brief of DRA, at p.4.

Dated: November 23, 2009

Respectfully submitted

By: /s/ Steven D. Patrick
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Submitted on behalf of:

**UTILITY CONSUMERS ACTION NETWORK,
WESTERN POWER TRADING FORUM *and*
CALIFORNIANS FOR RENEWABLE ENERGY**

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **JOINT REPLY BRIEF OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M), UTILITY CONSUMERS ACTION NETWORK, WESTERN POWER TRADING FORUM AND CALIFORNIANS FOR RENEWABLE ENERGY FOR ADOPTION OF SETTLEMENT AGREEMENT** by electronic mail to each party of record in **A.08-07-017**. Any party on the service list who has not provided an electronic mail address was served by placing copies in properly addressed and sealed envelopes and by depositing such envelopes in the United States mail with first-class postage prepaid.

Copies were also sent via Federal Express to Administrative Law Maryam Ebke and Commissioner Michael Peevey.

Dated at Los Angeles, California this 23rd day of November 2009.

/s/ Marivel Munoz
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