PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-4342**
July 8, 2010

REDACTED

R E S O L U T I O N

Resolution E-4342. San Diego Gas & Electric (SDG&E) requests approval of a renewable power purchase agreement with Calpine Energy Services, L.P.

PROPOSED OUTCOME: This Resolution approves SDG&E's request for cost recovery of a short-term renewable energy power purchase agreement (PPA) with Calpine Energy Services, L.P. The PPA is approved without modification.

ESTIMATED COST: Costs of this contract are confidential at this time

By Advice Letter 2154-E filed on March 29, 2010.

SUMMARY

SDG&E's proposed PPA with Calpine Energy Services, L.P. complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved.

SDG&E filed Advice Letter (AL) 2154-E on March 29, 2010 requesting Commission review and approval of a renewable energy PPA executed with Calpine Energy Services, L.P. (CES). The PPA is a short-term, bilateral contract for a portion of the generation from the Calpine Geysers units. The PPA is for four years and ten months. The geothermal units associated with the PPA began operating between 1971 and 1989, have been certified by the California Energy Commission (CEC) as RPS-eligible facilities, and are located in California.

The following table summarizes the agreement:

Generating facility	Technology Type	Term Years	Minimum Capacity (MW)	Minimum Energy (GWh)	Online Date	Location
Geysers	Geothermal, existing	4 yr., 10 months	25	212	3/1 2010	Sonoma and Lake Counties

NOTICE

Notice of AL 2154-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

On April 20, 2010, Division of Ratepayer Advocates (DRA) filed a late protest to Advice Letter 3477-E. On April 21, 2010, Energy Division notified SDG&E that DRA's protest was accepted. DRA's protest makes three recommendations in its protest: modify contract structure to minimize risk; require a higher level of collateral; and require SDG&E to bear all costs incurred prior to Commission approval of the contract.

SDG&E filed a reply to DRA's protest on April 27, 2010. SDG&E recommends denying DRA's protest.

DISCUSSION

Overview Of RPS Program

The RPS Program administered by the Commission requires each utility to increase its total procurement of eligible renewable energy resources by at least 1% of retail sales per year so that 20% of the utility's retail sales are procured from eligible renewable energy resources no later than December 31, 2010.[1]

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at

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1 *See* Pub. Utils. Code § 399.15(b)(1).

http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm and http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm.

SDG&E requests approval of a renewable energy contract with CES

On March 29, 2010, SDG&E filed AL 2154-E requesting Commission approval of a renewable power purchase agreement with CES, which was negotiated bilaterally. The PPA provides that SDG&E will procure RPS-eligible energy generated from the Geysers units. The facilities began operating in 1971 and are certified by the CEC as RPS-eligible facilities.

SDG&E began accepting energy deliveries from CES under the PPA on March 2, 2010. Procurement from CES is expected to contribute a minimum of 212 gigawatt-hours (GWh) annually towards SDG&E's Annual Procurement Target (APT) and 25 megawatts of resource adequacy capacity.

SDG&E requests the Commission to issue a resolution that:

1. The proposed agreement is consistent with SDG&E's CPUC-approved RPS Plan and procurement from the proposed agreement will contribute towards SDG&E's APT starting in 2010. As detailed in this Advice Letter, SDG&E's entry into the proposed agreement and the terms of such agreement are reasonable; therefore, all costs of the purchase associated with energy, green attributes, resource adequacy, and load uplift included in the proposed agreement should be fully recoverable in rates.
2. Approval of the proposed agreement, as amended, in its entirety, including approval of full cost recovery in rates through the Energy Resource Recovery Account (ERRA) mechanism of all payments to be made by SDG&E from the commencement of deliveries forward in association with this contract subject to Commission review of SDG&E's administration of the Proposed Agreement.
3. Issuance of a finding that any generation procured pursuant to the proposed agreement constitutes generation from an eligible renewable energy resource for purposes of determining SDG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard program (Public Utilities Code §§ 399.11, et seq. or other applicable law) and relevant Commission decisions.

4. Recovery of any costs that should accrue to SDG&E should any part of this structure be classified as a derivative subject to mark-to-market treatment under FASB Statement 133; and
5. Issuance of a finding that any energy and green attribute deliveries made prior to or after final CPUC approval will count fully toward SDG&E's RPS goals.

Energy Division Review Of The Proposed PPA

Energy Division evaluated the PPA for the following criteria:

- Consistency with SDG&E's 2009 RPS Procurement Plan (Plan)
- Consistency with the resource needs identified in SDG&E's Plan
- Consistency with RPS standard terms and conditions (STC)
- Consistency with bilateral contracting guidelines
- Project viability
- Compliance with the minimum quantity condition
- Consistency with the Interim Emissions Performance Standard
- Procurement Review Group (PRG) participation
- Comparison to the results of SDG&E's 2009 solicitation
- Cost reasonableness
- Ratepayer impacts of procurement prior to Commission approval of the PPAs

Consistency with SDG&E's 2009 RPS Procurement Plan

California's RPS statute requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.[2] The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan. SDG&E's 2009 RPS Procurement Plan (Plan) was approved by D.09-06-018 on June 8, 2009. Pursuant to statute, SDG&E's Plan includes an assessment of supply and demand to

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[2] Pub. Utils. Code, Section §399.14.

determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.[3]

SDG&E's 2009 Plan discussed plans to procure renewable energy generation through an annual solicitation, unsolicited bilaterals, and utility-owned generation. The bilateral contract is for renewable generation that may contribute towards SDG&E's RPS requirement.

<u>The PPA is consistent with SDG&E's 2009 RPS Procurement Plan, approved by D.09-06-018.</u>

Consistency with the resource needs identified in SDG&E's Plan

SDG&E's 2009 RPS Plan called for SDG&E to issue a competitive solicitation for electric energy generated by eligible renewable resources that could deliver in 2010, 2011, 2012, or 2013 for preferred terms of 10, 15, or 20 years in length with terms less than 10 years and terms greater than 20 years also being acceptable. Proposals could be for peaking, baseload, dispatchable, or as-available deliveries. SDG&E also stated in its Plan that bilateral offers would be considered if they were competitive when compared against recent RFO offers and provide benefits to SDG&E customers. The proposed CES PPA fits SDG&E's identified renewable resource needs. The facility is currently operating and will be able to provide firm renewable energy deliveries in 2010.

<u>The PPA is consistent with the resource needs identified in SDG&E's 2009 Procurement Plan.</u>

Comparison to the Results of SDG&E's 2009 Solicitation

The least-cost, best-fit (LCBF) evaluation is generally used to establish a shortlist of proposals from SDG&E's solicitation with whom SDG&E will engage in contract negotiations. In this case, a LCBF evaluation was conducted for the bilaterally negotiated PPA in order to evaluate its value relative to all of SDG&E's other RPS options. SDG&E's bid evaluation includes a quantitative

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[3] Pub. Utils. Code, Section §399.14(a)(3).

and qualitative analysis. SDG&E's quantitative analysis or market valuation includes evaluation of price, time of delivery factors, transmission costs, congestion costs, and resource adequacy. SDG&E's qualitative analysis focuses on comparing similar bids across numerous factors, such as, location, benefits to minority and low income areas; resource diversity, etc.

SDG&E determined that the PPA is favorable relative to proposals received in response to SDG&E's 2009 solicitation because the PPA's market valuation compares favorably with bids from its 2009 solicitation.

<u>The PPA compares favorably to the results of SDG&E's 2009 RPS solicitation.</u>

Consistency With RPS Standard Terms And Conditions (STCs)

The proposed PPA conforms to the Commission's decisions requiring STCs for RPS contracts.

<u>The PPA includes the Commission adopted RPS standard terms and conditions, including those deemed "non-modifiable".</u>

Consistency With Bilateral Contracting Guidelines

In D.09-06-050 the Commission determined that bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation. As discussed in this Resolution, the PPA was reviewed and found reasonable based on the same review and standards as those used for determining reasonableness of PPAs from solicitations.

<u>The PPA is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050</u>.

Project Viability

<u>There is no project viability risk associated with the CES PPA because the facilities are online and generating electricity.</u>

Compliance With The Minimum Quantity Condition

D.07-05-028 established a "minimum quantity" condition on the ability of utilities to count an eligible contract of less than 10 years duration with a facility that commenced commercial operations prior to January 1, 2005 for compliance with the RPS program.[4] In the calendar year that a short-term contract with an existing facility is executed, the utility must also enter into long-term contracts with new facilities equivalent to at least 0.25% of the utility's previous year's retail sales. The CES PPA triggers the minimum quantity condition because the facilities that are to deliver energy pursuant to the short-term PPA began commercial operation between 1971 and 1989. SDG&E has satisfied the minimum quantity condition with banked generation from previously signed contracts and is in compliance with D.07-05-028 (See below).

Minimum Annual Quota

	2006	2007	2008	2009	2010
Retail Sales (MWh)	16,846,888	17,056,023	17,409,884	16,993,688	
Minimum Quantity: 0.25% of prior year Retail Sales (MWh)	--	42,117	42,640	43,525	42,484

Signed RPS Contracts

	2006	2007	2008	2009	2010
Long term MWH (new or existing facilities)	--	0	724,760	1,213,293	0
Short term MWH (COD on or after 01/01/2005)	--	0	0	0	0
Total MWH eligible to count toward threshold	--	0	724,760	1,213,293	0
Contribution to Banked Minimum Quantity (MWh)	--	0	682,120	1,169,768	-42,484
Met Minimum Quantity? (Y/N)	--	N	Y	Y	Y

[4] For purposes of D.07-05-028, contracts of less than 10 years duration are considered "short-term" contracts and facilities that commenced commercial operations prior to January 1, 2005 are considered "existing".

How Minimum Quantities Met	--	0	Signed contracts	Signed contracts	Banked MWhs
Cumulative total of Banked Minimum Quantity (MWh)	--	0	682,120	1,851,888	1,809,404

Compliance With The Interim Greenhouse Gas Emissions Performance Standard (EPS)

California Pub. Utils. Code §§ 8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers.

D.07-01-039 adopted an interim EPS that establishes an emission rate quota for obligated facilities to levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. The EPS applies to all energy contracts for baseload generation that are at least five years in duration.[5] Generating facilities using certain renewable resources are deemed compliant with the EPS, although contracts with intermittent resources are subject to the limitation that total purchases under the contract do not exceed the expected output from the facility over the term of the contract.

<u>The PPA is not a long-term financial commitment subject to the EPS because the term of the PPA is less than five years.</u>

Procurement Review Group (PRG) Participation

SDG&E's PRG consists of: the California Department of Water Resources, the Union of Concerned Scientists, the Division of Ratepayer Advocates, the Coalition of California Utility Employees, The Utility Reform Network, and the Commission's Energy Division. SDG&E informed the PRG of the proposed transactions on May 21, 2009 and August 20, 2009. The PRG did not provide any feedback as a basis for disapproval of the PPA.

[5] "Baseload generation" is electricity generation at a power plant "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." Pub. Utils. Code § 8340 (a).

Although Energy Division is a member of the PRG, it reserved judgment on the contract until the AL was filed. Energy Division reviewed the transaction independently of the PRG, and allowed for a full protest period before concluding its analysis.

With regard to this PPA, SDG&E has complied with the Commission's rules for involving the Procurement Review Group.

Cost Reasonableness

Based on SDG&E's market valuation of the project, SDG&E determined that the PPA is favorable relative to proposals received in response to its 2009 RPS solicitation. The Commission's reasonableness review of RPS PPA prices also includes comparisons of proposed PPAs to other proposed RPS projects from recent RPS solicitations and recently approved PPAs. Using this analysis, and the confidential analysis provided by SDG&E in AL 2154-E, we determine that the PPA costs are reasonable. Confidential Appendix B includes a detailed discussion of the contractual pricing terms.

The total expected costs of the PPA are reasonable based on their relation to bids received in response to SDG&E's 2009 solicitation.

Payments made by SDG&E under the PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of SDG&E's administration of the PPA.

Cost Containment

Pursuant to statute, the Commission calculates a market price referent (MPR) to assess above-market costs of individual RPS contracts and the RPS program.[6] Contracts that meet certain criteria are eligible for above-MPR funds (AMFs).[7]

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[6] *See* Pub. Utils. Code § 399.15(c)

[7] SB 1036 codified in § 399.15(d)(2) the following criteria: the contract was selected through a competitive solicitation, the contract covers a duration of no less than 10 years, the contracted project is a new facility that will commence commercial operations after January 1, 2005, the contract is not for renewable energy credits, and the above-market costs of a contract do not include any indirect expenses including imbalance

Footnote continued on next page

The PPA is priced above the 2009 MPR for a five year contract beginning operation in 2010.[8] Since the PPA was negotiated bilaterally and is a short-term contract it is not eligible for AMFs. Additionally, SDG&E has exhausted its AMFs provided by statute.[9] Therefore, SDG&E will voluntarily incur the above-MPR costs of the PPA.

SDG&E is voluntarily entering into this RPS power purchase agreement as permitted by statute.

Independent Evaluator (IE) Oversaw SDG&E's RPS Procurement Process

The Commission requires the use of an IE to ensure that solicitation processes are undertaken in a fair, consistent, and objective manner so that projects selected for shortlisting and resulting in executed contracts are chosen based on reasonable and consistent logic. Specifically, the IE's role is to review SDG&E's bid evaluation, monitor negotiations, and review the resulting PPA. SDG&E retained PA Consulting (PA) as the IE for SDG&E's 2009 RPS solicitation. Also, as required, SDG&E submitted an IE Report prepared by PA with AL 2154-E.

According to the IE Report, PA performed its duties overseeing the 2009 solicitation. In its IE Report, PA states that it is of the opinion that SDG&E's methodology is reasonable and SDG&E conducted the RFO in a fair and equitable manner. Also, PA concludes that the CES contract merits Commission approval based on its price being reasonable in relation to SDG&E's 2009 RFO offers, SDG&E's LCBF evaluation tool, and it is energy from an existing resource.

An excerpt from the IE Report's contract-specific evaluation of the CES PPA is attached as confidential Appendix C to this resolution.

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energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades.

[8] Resolution E-4298: http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/111386.pdf

[9] On May 28, 2009, the Director of the Energy Division notified SDG&E that it had exhausted its AMFs account.

Consistent with D.06-05-039, an independent evaluator (IE) oversaw SDG&E's RPS procurement process.

Ratepayer Impacts Of Procurement Prior To Commission Approval Of The PPA

SDG&E began procuring energy under the PPA on March 2, 2010, prior to obtaining Commission approval of the PPA. In general, CPUC approval is required for generation under a PPA to be used for RPS compliance. SDG&E accordingly placed itself at risk by incurring costs under the PPA before Commission approval was obtained, as the Commission could potentially deny or condition approval of the PPA.

In this instance, SDG&E discussed the PPA with its PRG, the PPA otherwise complies with Commission decisions, and we have determined that the price is reasonable. Therefore, there is no harm to ratepayers from SDG&E's failure to submit the contract for approval in a timely manner. However, approval of this PPA, notwithstanding the deliveries prior to Commission approval, is not precedential, and does not constitute any change in standard Commission procedures or practices.

DRA protests this advice letter

On April 20, 2010, DRA filed a confidential protest to AL 2154-E. In its protest DRA makes several recommendations to the Commission regarding the contract terms and costs incurred by SDG&E prior to Commission approval. Specifically, DRA recommends requiring SDG&E to: 1) modify the PPA structure to reduce CES' risk of not meeting required generation production amounts; 2) modify the collateral required in the contract to be commensurate with Calpine's credit rating; and 3) require SDG&E to bear all costs prior to Commission approval.

We deny DRA's protest in its entirety. As discussed in Confidential Appendix A, and as argued by SDG&E in its reply to DRA's protest, the contract provides reasonable ratepayer protections such that there are terms to address any possible delivery shortfalls. Additionally, the level of collateral is reasonable in relation to the Seller, the term of the contract, the maturity of geothermal technology, and the operating history of the facility. Finally, as stated in the previous section, there is no harm to ratepayers from SDG&E's failure to submit the contract for approval in a timely manner.

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Pub. Utils. Code § 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable "eligibility" language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an "Eligible Renewable Energy Resource," that the project's output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller use commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.[10]

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires "CPUC Approval" of a PPA to include an explicit finding that "any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (*Public Utilities Code Section 399.11 et seq*.), Decision 03-06-071, or other applicable law."[11]

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission determine prior to final CEC certification of a project, that "any procurement" pursuant to a specific contract will be "procurement from an eligible renewable energy resource."

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract

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[10] *See, e.g.* D. 08-04-009 at Appendix A, STC 6, Eligibility.

[11] *See, e.g.* D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

enforcement activities shall be reviewed pursuant to the Commission's authority to review the administration of such contracts.

CONFIDENTIAL INFORMATION

The Commission, in implementing Pub. Utils. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

COMMENTS ON THIS RESOLUTION

Pub. Utils. Code § 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on June 4, 2010.

No comments were filed.

FINDINGS AND CONCLUSIONS

1. The PPA is consistent with SDG&E's 2009 RPS Procurement Plan, approved by D.09-06-018.
2. The PPA is consistent with the resource needs identified in SDG&E's 2009 Procurement Plan.
3. The PPA compares favorably to the results of SDG&E's 2009 solicitation.

4. The PPA includes the Commission-adopted RPS standard terms and conditions including those deemed "non-modifiable".
5. The PPA is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.
6. There is no project viability risk associated with the CES PPA because the facilities are online and generating electricity.
7. The facilities that are to deliver energy pursuant to the PPA began commercial operation before January 1, 2005.
8. SDG&E has satisfied the minimum quantity condition with banked generation from previously signed contracts and is in compliance with D.07-05-028.
9. The PPA is not a long-term financial commitment subject to the EPS because the term of the PPA is less than five years.
10. With regard to this PPA, SDG&E has complied with the Commissions rules for involving the Procurement Review Group.
11. The total expected costs of the PPA are reasonable based on its relation to bids received in response to SDG&E's 2009 solicitation.
12. Payments made by SDG&E under the PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of SDG&E's administration of the PPA.
13. SDG&E is voluntarily entering into this RPS PPA as permitted by statute.
14. Consistent with D.06-05-039 an independent evaluator oversaw SDG&E's procurement process.
15. There is no harm to ratepayers from SDG&E's failure to submit the PPA for approval in a timely manner.
16. Approval of this PPA, notwithstanding the deliveries prior to Commission approval, is not precedential and does not constitute any change in standard Commission procedures or practices.
17. The protest of DRA is denied.
18. Procurement pursuant to the PPAs is procurement from eligible renewable energy resources for purposes of determining SDG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities

Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.

19. The immediately preceding finding shall not be read to allow generation from a non-RPS-eligible renewable energy resource under this PPA to count towards an RPS compliance obligation. Nor shall that finding absolve SDG&E of its obligation to enforce compliance with this PPA.
20. The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
21. AL 2154-E should be approved effective today.

THEREFORE IT IS ORDERED THAT:

1. San Diego Gas & Electric Company's Advice Letter 2154-E, requesting Commission review and approval of a power purchase agreement with Calpine Energy Services, L.P., is approved.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on July 8, 2010; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON
PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

Confidential Appendix A

Disposition of Confidential Protest from the Division of Ratepayer Advocates

[Redacted]

Confidential Appendix B

Contract Summary

[Redacted]

Confidential Appendix C

Excerpt from the Independent Evaluator Project-Specific Report[12]

[Redacted]

[12] Pages 7-1 to 7-4 of "Report of the Independent Evaluator on Calpine Energy Services contract relative to the results of the 2009 Request for Offers from Eligible Renewable Resources (2009 Renewable RFO)" (March 2, 2010), PA Consulting Group, Jonathan M. Jacobs, submitted with SDG&E AL 2154-E on March 29, 2010.