

Decision 09-09-015 September 10, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902E) for Approval of the Demand Response Contract with EnerNOC, Inc.

Application 09-03-012
(Filed March 6, 2009;
amended July 9, 2009)

DECISION APPROVING DEMAND RESPONSE CONTRACT

1. Summary

This decision approves a demand response capacity contract between San Diego Gas & Electric Company (SDG&E) and EnerNOC, Inc. (EnerNOC), as amended and restated on July 9, 2009. EnerNOC will provide up to 25 megawatts (MWs) of dispatchable load reduction during the 2010 capacity delivery season, which will increase to 35 MWs during the 2011 capacity delivery season and finally to 40 MWs starting with the 2012 capacity delivery season until the end of the contract term (December 31, 2024, unless terminated earlier pursuant to the terms of the agreement). SDG&E will be limited to dispatching a maximum of 50 total hours of load reduction during any capacity delivery season.

This proceeding is closed.

2. Background

EnerNOC is a publicly traded company which, among other things, operates a demand response (DR) program for utilities and businesses. This program provides firm capacity to utilities by reducing peak demand in targeted

geographic areas through the use of energy management expertise, technology and communications networks. SDG&E filed this application to request approval of a DR capacity contract with EnerNOC (EnerNOC Agreement).

Pursuant to the EnerNOC Agreement, EnerNOC commits to provide up to 25 MWs of dispatchable load reduction during the 2010 capacity delivery season, which will increase to 35 MWs during the 2011 capacity delivery season and finally to 40 MWs starting with the 2012 capacity delivery season until the end of the contract term (the EnerNOC agreement is effective through December 31, 2024, unless terminated earlier pursuant to the terms of the agreement). A capacity delivery season is May 1 through October 31 of a calendar year. SDG&E will be limited to dispatching a maximum of 50 total hours of load reduction during any capacity delivery season.

On an annual basis from 2010 to 2012,¹ the original EnerNOC Agreement would result in contract costs and SDG&E administrative costs to be recovered in rates of approximately \$2.565 million in 2010, \$3.588 million in 2011, and \$4.089 million in 2012.² Throughout the remainder of the 15-year contract life, costs will escalate by up to 3% per year over the 2012 amount. Costs for any particular year would be recovered in the subsequent year (i.e., costs recovery in 2011 would be for costs incurred in 2010.) Based on a cost-effectiveness analysis,

¹ While the EnerNOC Agreement will likely begin in 2010, costs for any particular year would be recovered in the subsequent year (i.e., costs recovery in 2011 would be for costs incurred in 2010).

² Costs are as stated in SDG&E's newspaper publication of the proposed rate increase (San Diego Gas & Electric Company's Rule 3.2(c) Notice Regarding Proof of Newspaper Publication, dated March 26, 2009).

costs will be more than offset by the supply related benefits³ associated with the contracted DR.

A protest to the application was filed by the Division of Ratepayer Advocates (DRA) on April 13, 2009. SDG&E filed a reply to the protest on April 23, 2009. The prehearing conference (PHC) was held on May 8, 2009. Parties to the proceeding include SDG&E, DRA, and EnerNOC.

At the PHC, SDG&E indicated that discovery by DRA was ongoing, there have been informal meet and confer sessions with DRA on some of the issues, and, in their opinion, outstanding issues were likely to be resolved. DRA also stated that it was working with EnerNOC and SDG&E to possibly settle the proceeding.

Following the PHC, DRA and EnerNOC engaged in a series of discussions regarding a few of the terms of the original EnerNOC Agreement. Pursuant to these discussions, EnerNOC agreed to make the following changes, which were incorporated into an Amended and Restated EnerNOC Agreement executed by both EnerNOC and SDG&E:⁴

1. So as to clarify how the agreement will conform with the California Independent System Operator's (CAISO's) Market Redesign and Technology Upgrade (MRTU), Article 2.4 was amended to specify that, if necessary, the agreement would be changed to conform to the "CAISO tariff, Business Practice Manuals, Operating Procedures and other relevant requirements, as updated by CAISO from time to time, to preserve all

³ Benefits include avoided supply costs, the reduction in transmission, distribution, generation and capacity costs valued at marginal costs for the periods when there is load reduction.

⁴ On July 9, 2009, SDG&E filed an Amendment to the Application that reflected the terms and conditions of the Amended and Restated EnerNOC Agreement.

- performance attributes under the agreement.”⁵ Because the CAISO is still in the process of finalizing the processes necessary to fully implement the MRTU, the 45-day deadline following implementation of the MRTU was deleted from the agreement.
2. So as to strengthen the protection to ratepayers in case of an EnerNOC default, a new default provision was added to Article 10.1 to specify that EnerNOC would be in default if it failed to achieve an hourly delivery capacity ratio of at least 0.5 for each of three separate program events during the term of the agreement (however, subsequent to the first performance failure, only those performance failures occurring 30 days after the prior performance failure shall count for purposes of this new default provision). This default provision is consistent with similar provisions in other investor-owned utility DR capacity contracts approved by the Commission.
 3. So as to reduce the cost to ratepayers, a new and lowered DR capacity price per MW/year was included in Table 1 of the Amended and Restated EnerNOC Agreement.

In its Amended Application, SDG&E requests that the Commission rule that:

- SDG&E’s bundled customers need the DR resource that is the subject of the Amended and Restated EnerNOC Agreement;
- the prices and terms of the Amended and Restated EnerNOC Agreement are just and reasonable;
- full cost recovery in rates, as requested by SDG&E, should be granted; and
- such other relief as is necessary and proper.

On July 10, 2009, DRA responded to the Amended Application, stating that it has no objections to the Amended and Restated EnerNOC Agreement.

⁵ Supplement Attachment 12 to the Request for Offers (RFO) Template (Amended and Restated Agreement with EnerNOC) at Article 2.4.

3. Selection of the EnerNOC Agreement

The EnerNOC Agreement was solicited via SDG&E's 2010-2012 Supply RFO.⁶ The 2010-2012 RFO was released to the public on March 9, 2007. Three products were sought: Product 1 - DR for initial delivery in 2010, 2011, or 2012, running for a total of 15 years; Product 2 - peakers or intermediate class resources, in SDG&E's territory, totaling a minimum of approximately 200 MWs as turnkey or power purchase agreements for a minimum of 15 years, with on-line dates of between April 2010 and April 2012; and Product 3 - a generation facility, located inside or outside SDG&E's service territory of an approximately 500 MWs nameplate capacity, deliverable to SDG&E's service territory.

This Application addresses bids received and evaluated for Product 1 - DR. According to SDG&E, bids for Product 1 were for a product that "must be a means of reducing an end-use customer's demand and/or energy usage" that would reduce demand by at least 1.0 MW and be within SDG&E's service territory. Product 1 - DR offers were also required to comply with the policy guidance of the Energy Action Plan (I and II) and be in alignment with the state's "Demand Response Vision for the Future." Offers were also required to meet the Commission's definition of DR.

⁶ SDG&E requested and was granted in the 2006 Long Term Procurement Plan (LTPP) proceeding authority to launch or continue competitive solicitations in advance of the Commission's final adoption of need for the 2006 LTPP. Recognizing that a final decision on the 2006 LTPP was still pending, the 2010-2012 RFO was designed to fill only a portion of the need identified during the development of the 2006 LTPP. The Commission's final approval of authorized need was provided in Decision (D.) 07-12-052.

Generation resources located on the customer side of the meter, such as back-up generation, were disqualified as DR products in this offer.⁷ Products including DR committed on existing programs, or products for Direct Load Control programs targeted toward residential and business customers with demands of less than 100 kW, were also excluded. SDG&E sought offers that also met the resource adequacy requirements for DR as set forth by the Commission in D.05-10-042. Finally, the offer stated that SDG&E preferred DR products that would be available from May 1, 2010 through October 31, 2025. Products which were not available for all the months during this period required clarification from bidders, in detail, as to when the product would be available and the circumstances surrounding its availability.

SDG&E received a total of four offers for Product 1 – DR. Through its bid selection process,⁸ the number was narrowed, and SDG&E entered into negotiations with the top two ranking vendors, one of which was EnerNOC. SDG&E indicates that it is continuing to negotiate with the second vendor. If and when those negotiations result in an executed contract, SDG&E states that it will file a separate application for Commission approval of that contract.

4. Approval of the Amended and Restated EnerNOC Agreement

SDG&E's request is supported by the testimony set forth in the Commission-approved "RFO Solicitation Contract Approval Request" template (RFO Template). The RFO Template represents a means of providing the Commission with testimony in support of a request for approval of an RFO

⁷ See D.06-11-049, pp. 57 – 58.

⁸ The bid selection process is detailed in Exhibit 1, pp. 10-20.

contract. The RFO Template provides information on the background, RFO design process, the bid selection process, consistency with Commission decisions, participation of the Procurement Review Group (PRG) and Independent Evaluator (IE), contingencies and milestones, requested budget and cost recovery mechanism.

With respect to the information provided in the RFO Template, SDG&E identifies the following factors to justify approval of the Amended and Restated EnerNOC Agreement:

- The Commission has authorized, via its approval of SDG&E's 2006 LTPP, a bundled customer SDG&E system need that will be filled, in part, by the Amended and Restated EnerNOC Contract.
- The agreement with EnerNOC was solicited via SDG&E's competitive 2010-2012 Supply RFO (2010-2012 RFO). The 2010-2012 RFO was designed to be consistent with SDG&E's portfolio as presented in its Commission-approved 2006 LTPP.
- At all stages of the 2010-2012 RFO, SDG&E consulted with its PRG and also worked with its IE to ensure that the solicitation was open, designed and evaluated without bias and likely to garner a robust response from the market.
- Following a multiple step evaluation process, it was determined that the EnerNOC offer was one of the top two DR bids (negotiations with the other top bidder are on-going).
- A cost-effectiveness analysis performed on the EnerNOC Agreement indicates that the contract is cost effective for all performed tests,⁹ supporting the conclusion that it is a least-cost and best-fit opportunity for SDG&E's ratepayers. The reduction

⁹ Performed tests include the Total Resource Cost Test (Benefit/Cost (B/C) = 1.33); Rate Impact Test (B/C = 1.23); Program Administrator Cost Test (B/C = 1.33); and Participant Test (B/C = 1.09).

in capacity payment in the Amended and Restated EnerNOC Agreement makes the contact even more cost effective.

- As a DR program, the EnerNOC Agreement is consistent with the Commission's Energy Action Plan II loading order.
- As a DR program, the EnerNOC Agreement is compliant with both the Commission's greenhouse gas (GHG) standards and SDG&E's GHG reduction objectives.
- The requested regulatory accounting and cost-recovery mechanism are consistent with the established and previously authorized regulatory accounting and cost recovery for SDG&E's current DR programs.

Our review of the information provided in the RFO Template and the enhancements provided in the Amended and Restated EnerNOC Agreement leads to the conclusion that the request for approval of the Amended and Restated EnerNOC Agreement is justified and should be granted. Also, DRA has reviewed the Amended and Restated EnerNOC Agreement and has no objections.

5. Approval of the Requested Cost Recovery Mechanism

Consistent with the established and previously authorized regulatory accounting and cost recovery of its current DR programs and the request in its 2009-2011 DR Program Application (A.) 08-06-002, SDG&E requests that the same regulatory accounting and cost-recovery mechanism be applied to the Amended and Restated EnerNOC Agreement. Specifically, SDG&E proposes that the operation and maintenance expenses, capital related costs (i.e., depreciation, return and taxes), contractual payments, and all other contract costs associated with the EnerNOC agreement be recorded in the existing Advanced Metering and Demand Response Memorandum Account (AMDRMA). SDG&E also proposes that there be no change to the existing

disposition of the AMDRMA balances previously authorized by the Commission. AMDRMA balances would be transferred to the Rewards and Penalties Balancing Account on an annual basis for amortization in SDG&E's electric distribution rates over 12 months, effective on January 1 of each year, consistent with SDG&E's adopted tariffs.

SDG&E's accounting and cost-recovery proposals are reasonable and will be adopted.

6. Testimony and Exhibits

In its July 9, 2009 Amended Application, SDG&E included a motion to offer its testimony into evidence. The motion will be granted. SDG&E's testimony is identified as follows and will be received into evidence:

Exhibit 1 - RFO Solicitation Contract Approval (RFO Template), dated March 6, 2009 (Confidential Version)

Exhibit 2 - RFO Solicitation Contract Approval (RFO Template), dated March 6, 2009 (Public Version)

Exhibit 3 - Supplemental Attachment 12 to RFO Template in Support of Application to Approve EnerNOC Agreement, dated July 9, 2009 (Confidential Version)

Exhibit 4 - Supplemental Attachment 12 to RFO Template in Support of Application to Approve EnerNOC Agreement, dated July 9, 2009 (Public Version)

7. Confidential Information

In its July 9, 2009 Amended Application, SDG&E also moved that Exhibits 1 and 3 be sealed and remain sealed pursuant to the confidential information guidelines set forth in D.06-06-066.

SDG&E has provided declarations regarding the confidentiality of data provided in prepared testimony in support of its application request. The declarations identify information subject to requested confidential treatment,

identify the appropriate reference to the Matrix Category in Appendix A of D.06-06-066 regarding confidential treatment of investor-owned utility data, verify that the information is not already public, and assert that the detailed information is required for the application and cannot be aggregated, summarized, redacted, masked or otherwise protected in a way that allows partial disclosure.

An examination of the information contained in those exhibits confirms the need for confidential treatment as indicated by SDG&E. SDG&E's request that the associated three-year confidentiality period should begin as of the date of its application is reasonable. Exhibits 1 and 3 will therefore remain sealed until March 6, 2012.

8. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

9. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and David K. Fukutome is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. DRA has reviewed the Amended and Restated EnerNOC Agreement and has no objections.
2. The Amended and Restated EnerNOC Contract will fill a small portion of SDG&E's authorized bundled customer system need.

3. The agreement with EnerNOC was appropriately solicited via SDG&E's 2010-2012 RFO.

4. The Amended and Restated EnerNOC Agreement is cost effective.

5. The Amended and Restated EnerNOC Agreement is consistent with the Commission's Energy Action Plan II loading order.

6. The Amended and Restated EnerNOC Agreement is consistent with the Commission's GHG standards.

7. The requested regulatory accounting and cost-recovery mechanism associated with the Amended and Restated EnerNOC are consistent with the established and previously authorized-regulatory accounting and cost recovery for SDG&E's current DR programs.

Conclusions of Law

1. The prices and terms of the Amended and Restated EnerNOC Agreement are just and reasonable.

2. The Amended and Restated EnerNOC Agreement should be approved.

3. Full cost recovery in rates, as requested by SDG&E, should be granted.

4. The regulatory accounting and cost-recovery mechanism, as proposed by SDG&E, are reasonable and should be adopted.

5. SDG&E's July 9, 2009 motion to offer its testimony into evidence is consistent with the provisions of Rule 13.8(d) of the Commission's Rules of Practice and Procedure and should be granted.

6. SDG&E's July 9, 2009 motion to seal the evidentiary record is consistent with the provisions of D.06-06-066 and should be granted.

7. This decision should be effective today.

O R D E R

IT IS ORDERED that:

1. The San Diego Gas & Electric Company demand response capacity contract with EnerNOC, Inc., as amended and restated on July 9, 2009 (Amended and Restated EnerNOC, Inc. Agreement) is approved.

2. Operation and maintenance expenses, capital related costs (i.e., depreciation, return and taxes), contractual payments, and all other contract costs associated with the Amended and Restated EnerNOC, Inc. Agreement shall be recorded in San Diego Gas & Electric Company's existing Advanced Metering and Demand Response Memorandum Account. The Advanced Metering and Demand Response Memorandum Account balances shall continue to be transferred to the Rewards and Penalties Balancing Account on an annual basis for amortization in San Diego Gas & Electric Company's electric distribution rates over 12 months, effective on January 1 of each year, consistent with San Diego Gas & Electric Company's adopted tariffs.

3. San Diego Gas & Electric Company's July 9, 2009 motion to offer testimony into evidence is granted. As described in the body of this decision, the pieces of San Diego Gas & Electric Company's testimony are identified as Exhibits 1 through 4 and are received into evidence.

4. San Diego Gas & Electric Company's July 9, 2009 motion to seal portions of the evidentiary record is granted. Exhibits 1 and 3 shall be placed under seal and shall remain sealed until March 6, 2012.

5. Application 09-03-012 is closed.

This order is effective today.

Dated September 10, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners