

Decision 07-06-022 June 21, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate
Procurement Policies and Consider Long-Term
Procurement Plans.

Rulemaking 06-02-013
(Filed February 16, 2006)

**OPINION DENYING SOUTHERN CALIFORNIA EDISON COMPANY'S
PETITION TO MODIFY DECISION 06-07-029**

Summary

This decision denies the Petition to Modify (PTM) Decision (D.) 06-07-029 filed by Southern California Edison Company (SCE). SCE requests approval to solicit in its on going standard-track request for offers (RFO) up to an additional 500 megawatts (MW) of power purchase agreements (PPAs), with terms of up to 20 years, from new generating facilities, and to extend the cost allocation methodology (CAM) adopted in D.06-07-029 for the duration of the contract term. On March 12, 2007, the Commission circulated a proposed decision (PD) on this PTM which granted the additional 500 MW request and allowed SCE the option of extending the CAM, for the length of the PPAs, but not to exceed 20 years. In response to comments, the Commission reconsidered SCE's PTM and denies it, without prejudice, at this time.

Petition to Modify

On July 20, 2006, the Commission issued D.06-07-029 that established a CAM wherein the benefits and costs of new generation resources are shared with all benefiting customers for up to 10 years. That decision also directed SCE to

issue a RFO seeking up to 1,500 MW of new generation. SCE followed through with a RFO that initially solicited two types of proposals: Fast-track proposals that could be on-line prior to August 1, 2010; and standard-track projects that could be on-line prior to August 1, 2013. The standard-track RFO is on-going and SCE would like Commission approval to increase its bid solicitations now by an additional 500 MW, instead of waiting until the Commission issues a decision in the long-term procurement plan (LTPP) phase of this rulemaking and formally establishes a new need number for SCE.

SCE represents that in both the fast-track and the standard-track RFO, SCE limited its solicitation to PPAs with terms not exceeding 10 years in order to parallel the 10-year cost sharing mechanism from D.06-07-029. However, SCE argues in its PTM that the generation community would like the opportunity to provide PPAs with terms longer than 10 years and SCE believes that such contracts might provide significant higher value to its consumers. Nevertheless, SCE states that it is unwilling to enter into contracts with terms longer than the period authorized for the CAM because it believes that doing so would unfairly force its bundled customers to subsidize new generation that provides benefits to the entire system.

Therefore, on October 4, 2006, SCE filed a PTM D.06-07-029 to increase its procurement authorization by 500 MW in addition to the 1,500 authorized by D.06-07-029, for PPAs with terms up to 20 years from new generation facilities and to provide that the CAM from D.06-07-029 be applicable to the PPAs for the duration of the commitment.

Responses were received from Alliance for Retail Energy Markets (AReM), Direct Access Customer Coalition (DACC), Energy Users Forum (EUF) and Silicon Valley Leadership Group (SVLG) (collectively AReM/DACC/

EUFS/SVLG); California Manufacturers and Technology Association and the California Large Energy Consumers Association (CMTA/CLECA); Constellation Energy Commodities Group, Inc., Constellation New Energy, Inc. and Constellation Generation Group, LLC (Constellation); Division of Ratepayer Advocates (DRA); Morgan Stanley Capital Group Inc. (Morgan Stanley); NRG Energy, Inc. (NRG); The Utility Reform Network (TURN); and Western Power Trading Forum (WPTF).

In general, responding parties were ambivalent about SCE's request for the authorization for the additional 500 MW of new generation, but overall they opposed any extension of the CAM. As discussed in the March 12, 2007 PD, the CAM established in D.06-07-029 was for "a limited and transitional basis"¹ to encourage the construction of new capacity. Therefore, there was little support for SCE's request to extend the CAM for up to 20 years. Numerous parties did suggest, however, that if 20-year PPAs were beneficial to ratepayers, SCE should sign them without the additional CAM extension.

Based on a reasoned analysis of the PTM and responses, the Commission issued a PD granting SCE the authority to solicit bids for up to an additional 500 MW of new generation from PPAs in its on going RFO, subject to a need determination in the LTPP proceeding. In addition, the PD provided SCE with an option to continue the CAM beyond 10 years by filing an advice letter (AL) in the ninth year of the PPA seeking an extension, with justification, for the length of the term of the PPA, but not to exceed an additional 10 years.

¹ D.06-07-029, p. 4.

Comments were received from SCE, Sempra Global (Sempra), AReM, CMTA/CLECA, Californians for Renewable Energy (CARE), DRA, Energy Producers and Users Association (EPUC), Independent Energy Producers Association (IEP) and NRG. Reply comments were received from SCE.

DRA and CARE are the only two parties who support the PD. DRA finds the PD reaches a balanced result, and CARE only raises questions about whether potential PPAs might comply with the Federal Power Act, not about the PTM itself.

However, in the passage of time from November 2006 when responses to the PTM were filed and April when comments on the PD were filed, numerous parties changed their position on the 500 MW from “no opinion” to questioning whether the authorization was necessary in light of the fact that SCE would be making its case for its “need” numbers in the LTPP which is a current and open proceeding.

Opposition to the CAM extension, however, was overwhelming. Even SCE opposed the option arrangement in lieu of an outright 20-year extension.

Discussion

As we did in the PD, we will bifurcate the two requests from SCE in its PTM: (1) to increase SCE’s ability to solicit an additional 500 MW of bids for new generation in its current, on-going standard-track RFO, in advance of a finding of need by the Commission in the LTPP phase of the proceeding and (2) to extend the CAM established in D.06-07-029 beyond 10 years.

500 MW

Upon further reflection of SCE’s request for the authority to solicit bids for an additional 500 MW of new generation PPAs, we determined that to grant such a request before there is a firm need determination from the LTPP would amount

to a vacuous authorization. Therefore, by denying SCE's request for additional bid solicitation authority at this time, we are not determining that SCE does not need additional resources, but we are deferring that finding to the LTPP phase. SCE should make its justification for this additional amount of resources in that phase.

Extension of 10-year Cost Allocation Mechanism

The July 27, 2006 decision, D.06-07-029, was a carefully crafted compromise balancing the competing positions advanced by the investor owned utilities (IOUs), the market participants and the special interest intervenors. The Commission signaled its intent to move towards a new market mechanism, but established the CAM as a transitional step to incentivize new generation while moving towards a competitive market. That is why the CAM was limited to 10 years - but that is also why we did not limit the length of a PPA to 10 years. As we have repeatedly stated, any IOU currently has the discretion to solicit bids for PPAs of any duration. In fact, both San Diego Gas & Electric Company (SDG&E) and Pacific Gas and Electric Company (PG&E) have entered into PPAs with terms longer than 10 years. We, therefore, were very reluctant to modify our July 2006 decision and extend the CAM beyond the 10 years. We therefore drafted the option arrangement as a mechanism to address SCE's concerns over burdening its bundled ratepayers for system benefits, while not jeopardizing the development and transition to a competitive market.

This compromise did not satisfy SCE, nor the market participants. Based on the comments, including SCE's, we reverse our position. As CMTA/CLECA and AReM argued, allowing a 20-year CAM could undermine the development of a competitive wholesale market, could inhibit the transition to such a market and is a detour from restoring regulatory certainty and stability.

In addition, an important corollary to the establishment of the 10-year CAM is the energy auction process. Concurrently with consideration of SCE's PTM, parties have engaged in the Commission's mediation process to develop rules and procedures for implementation of the energy auction. Parties have presented the Commission with a proposal that the Commission presently has before it for consideration. While we have not made a determination whether to adopt the proposal or some other auction instrument, when the mechanics of any energy auction are considered, we find it reasonable to not continue this untested process beyond the initial 10-year period. SCE is looking at PPAs with potential start dates from 2010 through 2013. If one of the bids was a 20-year PPA with a start date of 2013, we would be putting in place a cost-sharing scheme, including an energy auction, that could potentially run until 2033. That is not reasonable to do at this time. We therefore deny SCE's request to extend the CAM beyond the 10 years set forth in D.06-07-029.

Comments on Revised Proposed Decision

The revised proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Comments were received from SCE, Sempra, AReM, CMTA/CLECA, Californians for Renewable Energy (CARE), DRA, Energy Producers and Users Association (EPUC), Independent Energy Producers Association (IEP) and NRG. Reply comments were received from SCE.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Carol A. Brown is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Upon consideration of the comments received on the revised proposed decision, it is reasonable to deny SCE's PTM, without prejudice.

2. To grant SCE authorization to solicit bids for additional resources that are still subject to a need determination by this Commission in the LTPP proceeding equates to a vacuous authorization at this time.

3. It is reasonable to allow SCE to justify its need numbers in the LTPP, and then solicit bids for resources that are consistent with the Commission's need determination that will issue in conjunction with the decision on the long-term procurement plans.

4. SCE already has the authorization to solicit bids for contracts for new generation, for terms of any length, consistent with the directives given in D.06-07-029.

5. It is reasonable to deny SCE's request to extend the CAM established for a 10-year term in D.06-07-029 to a longer term for up to 20 years.

Conclusions of Law

1. In light of the comments received to the PD issued March 12, 2007, it is reasonable to reconsider the PTM D.06-07-029 and deny it without prejudice.

2. No modifications to the text, Findings of Fact, Conclusions of Law or Ordering Paragraphs of D.06-07-029 are warranted at this time.

O R D E R

IT IS ORDERED that the Petition to Modify Decision 06-07-029 filed by Southern California Edison Company is denied without prejudice.

This order becomes effective today.

Dated June 21, 2007, at San Francisco, California.

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