



**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA**

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Application of San Diego Gas & Electric Company
(U 902 E) for Authority to Enter into Purchase
Power Tolling Agreements with Escondido Energy
Center, Pio Pico Energy Center and Quail Brush
Power

Application 11-05-023
(Filed May 19, 2011)

NOTICE OF EX PARTE COMMUNICATION

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December 27, 2012

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NOTICE OF EX PARTE COMMUNICATION

In accordance with Rules 8.2, 8.3, 8.4, and 8.5 of the Commission's Rules of Practice and Procedure, Quail Brush Genco, LLC ("Quail Brush") hereby gives notice of the following communication on December 21, 2012 in the above proceeding with Damon Franz, Energy Advisor to President Peevey.

On Friday, December 21, 2012 at approximately 11:00 a.m., William Kissinger of Bingham McCutchen, counsel for Quail Brush, a wholly owned indirect subsidiary of Cogentrix Power Holdings, LLC ("CPH"), and Cogentrix Energy Power Management, LLC ("CEPM"), the manager of CPH; and Stephen Larson of S.J. Larson & Associates, consultant to Quail Brush and CEPm, met with Damon Franz.

The communication was initiated by Mr. Larson. The purpose of the meetings was to provide information about: the Quail Brush Generation Project (the "Project"), San Diego Gas and Electric's ("SDG&E's") Application for Authority to Enter into Power Purchase Tolling Agreements with Escondido Energy Center, Pio Pico Energy Center, and Quail Brush Generation Project; the Proposed Decision ("PD") by Administrative Law Judge Yacknin regarding the Application; and Commissioner Ferron's Alternate Proposed Decision regarding the Application (the "Alternate") in light

of the Commission's action on PG&E's application for approval of the Oakley project. The meeting was held at the Commission's offices in San Francisco and lasted approximately 50 minutes. A PowerPoint presentation was provided in the meeting and is attached hereto.

Steve Larson provided an overview of the Project and a description of the Project's pending permitting process before the California Energy Commission ("CEC"). Both William Kissinger and Mr. Larson informed Mr. Franz about Quail Brush's concerns with the PD and the Alternate, including the methodology for calculating the local capacity requirement (LCR), the failure to acknowledge and incorporate any consideration of the potential impact of San Onofre Nuclear Generating Station ("SONGS") outages, the need to secure flexible generation resource commitments now to address the intermittency issues raised by significant amounts of renewables coming on line by 2015, the opportunity to allow once-through-cooling facilities like the Encina Power Station to retire before the regulatory deadline, the change in policy from the Commission's long-standing practice of respecting the Long Term Procurement Plan (LTPP) need assessments once made, the chilling effect that tampering with this policy could have on future development, and the negative impacts that the PD or Alternate, if adopted, would have on the Project. Mr. Kissinger and Mr. Larson suggested that the PD and Alternate ought to be reexamined in light of the Commission's Oakley decision,

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which focuses attention on all these considerations in approving the Oakley transaction.

Respectfully Submitted,

By:

/s/ William D. Kissinger

William Kissinger

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DATED: December 27, 2012

ATTACHMENT

Quail Brush Generation Project

Proposed Decisions in SDG&E PPTA Proceeding A.11-05-023 and Impact on the Quail Brush Generation Project

Presented by Quail Brush Genco, LLC
December 2012

Overview

- Background
- Concerns Raised by the Proposed Decisions
- Other Issues: Potential Negative Interaction with Long-Term Procurement Proceeding
- Need for a Hold to Allow a “Second Look”

Background: Quail Brush PPTA

SDG&E RFO and CPUC Application

- December 2007: Commission issued D.07-12-052 in the 2006 Long-Term Procurement Plan (LTPP) (subsequently modified by D.08-11-008) authorizing SDG&E to procure 530 MW to meet RA needs including “dispatchable ramping resources” to address intermittency of renewable resources.
- June 2009: SDG&E issues request for offers (RFO) to meet such local capacity needs.
- October 2009: Quail Brush short listed by SDG&E and commences negotiations on power purchase and tolling agreement (PPTA).
- April 2011: SDG&E signs PPTA with Quail Brush Genco, LLC.
- May 2011: SDG&E files application for approval of three PPTAs, including Quail Brush (A.11-05-023).



Background: Quail Brush at a Glance

100 MW quick-start, fast ramping, high efficiency Wartsila natural gas reciprocating engines.

Maximum flexibility; able to go from zero to full output in < 5 minutes.

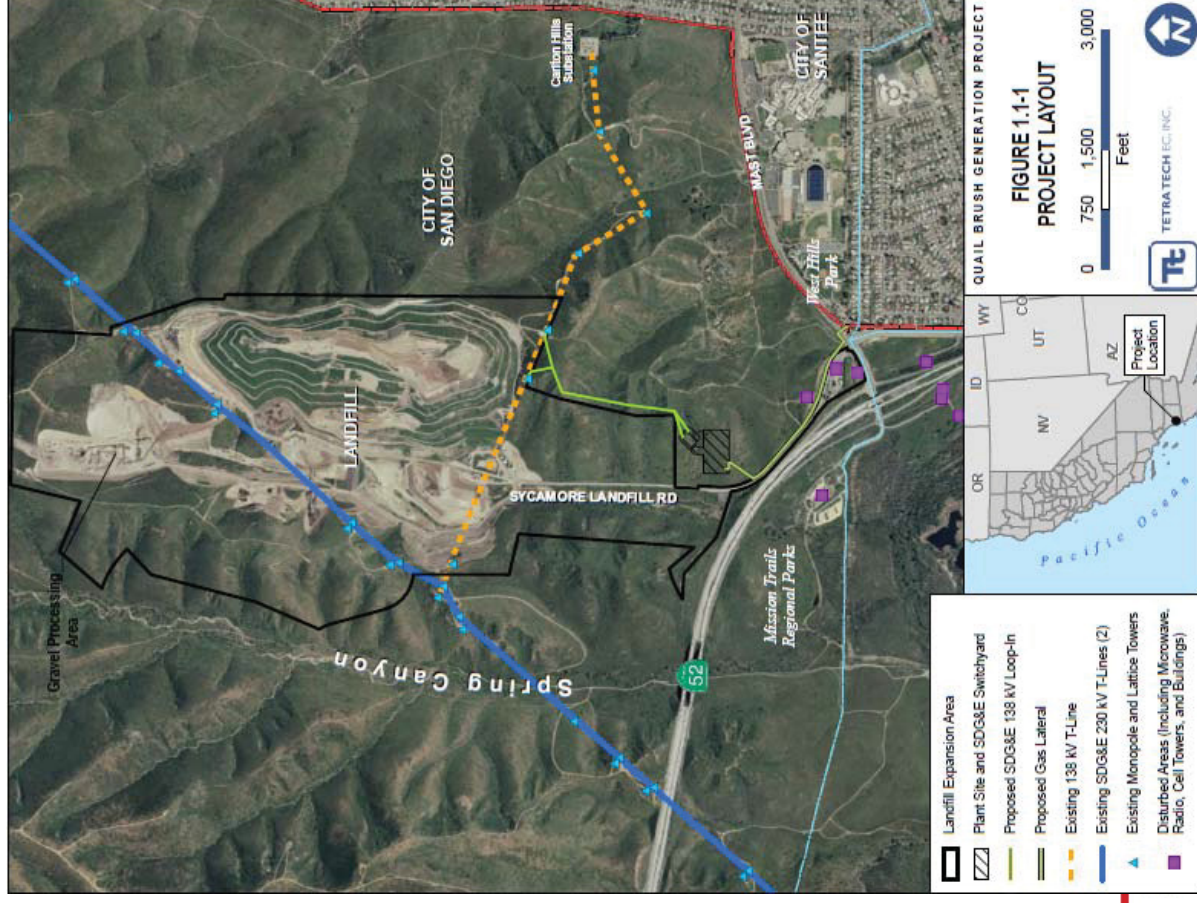
Ideally located electrically, minimal transmission network upgrades, no delivery network upgrades, close to natural gas and electric infrastructure, and results in minimal environmental impacts (adjacent to existing active landfill).

CEC Application for Certification (AFC) filed on 8/29/11; AFC found "data adequate" on 11/16/11. PSA expected in January 2013.

Cogentrix is an experienced project developer, having developed > 5000 MW of generation. Began Quail Brush development in 2008; multi-million dollar investment in Project to date.

Quail Brush PPTA result of competitive solicitation; undisputed by all parties that terms are just and reasonable.

Current COD: June 2014; slightly later COD likely given permitting delays.

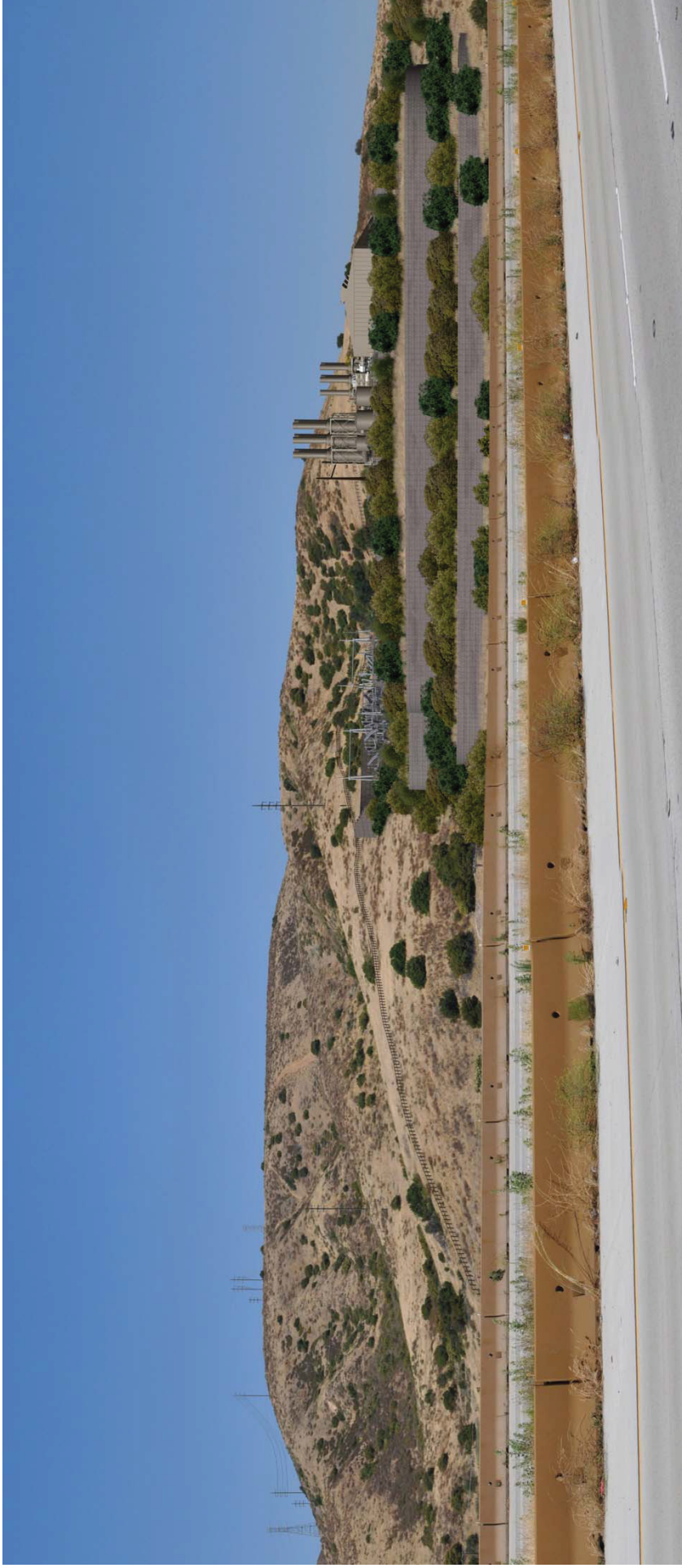


Background: Commitment to Environment & Community

- Located near and makes use of existing natural gas and transmission lines.
- Located adjacent to second largest landfill in San Diego County.
- Will meet or exceed all State & federal clean air requirements.
- No significant adverse health impacts to community.
- Cannot be seen from West Hills High School, Castle Rock, Fanita Ranch, and most of Santee.
- No significant noise or odor impacts.
- No significant adverse impacts to plants and wildlife.



Background: View from HWY 52



Background: Community Support

- BIOCOM – Life Sciences Association
- BOMA – Building Owners and Managers Association
- CleanTech San Diego
- CONNECT – Connects Life Sciences & Technology Innovators w/Investors
- Downtown San Diego Partnership
- International Brotherhood of Electrical Workers Local 569
- NAIOP – Commercial Real Estate Development Association
- San Diego Building & Construction Trades Council
- San Diego County Taxpayers Association
- San Diego East County Chamber of Commerce
- San Diego Regional Chamber of Commerce
- San Diego Regional Economic Development Corporation
- San Diego-Imperial Counties Labor Council
- Save Our Rural Economy
- United Association of Plumbers, Steamfitters, Refrigeration & HVAC Service Technicians Local 230



Background: PDs

Proposed Decisions Rejecting Quail Brush PPTA

- In 2012, CPUC decided to take into account the CAISO study on the impacts of Once-Through Cooling (OTC) retirements to determine “need” for local capacity areas.
 - SDG&E need was to be determined in the SDG&E PPTA proceeding.
 - SCE and PG&E need was to be considered in Track 1 of 2012 LTPP.
- November 20, 2012: ALJ Yacknin and Commissioner Ferron issue PDs denying SDG&E’s request to approve three PPTAs.
 - ALJ Yacknin’s PD denies SDG&E’s request to approve all three PPTAs.
 - Commissioner Ferron’s Alternate PD rejects PPTA for Quail Brush (100 MW) and Pio Pico (305 MW), but approves Escondido PPTA (45 MW).

Background: PDs

Proposed Decisions Rejecting Quail Brush PPTA (*cont'd*)

Collectively, the PDs:

- Conclude SDG&E has no need for new capacity until 2018 and that approving the PPTAs, which have 2014 CODs, would burden ratepayers with unnecessary costs.
- Provide no explanation of how the PPTAs are inconsistent with the Commission-approved SDG&E procurement plan that authorized SDG&E to procure resources with CODs before 2015.
- Ignore the looming need for Quail Brush's flexible resource benefits driven in large part by increases in renewable energy production.
- Ignore potential near-term and long-term loss of San Onofre Nuclear Generating Station (SONGS) and OTC resources prior to 2018.
- Establish a need for only 343 MW starting in 2018, relying on 370 MW load reduction due to uncommitted energy efficiency, demand response (DR), and combined heat and power (CHP).

Background: Party Status Denied

Quail Brush Motion for Party Status Denied

- Quail Brush did not initially seek to be a party; instead relied on SDG&E to represent its interests in A.11-05-023.
- Following issuance of PDs rejecting PPTAs, Quail Brush filed motion on November 27, 2012 seeking full party status:
 - Motion explains that a final decision finding no need for the Project would make project financing difficult, and could lead to abandonment of the Project.
- ALJ Yacknin acknowledged Quail Brush’s interest as a party, but denied motion given concern Quail Brush would make “disputable” factual assertions without affording opportunity to parties for cross-examination and discovery by other parties.
- ALJ Decision misunderstands Quail Brush role — error to reject intervention:
 - Developer perspective needed to explain pernicious impacts of PD;
 - Would correct errors of fact as to power project development timeline;
 - Party status will not prejudice other parties; Quail Brush would rely on evidence in record to advance reasons why PDs are flawed.

Concerns Raised by Proposed Decisions

Concerns Raised by PDs

Inconsistent with Law and Practice Governing Commission Approval of New Generation

- By statute and in practice, once Commission approves a utility's procurement plan, the Commission must:
 - "either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan."
 - Public Utilities Code § 454.5(c)(3).
- PDs make no determination how the PPTAs are inconsistent with the procurement plan adopted regarding D.07-12-052 (as modified by D.08-11-008) nor explain why, for the first time, demand response should be counted without any showing that it is local or dispatchable. This is inconsistent with the CPUC's rules for determining local resource adequacy established in D.06-06-064.
- There is no evidence in the record that the terms of the PPTAs are anything but just and reasonable. No party in the proceeding challenged the terms of the Quail Brush PPTA.
- PDs set dangerous precedent: earlier LTPP need determinations relied on by developers to make substantial investment in project development (Cogentrix has already made a multi-million dollar investment in Project).
- As SDG&E notes, "The PD's side-stepping of the Commission's precedent . . . will send a chilling signal to the electric industry's developers . . . and future RFO participants." Quail Brush concurs.



Concerns Raised by PDs

Ignores Immediate Need for New, Flexible Generation Commitments

Quail Brush joins in comments submitted by SDG&E, CAISO and Pico: need for flexible generation requires approval of PPTAs now.

- There is plainly a need for flexible resources as soon as 2015.
 - Substantial amount of renewable generation coming on line by 2015.
 - Supply of existing generation in southern California uncertain given issues around SONGS and project retirements driven by the State's OTC policy to retire such facilities (e.g., Encina power plant).
 - As noted by CAISO, SDG&E, and SCE in their Joint Proposal on Resource Adequacy (RA) Flexibility in R.11-10-023, significant net load changes occur beginning in 2015, which underscores near-term need for flexible generation.
 - Waiting *until* 2018 as urged by PDs not an option for developers either. As noted by SDG&E: “[D]evelopers cannot merely put on hold their projects while the utility issues a new RFO or files a new application for approval of the same contract.”
- Need for flexible generation demands bold action by the Commission now, not “kicking the can down the road,” when it will be difficult or impossible to develop such projects in time to meet the need.

Concerns Raised by PDs

Ignores Immediate Need for New, Flexible Generation Commitments (cont'd)

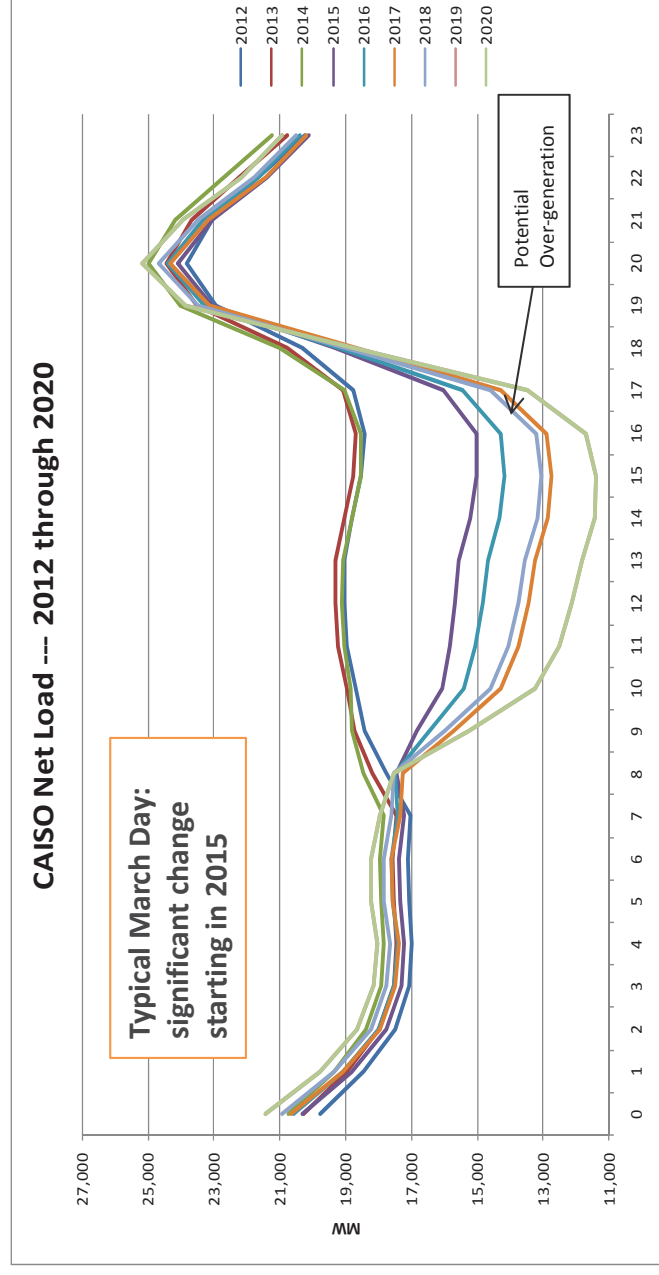
Massive Influx of New Renewable Generation Will Drive Near Term Need for Projects like Quail Brush.

- SDG&E has procured >1,000 MW of intermittent renewable projects (solar and wind) scheduled to be on-line and transmitting energy directly to SDG&E along the Sunrise Powerlink and the SW Powerlink by 2015.
- Commission 2006 LTPP order designed to meet this influx of new intermittent renewable resources:
 - “dispatchable ramping resources that can be used to adjust for the morning and evening ramps created by the intermittent types of renewable resources.” – D.07-12.052.
- PDs (at 17) defers action on addressing intermittent generation because:
 - “Commission has yet to determine the particular operational characteristics of resources that are needed to support renewable resources integration or to set procurement targets for them.”
- As Pio Pico notes in its comments: “the need for renewable integration resources does not go away simply because the Commission has yet to figure out what, if anything to do about it.”
- Quail Brush offers the flexible peaking capabilities SDG&E requires on a prudent timetable.



Concerns Raised by PDs

Per CAISO: “Net load pattern changes significantly starting in 2015.” (“Net load” is the load remaining after subtracting that amount of solar and wind projected to serve load.) The steep slope of the lines representing CAISO net load in 2015 and beyond highlights a near-term need for fast-ramping flexible generation like Quail Brush to firm intermittent solar generation.



Reprinted from: CAISO Presentation in R.11-10-023, RA Flexibility Workshop Flexible Capacity Procurement Proposal, slide 10 (slide included with minor changes in 12/6/12 Phase 2 Scoping Memo and Ruling of Assigned Commissioner and ALJ, Attachment A: 10/29/12 Resource Adequacy and Flexible Capacity Procurement Joint Parties Proposal at 5).



Quail Brush Genco, LLC

A Project Company of Cogentrix Energy

Concerns Raised by PDs

Ignores Immediate Need for New, Flexible Generation Commitments (*cont'd*)

Uncertain SONGS Outlook Also Drives Quail Brush Need.

- The PDs focus on CAISO's OTC study, but that study was developed in 2011 and therefore does not take into account the SONGS outage.
- August 2012 CAISO study shows substantially increased local capacity requirements (LCR) need in the event of a SONGS shut down.
- PDs acknowledge SONGS outage (as does CPUC PD in the 2012 LTPP Track 2, noting "heightened uncertainty surrounding SONGS"). Yet PDs make no allowance for the outage and the impacts it is likely to have on SDG&E LCR.
- As with the impacts of intermittent resources, PDs defer consideration to another pending Commission proceeding – the SONGS Order Instituting Investigation (OII).
- Deferring consideration to the OII is bad policy; it is prudent to deal with the real issue today by authorizing SDG&E to procure additional resources given genuine threats to grid reliability.
- To the extent ALJ's concern in rejecting the PPTA was about short term "over-procurement," the potential impacts of the SONGS outage and renewables integration more than justify approval of the PPTAs.



Concerns Raised by PDs

Ignores Immediate Need for New, Flexible Generation Commitments (cont'd)

Forced Retirement of OTC Units like Encina Also Support Approval of Quail Brush PPTA.

- State Water Resources Control Board (SWRCB) determination in support of State's OTC policy requires retirement of OTC units like Encina as soon as possible.
- The sooner clean, efficient projects like Quail Brush are on line, the sooner less efficient, environmentally harmful OTC projects like Encina can retire.
- Delaying CODs for projects like Quail Brush until 2018 is unworkable for the SWRCB since OTC owners' implementation plans require them to initiate compliance efforts long before the compliance deadline — end of 2017 for Encina.
- The PD's imposition of a 2018 COD effectively obliges SDG&E to rely on Encina beyond the 2017 retirement date given the OTC compliance dates imposed on it by the Commission. Thus, delay impedes State OTC and GHG policy goals.
- As SDG&E notes in its comments, "the compliance dates actually suggest a COD of no later than 2016." SDG&E comments at 11. Given development timelines, only projects in this proceeding can meet this COD.



Concerns Raised by PDs

Treatment of Incremental DR is Unsupportable

- Quail Brush concurs with CAISO conclusion that PDs removal of 219MW of demand response (DR) from the total need figure was improper given the nature of the resources examined.
- Prior Commission decisions make plain that dispatchable DR resources can be allowed to count toward LCR “to the extent feasible.” R.05-12-013, D.06-06-064.
- For it to count toward LCR, DR must be:
 - dispatchable when and where needed for a specific MW quantity;
 - durable, i.e. dependable over a significant period of time;
 - responsive, able to respond in less than 30 minutes to address contingency driven events;
 - visible, i.e. the CAISO must be able to see the response in real-time.
- There is no record evidence that the 219 MW of DR programs identified by SDG&E which the ALJ subtracted from the total need determination has the attributes to be feasibly counted toward reducing LCR need.
- Indeed evidence by SDG&E says the opposite: its DR programs are not designed to provide generation substitutable attributes needed by ISO.
- Removal of 219 MW from LCR Need determination seriously threatens grid reliability within SDG&E local area – imprudent not to approve PPTAs to avoid there being a shortfall in capacity.



Concerns Raised by PDs

Methodology PDs Use to Calculate LCR Need Equally Unsustainable—Apples Minus Oranges

- The PDs look to the two methodologies put forward to arrive at LCR:
 - The CAISO's OTC Study: 730 MW (Trajectory Scenario).
 - SDG&E's Spreadsheet Approach: 488 MW (after subtracting 387 MW for uncommitted energy efficiency, DR, and CHP).
- After determining that the CAISO OTC study is more appropriate, the PDs subtract SDG&E spreadsheet elements from the CAISO's OTC Study to identify a LCR need of 343MW beginning in 2018.
 - $730 \text{ MW} - 387 \text{ MW} = 343 \text{ MW}$
- The PDs' apples minus oranges approach is analytically flawed; "a crude solution" by its own reckoning.
 - "The power flow study results do not correlate, MW for MW, to resource assumption inputs."
- This methodology understates LCR and will result in SDG&E under-procuring needed new generation. Need to go forward with generation here to avoid getting caught short.

Other Issues: Interplay with 2012 LTPP Track 1 Proceeding

Common Issues, Separate Proceedings and Potential for Inconsistencies

- The SDG&E LCR issues were previously considered with SCE LCR needs, which made sense given the overlap of issues, evidence and witnesses for the two.
 - SDG&E and DRA even filed a joint motion to postpone ruling on SDG&E PPTA proceeding until a decision is issued in the 2010 LTPP Proceedings (R.10-05-006) given the common underlying issues of fact.
- For reasons relating to timing, they were separated notwithstanding important common issues, including: how much to rely upon the CAISO OTC Study; whether to incorporate uncommitted energy efficiency and DR into LCR need determinations; how to incorporate the need for flexible resources; and the impact of potential SONGS retirement.
- As a result, the CAISO OTC study is being applied in one proceeding by one ALJ and Commissioner to determine SDG&E's LCR and in a different proceeding by a different ALJ and Commissioner to determine SCE's LCR (with a PD expected out before year end).
- Having two separate and distinct proceedings with different decision-makers may result in inconsistent outcomes.

Need for a Hold to Allow a “Second Look”

A Second Look

PDs Should Not Be Adopted – Placing a Hold Allows a Needed “Second Look”

A hold, followed by a revised PD, would:

- Allow the Commission to rectify errors in the PDs in order to ensure reliability of San Diego load pocket.
- Provide an opportunity for reflection on importance of making commitments now to enable development of projects designed to meet expected significant net load changes starting in 2015.
- Allow the Commission to incorporate changing circumstances and well-settled policy goals into SDG&E’s LCR determination.
- Avoid inconsistent Commission treatment of issues being addressed simultaneously in two proceedings by separate ALJs and Commissioners.
- Provide opportunity for the Commission to proceed with application while affording SDG&E the opportunity to include a slightly delayed COD for Quail Brush to address delays caused by various permitting proceedings.

Quail Brush Generation Project

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