

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER
ON REHEARING OF DECISION 04-06-011**

I. Summary

This ruling and scoping memo describes the issues to be considered in this re-hearing proceeding and establishes the dates for service of testimony and reply testimony and schedules evidentiary hearings (EH) for October 17-21, 2005.

II. Background

On June 30, 2005, the Commission issued Decision (D.) 05-06-062 granting limited rehearing of D.04-06-011 regarding the Otay Mesa Power Purchase Agreement (PPA). D.04-06-011 granted, with modifications, San Diego Gas & Electric Company's (SDG&E) motion for Commission authorization to enter into new electric resource contracts with Comverge, Envirepel, Ramco, Palomar and Otay Mesa. SDG&E's motion stated that the contracts were the result of a request for proposal (RFP) issued by SDG&E to solicit bids to procure energy to meet its short- and long-term grid reliability needs.

The decision granting limited rehearing of D.04-06-011 was based on the determination that the Commission should not have considered the Otay Mesa

PPA a “winning bidder” of SDG&E’s RFP, but instead a bilateral contract to meet needs of the utility outside the scope of the RFP.

D.05-06-062 found that SDG&E had already established a need for the Otay Mesa PPA, but that the record did not contain evidence to demonstrate that the PPA is beneficial to SDG&E ratepayers and that the PPA is reasonable pursuant to Pub. Util. Code § 454.5(c)(3).

On July 22, 2005, a prehearing conference (PHC) was held and parties were asked to submit proposals on (1) the scope of the rehearing given the Commission’s direction in D.05-06-062; (2) whether alternatives to the Otay Mesa PPA should be considered, and if so, what process should be used; and (3) the procedural schedule.

III. Scope of Rehearing

The decision granting rehearing limited the scope of the rehearing to the determination whether the Otay Mesa PPA provides ratepayer benefits and is reasonable pursuant to Pub. Util. Code § 454.5(c)(3). SDG&E, Calpine Corporation (Calpine) and the City of Chula Vista (Chula Vista) all argue that the scope of the rehearing is limited to the sole purpose of determining the reasonableness of the Otay Mesa PPA.

SDG&E plans on presenting testimony regarding the benefits of the Otay Mesa PPA by comparing the costs to customers with and without the PPA.

On the other hand, West Coast Power, Enpex Corporation (Enpex) and the ratepayer groups, the Office of Ratepayer Advocates (ORA), The Utility Reform Network (TURN) and Utility Consumers Action Network (UCAN) all urge the Commission to correct the error identified in D.04-06-011 by expanding the scope of the rehearing to allow for the comparison of the Otay Mesa PPA against alternatives. Specifically, West Coast Power argues that the reasonableness of

the Otay Mesa PPA can only be determined by comparing it to resource options that were excluded from the RFP. Enpex also contends that the only appropriate way to review the Otay Mesa project as a bilateral contract is against alternatives. Enpex seeks the opportunity to supply the record with testimony describing the reliability, cost and environmental qualities of its project so if the Commission rejects Otay Mesa it will have the information to designate alternative procurement options.

ORA, TURN and UCAN also argue that the costs and benefits of the Otay Mesa PPA cannot be found unless the PPA is compared against other alternatives that would serve the same needs. The ratepayer groups jointly propose that this comparison proceed as follows: SDG&E identifies the needs to be filled by Otay Mesa, then the PPA is scrutinized to determine if it is the least-cost/best fit for ratepayers in meeting these needs.

IV. Discussion

The language from the rehearing decision, D.05-06-062 is clear that the Commission intended that the rehearing be limited to a determination as to whether “the Otay Mesa PPA provides ratepayer benefits and is reasonable pursuant to Pub. Util. Code § 454.5(c)(3).”¹ While we thoroughly and carefully considered the suggestions advanced by West Coast Power, Enpex, ORA, TURN and UCAN concerning comparisons of alternatives, we are convinced that the Otay Mesa PPA can be reviewed and scrutinized on its own, as a bilateral contract. To do as West Coast Power and Enpex suggest and compare Otay Mesa to bids from resources that “should have had an opportunity to compete for a

¹ D.05-06-062, p. 17, Ordering Paragraph 1.

contract” would be the equivalent of reopening the bidding under the RFP SDG&E conducted in the 2003/2004 timeframe, something the rehearing decision could have ordered, but clearly didn’t. On the other hand, to do as ORA, TURN and UCAN suggest going forward, which is for SDG&E to set forth its resource needs and the criteria for judging the Otay Mesa PPA, and other potential resources, would be the equivalent of starting a new RFP now--and that process is again something D.05-06-062 could have ordered, but did not.

SDG&E has the burden of presenting testimony in this rehearing that is convincing as to the ratepayer benefits and reasonableness of the Otay Mesa PPA. Intervenors will have the opportunity to scrutinize SDG&E’s testimony and cross-examine its witnesses to create a record as to whether the Otay Mesa PPA provides ratepayer benefits and is reasonable pursuant to § 454.5(c)(3). There is no justification for expanding the scope of the rehearing. In particular, the scope will not include consideration of the reallocation of the Sunrise Department of Water Resources (DWR) contract, which is being considered in a separate phase of R.04-04-003.

A. Procedural Schedule

PHC	7/22/05
SDG&E Testimony	9/8/05
Intervenor Testimony	9/30/05
SDG&E Reply	10/7/05
EHS	10/17 – 10/21/05

At the close of the EHS a post-hearing briefing schedule will be established, and the proceeding will be submitted when reply briefs are filed.

B. Principal Hearing Officer

This ruling designates ALJ Carol Brown as the principal hearing officer in this proceeding.

C. Service List

The official service list is now on the Commission's web page, www.cpuc.ca.gov. Parties should confirm that the information on the service list is correct, and serve notice of any errors on the Commission's Process Office, the service list, and the judge. Parties should frequently check the official service list to ensure that they are operating with the most current list. Parties shall e-mail courtesy copies of all served and filed documents on the entire service list, including those appearing on the list as "State Service" and "Information Only."

D. Hearing Preparation – Meet-and-Confer

Hearings are scheduled for October 17-21, 2005. On or before Friday, October 14, 2005, SDG&E is directed to organize a meet-and-confer conference call with all parties to discuss the principal issues on which the hearings will focus, key disputes and any stipulations or settlements. Parties should also use the meet-and-confer to discuss witness schedules, time estimates from each party for the cross-examination of witnesses, scheduling concerns, and the order of cross-examination. The first morning of hearings on October 17, 2005, will begin at 10:00 a.m., but the time may be adjusted on subsequent days according to the participants needs.

Before post-hearing briefs are filed, the parties must agree on an outline, and use that outline for the briefs and reply briefs.

Finally, the parties should comply with the Hearing Room Ground Rules set forth in Appendix A hereto.

E. Procedure for Requesting Final Oral Argument

Pursuant to Rule 8(d), parties requesting final oral argument before the Commission should include that request in the opening line of their concurrent opening brief and should identify in the heading of the brief that the brief includes this request.

F. Rules Governing Ex Parte Communications

This proceeding is subject to Pub. Util. Code § 1701.3(c), which means that *ex parte* communications are prohibited unless certain statutory requirements are met (see also, Rule 7(c)). An *ex parte* communication is defined as “any oral or written communication between a decisionmaker and a person with an interest in a matter before the Commission concerning substantive, but not procedural, issues that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter.” (Pub. Util. Code § 1701.1(c)(4).) Commission rules further define the terms “decisionmaker” and “interested person” and only off-the-record communications between these two entities are “*ex parte* communications.”

The law permits Commissioners to engage in *ex parte* communications if all interested parties are invited and with no less than three business days’ notice. If a Commissioner agrees to meet with an individual party, the Commissioner must grant all other parties individual *ex parte* meetings of a substantially equal period of time. The law permits written *ex parte* communications provided that those who provide the letter to a decisionmaker must provide a copy of the communication to each party on the same day. (Pub. Util. Code § 1701.3(c); Rule 7.) Parties must report *ex parte* communications as specified in Rule 7.1.

G. Category

This ruling confirms that this proceeding on rehearing is ratesetting.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is set forth herein.
3. Ex parte communications are subject to Rule 7 of the Commission's Rules of Practice and Procedure.

4. ALJ Carol Brown is the principal hearing officer in this proceeding.
5. Parties shall follow the service list rules as set forth herein.
6. Parties shall comply with the Hearing Room Ground Rules set forth in Appendix "A" hereto.

Dated August 16, 2005, at San Francisco, California.

/s/ MICHAEL R. PEEVEY
Michael R. Peevey
Assigned Commissioner

APPENDIX A

Hearing Room Ground Rules

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1. All prepared written testimony should be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned Administrative Law Judge (ALJ). Prepared written testimony shall not be filed with the Commission's Docket Office.
2. Each party sponsoring an exhibit should, in the hearing room, provide two copies to the ALJ and one to the court reporter, and have copies available for distribution to parties present in the hearing room. If the exhibit is testimony that has already been served on the ALJ, she only needs to be provided with one copy for central files. The upper right hand corner of the exhibit cover sheet should be blank for the ALJ's exhibit stamp. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the exhibit.
3. As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction.
4. Generally, corrections to an exhibit should be made in advance and not orally from the witness stand, and only corrections of a substantive nature will be allowed from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.
5. Individual chapters of large, bound volumes of testimony may be marked with separate exhibit numbers, as convenient.

APPENDIX A

**Hearing Room Ground Rules
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6. Partial documents or excerpts from documents must include a title page or first page from the source document; excerpts from lengthy documents should include a table of contents page covering the excerpted material.
7. Motions to strike prepared testimony must be made at least two working days before the witness appears, to allow the ALJ time for review of the arguments and relevant testimony.
8. Notices, compliance filings, or other documents may be marked as reference items. They need not be served on all parties. Items will be marked using letters, not numbers.
9. Food and beverages are allowed IF you dispose of containers and napkins properly.

(END OF APPENDIX A)

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on Rehearing of Decision 04-06-011 on all parties of record in this proceeding or their attorneys of record.

Dated August 16, 2005, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

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 to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.