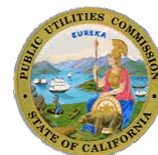


**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

04/26/21
04:59 PM

Order Instituting Rulemaking to Implement
Senate Bill 520 and Address Other Matters
Related to Provider of Last Resort.

Rulemaking 21-03-011
(Filed March 18, 2021)

**SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)
COMMENTS ON ORDER INSTITUTING RULEMAKING**

AIMEE M. SMITH
8330 Century Park Court, CP32
San Diego, California 92123
Telephone: (858) 654-1644
Facsimile: (858) 654-1586
E-mail: amsmith@sdge.com

Attorney for:
SAN DIEGO GAS & ELECTRIC COMPANY

April 26, 2021

TABLE OF CONTENTS

I.	INTRODUCTION AND BACKGROUND	1
II.	DISCUSSION.....	2
III.	RESPONSES TO QUESTIONS INCLUDED IN OIR	5
	Question 1	5
	Question 2	7
	Question 3	7
	Question 4	8
	Question 5	8
	Question 6	8
	Question 7	8
	Question 8	9
	Question 9	9
	Question 10	9
	Question 11	9
	Question 12	10
	Question 13	10
	Question 14	10
	Question 15	11
	Question 16	11
	Question 17	11
	Question 18	11
	Question 19	12
	Question 20	12
IV.	CONCLUSION.....	12

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

Order Instituting Rulemaking to Implement
Senate Bill 520 and Address Other Matters
Related to Provider of Last Resort.

Rulemaking 21-03-011
(Filed March 18, 2021)

**SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)
COMMENTS ON ORDER INSTITUTING RULEMAKING**

I. INTRODUCTION AND BACKGROUND

In accordance with Rule 6.2 of the Rules of Practice and Procedure of the California Public Utilities Commission (the “Commission”), the *Order Instituting Rulemaking* (“OIR”) issued on March 25, 2021, and Administrative Law Judge (“ALJ”) Kline’s April 5, 2021 email ruling, San Diego Gas & Electric Company (“SDG&E”) submits these comments regarding the OIR and provides preliminary responses to the questions contained therein.

As detailed in the OIR, the purpose of the instant rulemaking is to implement the provisions of Senate Bill (“SB”) 520^{1/} related to the “provider of last resort” (“POLR”) obligation.^{2/} The POLR serves as an energy supply backstop to ensure uninterrupted service in the event of an “unplanned customer migration” or where a load-serving entity (“LSE”) providing retail service fails to provide or denies service to a retail end-use customer.^{3/} SB 520 provides that while the investor-owned utilities (“IOUs”) are currently designated as the POLR in their respective distribution service territories, another LSE may be designated by the Commission to act as POLR in a specified service area upon satisfaction of established criteria. The preliminary scope of the rulemaking is “everything necessary to establish and implement the framework for

^{1/} Senate Bill (“SB”) 520, (Stats. 2019, Ch. 408).

^{2/} OIR, p. 1.

^{3/} *Id.*

the POLR and develop rules for LSEs in preparation for the possibility of an unplanned customer migration as described in SB 520.”^{4/}

II. DISCUSSION

The OIR makes clear that the POLR framework adopted by the Commission must “ensure that the electric system remains reliable and affordable while also working to achieve ambitious clean energy goals and allowing for retail choice.”^{5/} SDG&E supports this goal and agrees that it is critically important to clearly define the functional responsibilities of the POLR. SDG&E believes that the phased process suggested in the OIR, which will focus first on defining the POLR obligation for the existing POLRs (the IOUs) and then establish the process for transitioning the POLR obligation to non-IOU LSEs, makes sense.

California’s market for retail electric service has changed dramatically over the past decade and will continue to evolve toward greater fragmentation and a diminished role for the IOUs. According to the Commission’s own analysis, up to 85 percent of the historical retail customer base of the three large IOUs could depart utility bundled service to be served by alternative energy providers or other non-IOU sources, principally Community Choice Aggregators (“CCAs”), in the near future.^{6/} Indeed, SDG&E anticipates that more than half of its load will depart bundled service by the end of 2022 to be served by CCAs that have formed in its service territory, with various additional entities in the region continuing to express interest in CCA formation. Given the paradigm shift caused by ever-increasing levels of customer load departure, the Commission’s

^{4/} *Id.* at p. 15.

^{5/} *Id.*

^{6/} See CPUC Staff White Paper, *Consumer and Retail Choice, the Role of the Utility, and an Evolving Regulatory Framework* (May 2017), p. 3. The White Paper states that “the estimate of 85% load departure is based on 15 to 20 million consumers being served by CCA, Direct Access or Customer sited generation like rooftop solar (see p. 3, footnote 2).” *Id.*

historical approach of deeming the IOUs to be the default entities responsible for ensuring adequate energy supply in their distribution service territories must be reconsidered.

Developing a regulatory construct for the POLR obligations will require consideration of practical issues – *e.g.*, how from an operational perspective would an LSE acting as POLR absorb, potentially with little notice or time to prepare, a large influx of transitioned customers? – as well as policy questions regarding what LSE should bear the default obligation to act as POLR in a customer choice environment and how to ensure that the proper incentives are in place to ensure that at least one LSE is willing to act as POLR in each service area. The framework adopted by the Commission must acknowledge the greatly altered landscape and must be workable within the conditions that are expected to exist within the next few years. As a starting point for discussion of POLR-related requirements, SDG&E proposes four guiding principles to frame the POLR function (regardless of what entity is acting as the POLR):

- 1) Reliance on the POLR should be permitted only in limited, expressly defined circumstances. Put simply, LSEs should not be permitted to transfer their customers to the POLR absent extreme circumstances. LSEs that become insolvent, or are faced with an operational inability to serve, should be required to file an emergency motion with the Commission to request POLR relief. If the POLR relief is granted by the Commission, the POLR would be required to provide service to affected customers.
- 2) From an operational perspective, the POLR service should be viewed as a short-term “bridge” service (with a separate tariff schedule if the POLR is an IOU) until the transitioned customers can be absorbed into the standard service provided by the POLR LSE (*i.e.*, placed onto a standard tariff for the relevant customer class if

the POLR LSE is an IOU, or transitioned to standard service terms if the POLR is a non-IOU LSE) or permanently moved to another LSE. In other words, POLR service is more a temporary state than a permanent customer class. Once customers are transitioned to a standard service offering, they would no longer be POLR customers; they would be regular customers of their permanent LSE. The bridge POLR state should exist for a limited period (*e.g.*, no longer than nine months), which should provide sufficient time for customers to be transferred to a standard service offering or to a new provider LSE. The POLR should not be required to undertake front-stop procurement since the timing of the need, if any, for such procurement and the level of potential load transfer is unknown and such a requirement would result in unnecessary cost and could create procurement challenges for other LSEs in resource-constrained markets.

- 3) To the extent the POLR is required to perform procurement on behalf of customers in a POLR state, cost recovery for the net costs of such procurement (minus any amount available through payment of a reentry fee^{7/}) must be guaranteed through a cost recovery mechanism that allocates costs broadly to all customers in the relevant service area (or statewide) rather than imposing costs solely on the customers of the POLR. Once the transitioned customers exit their POLR state, going-forward procurement on behalf of such customers and associated cost recovery would be in accordance with the standard tariff or service plan to which the customer is assigned.

^{7/} See D.18-05-022.

- 4) The POLR framework must not pre-judge the question of whether the IOUs will continue in the POLR role in their respective distribution service territories. The adopted POLR framework must be structured so that the POLR role is a viable option for non-IOU LSEs. This includes ensuring that appropriate incentives exist to balance the risks and costs of taking on the POLR function.

III. RESPONSES TO QUESTIONS INCLUDED IN OIR

SDG&E provides below its preliminary comments in responses to the questions raised in the OIR, which reflect SDG&E's initial thoughts regarding the matters addressed. SDG&E anticipates that the stakeholder process will provide an opportunity for robust and productive discussion, and that parties' and its own views regarding these topics will continue to evolve as the record of the proceeding is further developed.

Question 1: Considering the current electric market and available generation, has the Commission implemented sufficiently robust framework for ensuring that load migration to and from LSEs can be achieved without disrupting energy supply or high costs? If not, how does the CPUC ensure continuity of service in the event of an LSE failure?

SDG&E's Response: The first CCA was launched in California over a decade ago and since that time there have been several transitions of large groups of customers from utility bundled service to CCA service. These transitions have largely occurred without disruption of energy supply to customers. However, a planned transition of customers from an IOU to a CCA provider that is performed in accordance with Commission requirements, including those established in the Commission Integrated Resource Plan ("IRP") and Resource Adequacy ("RA") proceedings, plainly does not raise the same challenges as does an unexpected failure of an LSE that results in an unanticipated influx of customers to the LSE acting as POLR. Thus, properly framed, the question is whether the Commission has a sufficiently robust framework in place to

ensure that *unplanned for* load migration to and from LSEs can be achieved without disrupting energy supply or imposing high cost.

The Commission has adopted requirements for CCAs and direct access (“DA”) providers related to reentry fees and financial security requirements (“FSRs”) that are designed to prevent interruption of service and mitigate the cost burden associated with a mass involuntary transfer of customers from these LSEs to an IOU.^{8/} While these protective measures continue to be critical to preventing disruption of service, and should be retained in the POLR framework, the foundational assumption that any mass involuntary return of customers would necessarily be to an IOU (acting in the role of POLR) must be reexamined. The framework established to ensure continuity of service in the event of LSE failure must acknowledge that in some cases, the IOU is not the appropriate LSE to act as POLR.

As a practical matter, ensuring continuity of service in the event of an LSE failure starts with ensuring that the appropriate entity is tapped to act as the POLR in such an instance. The smaller the portion of load served by the POLR, the more disproportionate the risk inherent in acting as the POLR for the service area. Thus, the Commission’s rules must acknowledge the potential for a situation where the IOU serves a minority of load (or no load at all) within its distribution service territory; in such a circumstance, it is illogical to assume that the IOU would continue to act as the POLR.

^{8/} See, e.g., D.18-05-022, D.13-01-021, D.11-12-018.

Question 2: What types of mechanisms or requirements for the POLR should be considered to ensure that the POLR has access to procurement resources in the event of LSE failure? These may include increased reserve margin, use of the backstop procurement mechanism in IRP, etc. To fulfill POLR service duties, can the POLR rely on purchasing energy on the CAISO market or should the POLR be ordered to do some advance procurement/hedging?

SDG&E's Response: The procurement undertaken by the POLR to serve customers during the bridge period until they are transitioned to a standard service offering (or to another LSE) would be short-term in nature. The POLR could rely on the California Independent System Operator ("CAISO") market to procure sufficient short-term energy. The POLR should not be required to undertake advance procurement since the timing of the need, if any, for such procurement and the level of potential load transfer would be impossible to know in advance. Hedging a position that cannot be defined is impractical and not cost-effective. In addition, an advance procurement requirement for the POLR would increase competition for limited capacity in already constrained markets, thereby exacerbating existing challenges for LSEs actually serving load. Moreover, such procurement would raise thorny questions regarding cost allocation if the procurement is ultimately not used to serve POLR customers.

Question 3: What issues need to be addressed to ensure RA obligations are met under the condition of an LSE failure and return of customers to POLR service? This includes consideration of the Energy Division compliance process, the waiver process, and the Commission's statutory authority to enforce compliance?

SDG&E's Response: POLR service should be provided on a short-term basis only. The most likely scenario for POLR activation is a mass involuntary transfer of customers to the POLR as the result of an extreme circumstance. The POLR service should be a "bare bones" basic service focused solely on ensuring continuity of service until customers can be transitioned to standard service (*i.e.*, to the appropriate IOU customer tariff or CCA/DA provider service offering). Accordingly, the full suite of RA program requirements should not apply to the POLR service itself; rather, the nine-month POLR transition period would be used by the LSE(s) taking

over permanent service to involuntarily transferred customers to procure adequate resources to meet the RA (and other) requirements associated with serving the transferred customers through standard tariffs/service offerings once those customers move from POLR service to standard service.

Question 4: IRP sets long term planning requirements and orders procurement. What issues need to be considered in the POLR proceeding to ensure that long term reliability needs are met in the event of LSE failure? Is there additional information needed to ensure POLR can meet long-term reliability needs?

SDG&E's Response: Please see responses to Questions 2 and 3.

Question 5: The state depends on LSEs' long-term contracts in IRP and RPS to bring new resources online to ensure RA. If a CCA fails, what happens to these resources? Can a POLR assume procurement contracts from a CCA or ESP in the event of the CCA or ESP becomes bankrupt or insolvent or otherwise fails to perform under the contract? If a POLR does assume the contract, what should be done to protect the IOU and bundled customers from uneconomic terms or terms that procurement review group would have found to be unreasonable for an IOU?

SDG&E's Response: As noted above, the POLR service should be short-term in nature.

Thus, the issue of the long-term contracts would fall to the LSE(s) that takes over the failed CCA or DA provider's load once customers are transitioned out of the POLR service.

Question 6: The POLR will have costs related to being prepared for a general non-IOU failure and costs associated with a specific failure when it may occur. To fulfill Section 387(g), what issues should be considered when determining cost recovery? Should a specific cost allocation and recovery framework be developed for the POLR in the event that the POLR is ordered to perform central procurement functions in the future?

SDG&E's Response: To ensure customers are not adversely affected by a non-IOU LSE failure, additional cost recovery mechanisms may be necessary to help offset the administrative and higher energy costs associated with POLR service.

Question 7: Should there be specific corporate entity requirements for an IOU POLR so that POLR services aren't mixed in with other IOU services?

SDG&E's Response: As discussed above, the POLR service should be a short-term, basic service provided through a separate tariff schedule (if by an IOU) or as a separate service offering

(if by a CCA/DA provider). As a separate service, POLR service would be clearly distinct from the IOU's bundled service offerings or the CCA/DA Provider's standard service offerings.

Question 8: To fulfill Section 387(h), what are the existing GHG reduction, air quality goals, and reporting requirements that should be considered? What other agencies have regulations that should be reviewed in this context? What rules for all LSEs should the Commission consider?

SDG&E's Response: Please see responses to Questions 2 and 3 above.

Question 9: What issues need to be considered to meet statutory requirements for RPS in the event of a return of customers to POLR, including approved RPS procurement, submission of annual RPS Procurement Plans, annual RPS Compliance Reports, any penalties associated with non-compliance of the RPS program?

SDG&E's Response: Please see responses to Questions 2 and 3 above.

Question 10: What types of mechanisms or requirements for the Non-IOU LSEs should be considered to ensure continuity of service? These mechanisms include current rules for CCA and DA providers to register, financial securities requirements, enforcement, waiver processes, and treatment of forward contracts. Are LSEs adequately hedged for energy? If not, is a mechanism necessary to ensure that they are adequately hedged?

SDG&E's Response: Please see responses to Questions 2 and 3 above. The issue of hedging and forward contracting would fall to the LSE that takes over the failed CCA or DA provider's load.

Question 11: What modifications, if any, are needed to the calculation or procedures implementing financial security requirements for CCAs or ESPs? Are there any additional aspects in the calculation of customer reentry fees that need to be considered?

SDG&E's Response: SDG&E notes generally that the POLR must be reasonably compensated for the risk associated with acting as the POLR. The CCA/DA provider reentry fees and FSRs established under the Commission's current rules provide a useful starting point for the discussion of reasonable compensation, but further consideration must be given to ensuring that LSEs (including non-IOU LSEs) have a reasonable incentive to act as POLR.

Question 12: What do we need to consider when developing a procedure for deregistering a CCA?

SDG&E's Response: SDG&E submits that this issue need not be included within the scope of the instant proceeding. While it is tangentially related to POLR operations since a CCA failure is one circumstance that could lead to reliance on the POLR, it does not appear to be the case that development of the POLR framework requires determination of the details of the CCA deregistration process.

Question 13: CCAs and ESPs will likely have outstanding RA, RPS, and IRP obligations in the event of a failure, and a failure could occur at any point in the calendar year. What actions should CCAs and ESPs be required to take now to ensure these obligations are either met or transferred to the POLR before deregistering with the CPUC? What is a reasonable time window for these actions to occur?

SDG&E's Response: Please see response to Questions 2, 3 and 12. The POLR service should operate as a short-term bridge to allow the LSE(s) taking over service for the transitioned customers a nine-month period to move those customers from the POLR service to permanent, standard service. The POLR would not be required to assume the RA, IRP, Renewable Portfolio Standard ("RPS") or other obligations from the failing CCA/DA provider; instead, the LSE(s) permanently taking over the failed CCA or DA provider's load would assume such obligations and the compliance requirements associated with that new load.

Question 14: A Joint Power Authority is an entity formed by multiple municipalities to engage in a joint operation, such as a CCA. Municipalities generally limit their liability when joining a JPA, including CCA JPAs. In the event of a JPA CCA insolvency, are there sufficient mechanisms to protect bundled customers and JPA member municipalities from the debts of the CCA. Are different mechanisms necessary address debt resulting from (a) contractual obligations, (b) Commission-issued citation penalties, and (c) other regulatory obligations.?)

SDG&E's Response: SDG&E has no comments on this topic at this time but reserves the right to provide comments in the future.

Question 15: Are there any additional aspects of the process for a return of customers to POLR that need to be considered?

SDG&E's Response: SDG&E has not identified additional aspects that must be considered but reserves the right to do so in the future.

Question 16: Are there any timing or process issues related to the rules, procedure and existing schedules that should be considered in the framework and implementation of SB 520? Are there other additional actions the Commission must take to comply with SB 520? Are there any other substantive issues necessary to implement SB 520?

SDG&E's Response: As noted above, SDG&E anticipates that more than half of its load will depart bundled service by the end of 2022. Once SDG&E is serving a minority of load in its distribution service territory, acting as the POLR and providing backstop procurement service to the majority of customers served by other LSEs will no longer be a reasonable option. Thus, it is critical that the Commission implement a viable process for designating non-IOU POLR(s) in an IOU's distribution service territory as soon as possible.

Question 17: What procedures are necessary to enable CCAs to merge?

SDG&E's Response: SDG&E submits that this issue should not be included within the scope of the instant proceeding. CCA formation issues are not directly related to POLR operations.

Question 18: What aspects of this proceeding require coordination with other agencies or other proceedings? What is the most efficient procedural approach to obtaining input from these agencies? What procedural tools -- such as workshops or crossproceeding reporting -- would efficiently encourage appropriate coordination between agencies or proceedings without creating undue burdens on agencies or parties?

SDG&E's Response: SDG&E has not identified specific areas where a need for coordination exists but reserves the right to do so in the future.

Question 19: Are there any gaps or misalignments between existing proceedings and programs that should be considered in this proceeding? Are there aspects of other proceedings and programs, such as Distributed Energy Resources or Demand Response that could be impacted by an LSE failure? To what extent should the Commission consider impacts to these programs as part of this proceeding? What aspects of this proceeding require coordination with other agencies or other proceedings? What is the most efficient procedural approach to obtaining input from these agencies?

SDG&E's Response: SDG&E is not aware of any gaps or misalignments at this time but reserves the right to identify gaps and/or misalignments in the future.

Question 20: Should the record from any other Commission proceeding be incorporated into the record of this proceeding? Are there formal reports or informal reports from other agencies or the CAISO that should be considered?

SDG&E's Response: SDG&E does not believe so but reserves the right to request additions to the record in the future.

IV. CONCLUSION

For the reasons set forth above, the Commission should take the actions described herein in order to achieve the objectives outlined in the OIR.

Respectfully submitted this 26th day of April, 2021.

/s/ Aimee M. Smith
AIMEE M. SMITH

8330 Century Park Court, CP32
San Diego, California 92123
Telephone: (858) 654-1644
Facsimile: (858) 654-1586
E-mail: amsmith@sdge.com

Attorney for:
SAN DIEGO GAS & ELECTRIC COMPANY