

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4103

October 18, 2007

R E S O L U T I O N

Resolution E-4103. San Diego Gas & Electric's (SDG&E) request to expand the Demand Reduction Agreement for a Distributed Resource Project with EnerNOC, Inc is denied.

By Advice Letter (AL) 1896-E filed on May 11, 2007.

SUMMARY

This Resolution denies SDG&E's request for approval through Advice Letter 1896-E for authorization to expand a Demand Reduction Agreement for a Distributed Resource Project between SDG&E and EnerNOC, Inc. (EnerNOC).

BACKGROUND

On June 9, 2004, the Commission issued Decision D.04-06-11 approving five proposals SDG&E presented to meet its short-term and long-term grid reliability needs. As a result, SDG&E filed Advice Letter 1673-E seeking Commission approval to enter into contract with Celerity Energy Partners San Diego, LLC (Celerity). On April 21, 2005, the Commission adopted Resolution E-3926 which approved SDG&E's Agreement with Celerity for electric load curtailment and/or the aggregation of net electrical output generated by qualified facilities. Subsequently, in May of 2006, the assets of Celerity, including this Agreement, were acquired by EnerNOC, Inc (EnerNOC).

The original agreement under section 8.1 states that SDG&E may expand the Contract Capacity by up to an additional twenty-five (25) MW under the original terms and conditions. Resolution E-3926, OP 5, advises SDG&E to file an advice letter requesting Commission approval if it plans to expand the Contract Capacity beyond the current maximum of 25 MW. Although the rate for the additional capacity and energy will remain the same, the total cost of the Agreement will double from \$20.7 million to \$41 million due to the additional 25

MW of generated capacity, for a total of 50 MW. SDG&E's existing agreement with EnerNOC is estimated to have an upper limit of \$20,768,750 over 8.5 years based on 25 MW capacity and 80 hours of annual dispatch. The additional capacity and energy would be provided by new program participants. Payments made by SDG&E for the additional capacity will be fully recoverable in rates through the Interruptible Load and Rotating Outage Programs Memorandum Account (ILROPMA). SDG&E notes that the economics of the Agreement compare favorably to offers recently received in SDG&E's 2008 Local Peaker RFO for new capacity in SDG&E's service territory

The Agreement calls for EnerNOC to provide a minimum of five (5) MWs of Contract Capacity and a maximum Contract Capacity of twenty-five (25) MWs, either through demand reduction and/or export to the SDG&E grid. Under the contract EnerNOC must acquire the right to control end-use customer load or to operate one or more electrical generators located at various end-use customer facilities within SDG&E's retail service territory. Each facility must have the capacity to curtail or produce not less than 250 kW of capacity and, if generation based, be operable on natural gas, diesel or a mixture of natural gas and diesel fuel. Resources must be dispatchable within 10 minutes of notification from SDG&E. Dispatch will be for no more than eight hours each day, not more than two times each day for a maximum of eighty hours annually.

In a response to an informational request from Energy Division to SDG&E, Energy Division learned that SDG&E triggers the program under three possible conditions. Under condition one SDG&E may call on the program when their alternative energy cost forecast is greater for the hours of dispatch than the contact price of energy. Under condition two SDG&E may dispatch the program when a peak load forecast exceeds 3,500 MW to help ease load on the grid to avoid potentially higher real-time prices. Under condition three SDG&E will dispatch the program when CAISO or SDG&E's Grid Operations request a dispatch to help manage an operational situation. Each of the trigger conditions model those associated with peak power generator units as opposed to strictly demand response resources.

NOTICE

Notice of AL 1896-E, was made by publication in the Commission's Daily Calendar. SDG&E has stated that a copy of the Advice Letters was mailed and distributed in accordance with Section III-G of General Order 96-A including parities in R.01-10-24.

PROTESTS

No protests were filed.

DISCUSSION

The original program as presented to the Commission had some characteristics of Demand Response.

In its proposed decision regarding the subject Agreement, the Commission declined to grant approval on the grounds that the proposal did not comport with the “legalistic” interpretation of a demand response project. Upon further review of the proposal the Commission reversed its assessment and approved the proposal in Decision D.04-06-011. The Commission found that Celerity’s program was directed at customers who could perform load reduction or who have existing diesel back up generators. The Commission also highlighted one of the key elements of the Celerity proposal to be the conversion of existing diesel units to dual-fueled units that primarily burn natural gas. Thus in D.04-06-011, the Commission concluded that the program, with its operational characteristic of dual-fuel units and load-reduction arrangements, is consistent with spirit and intent of the Demand Response Vision Statement (D.03-06-032) and authorized SDG&E to complete contract negotiations with Celerity.

Resolution E-3926, which approved SDG&E’s demand reduction contract with Celerity, characterized the original proposal as a “dispatchable network of a variety of demand reduction resources, including load shedding or load transfer arrangements and customer-owned generation.”¹

The current program operates less like demand response than originally proposed and now operates as a distributed generation program.

Energy Division, through a series of informational requests, has learned from representatives at both EnerNOC and SDG&E that the current program does not utilize load reduction as originally proposed to and contemplated by the Commission in D.04-06-011 or as approved in Resolution E-3926. All current

¹ Resolution E-3926 at page 1 (April 21, 2005).

program participants are back-up generation participants that provide capacity to the grid when the program is dispatched. During discussions with SDG&E and EnerNOC, Energy Division learned that EnerNOC does not envision load reduction demand response resources as participants in the expansion of the program. This means that the program no longer has characteristics of a demand response resource but operates like a supply-side resource program.

In a letter from Celerity to SDG&E dated April 4, 2005, Celerity explained that plans to retrofit the diesel units to natural gas with bi-fuel equipment that would meet ATCM requirements was not possible as there was no commercially available technologies that could achieve the level of natural gas fueling needed to meet ATCM requirements. Celerity therefore pursued re-permitting the diesel units and retrofitting them with emissions reduction equipment. EnerNOC has continued this practice.

Thus what was originally proposed to the Commission as a demand response resource utilizing load reduction and dual-fuel fired back-up generators has become a diesel-fired back-up generator supply-side resource.

PG&E proposed a similar back-up dual fuel fired generator program in September 2006 when the Commission sought proposals to expand demand response programs following the summer 2006 heat wave. The Commission rejected PG&E's back-up generator program in D.06-11-049 citing TURN's argument that counting a back-up generator program as demand response would, "turn the Commission's preferred resource loading order on its head."² The Commission further stated that its objective in funding demand response programs is to "reduce system demand, not substitute system electricity with electricity generated by off-grid natural gas facilities"³ Also, in D.05-01-056 the Commission found that back-up generation is not a true demand response resource.

Because the program as it exists now no longer has any characteristics of a demand response resource, Energy Division recommends that the Commission reject SDG&E's advice letter filing.

² Decision 06-11-049 at p. 58 (November 30, 2006),

³ Id.

SDG&E argues that the Commission should reject the findings of Draft Resolution E-4103 and approve the expansion of the SDG&E- EnerNOC contract because SDG&E followed proper procedure and the terms of the contract have remained unchanged.

SDG&E argues that Energy Division's rationale for denying the expansion of the contract, that it does not utilize demand response measures as originally contemplated, is inappropriate because the Commission's original approval of the agreement occurred in a procurement docket, not a demand response docket. SDG&E states that it does not seek Commission approval to count the program toward its demand response goals. SDG&E also argues that it seeks to simply expand the capacity of the current contract but not change the nature of the agreement as originally approved in D.04-06-011. In support of its position SDG&E states that Ordering Paragraph (5) of Resolution E-3926 approved the original agreement and authorized SDG&E to seek expansion of the current Agreement through the advice letter process.

Energy Division agrees that the Commission approved the agreement in a procurement docket. However, SDG&E's characterization of the agreement in that proceeding, and the Commission's subsequent understanding of the agreement, was that the program is a demand response program. As already noted in the Background section of this resolution, the Commission approved the agreement because it contained elements that could be considered demand response. The decision specifically found the program to be "directed at customers who have conventional load-reduction arrangements *or* who have existing diesel back-up systems to provide power..."⁴ In SDG&E's advice letter filing (AL 1673-E) which sought approval of the specific contract terms, SDG&E described the program as consisting of two components; "1) it takes existing backup generation units and converts them to significant demand reduction resources . . .and 2) it provides for demand response where the customer is able to drop load *without using backup generation*."⁵ Resolution E-3926, which subsequently approved AL 1673-E, noted that the program consisted of two components; 1) back up generation and 2) demand response without using any back up generation.⁶

⁴ D.04-06-011 p.39 (emphasis added.)

⁵ SDG&E Advice Letter 1673-E p.1 (March 3, 2005)

⁶ Commission Resolution E-3926 at p.4

As noted earlier, Energy Division has concluded that the program does not currently employ, nor plans to employ, the demand response elements that were originally proposed. The program has changed from a combination demand response and back-up generation program to an exclusively back-up generation program. Energy Division also repeats here recent Commission policy that programs that employ backup generation do not qualify as a demand response resource.⁷

Through its comments on the draft resolution, SDG&E attempts to make a showing that expansion of the back-up generation utilized per the agreement is cost-effective compared to bids received in the 2008 Local Peaker RFO which has been approved in a proposed Commission decision⁸.

SDG&E characterizes Energy Division's requirement that SDG&E re-file its proposal as an application under the Commission AB 57 procurement plan as "overly burdensome" and a "waste of Commission resources", because the program has been previously approved and SDG&E has simply followed the Commission's earlier directive to file an advice letter should SDG&E seek to expand the agreement.⁹

The use of an advice letter as the procedural vehicle to expand the agreement was based on the premise that the program was a demand response program. Demand response is the second-highest priority resource in the Energy Action Plan II loading order and can therefore be afforded procedural flexibility such as advice letter filings. Because the agreement is no longer a demand response program, it must be evaluated like a conventional supply-side resource. Energy Division conducted a review of the contract for procurement purposes. Energy Division has concluded that expansion of the contract does not compare favorably.

⁷ Decision(s) D.06-11-049 p. 58 and D.05-01-056 p. 45-46.

⁸ Proposed decision issued on August 16, 2007 in A.07-05-023.

⁹ SDG&E, *Comments of San Diego Gas & Electric Company to Draft Resolution E-4103*, August 23, 2007, p. 2.

EnerNOC raises several procedural issues and further argues that requiring SDG&E to seek approval via an application will jeopardize timely implementation of the expanded program.

EnerNOC argues that because no party filed a protest or response to SDG&E's Advice Letter 1896-E, there is no basis for its rejection. EnerNOC also appears to imply that because the Commission previously ordered SDG&E to file an advice letter for expansion of the agreement, that the contract expansion had already been approved by the Commission. Commission rules on advice letter procedure allow Energy Division the discretion to accept or deny an advice letter regardless of whether comments or protests have been filed. The mere submittal of an advice letter does not mean that whatever is requested is automatically approved.

EnerNOC also argues that requiring SDG&E to file an application in the procurement proceeding will jeopardize the ability of EnerNOC to implement the expanded program by summer 2008. EnerNOC also voices concern that R.06-02-013 is closed for submittal of additional applications.

Energy Division has evaluated the contract expansion for procurement purposes. Energy Division has concluded that the expansion of the contract does not compare favorably with other procurement options.

COMMENTS

Public Utilities Code section 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 or reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

On August 23, 2007 SDG&E filed comments to Draft Resolution E-4103. SDG&E disagrees with the findings of Draft Resolution E-4103 which denies the expansion of the agreement between SDG&E and EnerNOC. SDG&E respectfully urges the Commission to revise Draft Resolution E-4103 and grant SDG&E's

approval to expand the contract capacity agreement with EnerNOC for an additional 25 MW.

On August 23, 2007 EnerNOC filed comments to Draft Resolution E-4103. EnerNOC strongly opposes the Draft Resolution E-4103 asserting that it is not supported by law or fact. EnerNOC asks that the Commission reverse the outcome by issuing and adopting an Alternate Resolution approving SDG&E's Advice Letter 1896-E.

FINDINGS

1. SDG&E's program as currently implemented does not utilize load reduction as originally proposed to and contemplated by the Commission in D.04-06-011 or as approved in Resolution E-3926.
2. The program no longer has characteristics of a demand response resource but operates like a supply-side resource program.
3. SDG&E's agreement and program with EnerNOC was originally proposed to the Commission as a demand response resource utilizing load reduction and dual-fuel fired back-up generators but in practice has become a diesel-fired back-up generator supply-side resource.
4. The Commission in D.05-01-056 found that back-up generation is not a true demand response resource.
5. The Commission rejected PG&E's similar back-up generator program in D.06-11-049 finding that the program was not a Demand Response resource.
6. The expansion of the Demand Reduction Agreement for a Distributed Resource Project does not comport with the Commission definition or vision of a Demand Response Resource as the program currently exists, therefore SDG&E's request for approval in Advice Letter 1896-E should be denied.
7. SDG&E's request to expand its Agreement with EnerNOC via an advice letter should be rejected.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter 1896-E is denied.

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 October 18, 2007; the following Commissioners voting favorably thereon:

/s/ Paul Clanon
Paul Clanon
Executive Director

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