

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED

08-18-10
04:59 PM

Application of San Diego Gas & Electric Company (U902E) to Amend Renewable Energy Power Purchase Agreement with NaturEner Rim Rock Wind Energy, LLC and for Authority to Make a Tax Equity Investment in the Project.

A.10-07-017
(Filed July 15, 2010)

PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES TO THE APPLICATION OF SAN DIEGO GAS AND ELECTRIC COMPANY TO AMEND RENEWABLE ENERGY POWER PURCHASE AGREEMENT WITH NATURENER RIM ROCK WIND ENERGY, LLC AND FOR AUTHORITY TO MAKE A TAX EQUITY INVESTMENT IN THE PROJECT.

I. INTRODUCTION

Pursuant to Rule 2.6 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure ("Rules"), the Division of Ratepayer Advocates ("DRA") files this protest to San Diego Gas and Electric Company's ("SDG&E") Application 10-07-017 to Amend Renewable Energy Power Purchase Agreement ("PPA") with NaturEner Rim Rock Wind Energy, LLC ("NaturEner") and for Authority to Make a Tax Equity Investment in the Project ("Application").

DRA is not recommending approval or denial of the Application at this time;¹ however, the complex and novel nature of SDG&E's tax equity investment proposal warrants a detailed investigation by the Commission to evaluate its merits and potential impacts on ratepayers. This Protest does not identify all of issues that DRA will examine in this proceeding. DRA anticipates that some

¹ DRA has initiated and will continue to conduct discovery to develop its testimony and recommendations and DRA reserves all rights to oppose the project at a later time.

issues may be resolved, and others may arise as discovery proceeds. DRA expects that hearings may be necessary to resolve the issues raised by SDG&E's application.

II. BACKGROUND

On July 15, 2010, SDG&E filed an application requesting Commission authority to amend pricing and other terms of an approved PPA with NaturEner Rim Rock Wind and to make a tax equity investment of up to \$600 million in a holding company that will develop the 309 MW Rim Rock Project. SDG&E argues that due to financing difficulties facing renewable developers, its proposed tax equity investment will enhance the viability of the Rim Rock Project.² SDG&E estimates that ratepayers would be repaid their investment in the Project in approximately 10 years via the monetization of tax benefits including Production Tax Credits ("PTCs") and depreciation as well as through the revenues generated by the Project.³

SDG&E requests specific Commission approval of:

- (1) The proposed tax equity investment in the Rim Rock Wind project holding company of up to \$600 million and SDG&E's request to enter into the implementing transactional documents attached to the Application;
- (2) The proposed amendments to the existing Rim Rock Wind PPA and adoption of specific findings regarding the amended PPA;
- (3) The ratemaking and cost recovery proposals, including a return on investment that is fixed for the life of the investment at SDG&E's currently-authorized return;
- (4) The request to modify its current long-term procurement plan to allow SDG&E to enter into hedging arrangements for a period of up

² Application, p. 2.

³ Id. pp. 6-8.

to ten years in order to ensure price stability for the null power sales associated with the transaction;

- (5) The request to provide credit support as necessary to the project company pursuant to P.U. Code Section 701.5(c); and
- (6) Any limited waivers, as necessary, of the Commission's Affiliate Transaction Rules to effect the transactions described herein and to preserve the confidentiality of certain NaturEner cost data and sensitive SDG&E renewable procurement information.⁴

III. ISSUES

DRA is still in the process of reviewing the Application and supporting materials, but has identified several issues that it intends to review and address, as necessary, in evidentiary hearings. Many of these issues arise from a lack of clarity or other uncertainties in SDG&E's proposed treatment of cost items and in its ratemaking proposal. Other concerns arise from a lack of adequate protections for ratepayers and requests for disproportionate benefits for shareholders.

Potentially contentious issues include, but are not limited to, the following:

(1) Whether it is reasonable to allow SDG&E to recover its tax equity investment in the Project through a treatment and rate of return similar to rate base. What are the risks and benefits from both an economic and policy perspective, of allowing a utility to earn the same rate of return on an intangible capital asset as it would for a rate based plant in service? Is it appropriate to grant a utility's shareholders such a rate of return on an intangible capital asset?

(2) SDG&E identifies this Application as the first of its kind and emphasizes that, depending upon the outcome of this proceeding, it intends to seek Commission approval for similar additional proposals for tax equity investments.

⁴ Id. pp. 20-21.

Therefore, the Commission must consider appropriate policies and rules regarding tax equity investments to ensure appropriate ratemaking treatment and adequate safeguards, given that utilities will likely file additional, similar applications.

(3) What benefits or risks will SDG&E's investment create for shareholders? How will this sizeable investment impact SDG&E's financial health in light of such risks? Could the same investment made by SDG&E's parent company, Sempra Energy, provide similar benefits with less risk to ratepayers? Has SDG&E adequately demonstrated the need for its ratepayers specifically to be this investor? Does SDG&E have sufficient experience with tax equity investments to support a robust and realistic assessment resulting risks and impacts?

(4) What are the sources and likelihood of the risks that ratepayers bear under this proposal? For example, what changes in assumptions could result in a failure to generate the revenues required for ratepayers to receive a return of and on their investment within ten years, or within the term of the amended PPA? Has SDG&E analyzed the likelihood that the Project will be unable to achieve the expected revenues from the sales of null power and the resulting costs of the amended PPA? Are the risks that ratepayers bear proportionate with the benefits they will receive? What are the risks shareholders bear and are they proportionate with the benefits they will receive?

(5) Whether the Commission should give guidance to regulated utilities regarding how they should prioritize tax equity investment opportunities to minimize risks and maximize potential benefits, rather than simply proceed under a "first-come, first-served" approach.

(6) Whether the utilities' expansion of their role into that of a tax equity investor will negatively affect the competitiveness of the renewable market and unduly increase the utilities' already sizeable influence in the marketplace. What policies and rules should the Commission implement regarding tax equity investments to ensure a competitive market for renewable power, given that utilities will likely file similar applications?

(7) Whether SDG&E has adequately demonstrated and justified a need for the price amendments to the original PPA with NaturEner, particularly since the difficulties in the economy and in the financial markets were already well known by May, 2009.

(8) Whether the Project's costs with the proposed price amendments, and considering the estimated maximum potential costs given numerous uncertain pricing terms, are reasonable and competitive with other similar wind resources, including out-of-state wind resources in the Western Electricity Coordinating Council (WECC), other potential wind energy projects in California, and other wind projects developed and built by NaturEner.

(9) Whether there is a need for the energy produced by this facility under the terms of the Amended PPA, in light of California's need for resource diversity and other potential options for SDG&E to procure renewable energy, in particular from projects located within the Sunrise Powerlink transmission corridor.

(10) Whether the Commission should grant the modification to SDG&E's long-term procurement plan to extend the period over which SDG&E may enter into hedging for sales of null power associated with the transaction arrangements.

IV. CATEGORIZATION AND PROPOSED SCHEDULE

DRA agrees with SDG&E’s proposed categorization of this proceeding as rate setting. Evidentiary hearings may be necessary to resolve the issues that are raised by SDG&E’s Application. Therefore, DRA requests that a prehearing conference be held to establish a schedule for this proceeding.

DRA has several concerns regarding the schedule proposed for this proceeding. First, DRA requests that the Prehearing Conference be held on September 7, 2010 rather than August 31, 2010 as proposed by SDG&E because DRA staff is unavailable the week of August 30.

Second, DRA has serious concerns regarding the highly expedited schedule proposed by SDG&E, which contemplates a final decision by March, 2011- just eight months from the filing of the application.⁵ The tax equity investment proposed in the Application is the first of its kind proposed at the Commission and warrants close scrutiny, especially given the proposed \$600 million cost of the tax equity transaction alone. Given the complex and novel nature of the transaction and the significant impacts on ratepayers, DRA is concerned that the proposed schedule does not allow sufficient time to thoroughly vet and analyze the various requests in the Application. Therefore, DRA recommends that the Commission adopt a schedule that will provide the time needed to thoroughly analyze and draft testimony regarding proposals included in SDG&E’s application.

DRA’s proposed schedule is below:

EVENT	DRA’S PROPOSED SCHEDULE
Pre-Hearing Conference	September 7, 2010
Opening Intervenor Testimony	November 19, 2010

⁵ Pursuant to Public Utilities Code Section 1701.5(b), the Commission has 18 months from the date of the issuance of the scoping memo to resolve the issues raised in that scoping memo.

Concurrent Rebuttal Testimony	December 17, 2010
Evidentiary Hearings (if necessary)	January 17-21, 2011
Opening Briefs	February 4, 2011
Reply Briefs	February 18, 2011

V. CONCLUSION

For the reason stated above, DRA recommends that the Commission further investigate several aspects of SDG&E’s Rim Rock Application. DRA will conduct discovery to develop its testimony and recommendations. Hearings may be required and a schedule should be established at the prehearing conference that allows for a thorough review of the application. Since DRA has not completed discovery or filed its report, it reserves the right to assert any issue discovered after this Protest has been filed. Additionally, DRA recommends that its proposed schedule for this proceeding be adopted by the Commission.

Respectfully submitted,

MARCELO POIRIER
CANDACE MOREY

/s/ MARCELO POIRIER

Marcelo Poirier

Attorneys for the Division of
Ratepayer Advocates

California Public Utilities
Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-2913
Fax: (415) 703-2262

August 18, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES TO THE APPLICATION OF SAN DIEGO GAS AND ELECTRIC COMPANY TO AMEND RENEWABLE ENERGY POWER PURCHASE AGREEMENT WITH NATURENER RIM ROCK WIND ENERGY, LLC AND FOR AUTHORITY TO MAKE A TAX EQUITY INVESTMENT IN THE PROJECT** to the official service list in **A.10-07-017** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **August 18, 2010** at San Francisco, California.

/s/ Imelda Eusebio
Imelda Eusebio

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

**Service List
A.10-07-017**

JWright@semprautilities.com
RAP5@pge.com
TJDH@pge.com
mrw@mrwassoc.com
Derek@AltaPowerGroup.com
SEHC@pge.com
jon.jacobs@paconsulting.com
SNelson@sempra.com
liddell@energyattorney.com
jfo2@pge.com
cmmw@pge.com
jrehfeld@naturener.net
nmurray@naturener.net
stevegreenwald@dwt.com
judypau@dwt.com
cem@newsdata.com
ssmyers@att.net
abb@eslawfirm.com
cni@cpuc.ca.gov
dbp@cpuc.ca.gov
cjm@cpuc.ca.gov
xjv@cpuc.ca.gov
mpo@cpuc.ca.gov
ys2@cpuc.ca.gov