Decision 15-10-049 October 22, 2015

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company (U904G) to Establish a Distributed Energy Resources Services Tariff.	Application 14-08-007 (Filed August 8, 2014)

DECISION GRANTING SOUTHERN CALIFORNIA GAS COMPANY'S APPLICATION TO ESTABLISH A DISTRIBUTED ENERGY RESOURCES SERVICES TARIFF WITH MODIFICATIONS AND DENYING JOINT SETTLEMENT AGREEMENT BETWEEN SOUTHERN CALIFORNIA GAS COMPANY AND OFFICE OF RATEPAYER ADVOCATES

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Summary

This decision establishes a Distributed Energy Resources Services (DERS) Tariff by which Southern California Gas Company will facilitate the adoption and use of combined heat and power (CHP) energy systems for its customers. It is anticipated that providing Southern California Gas Company's (SoCalGas) customers an opportunity to employ Distributed Energy Resources will make more widely available a service that reduces the health and environmental impacts from air pollution, reduces greenhouse gas emissions, and provides operational efficiencies, consistent with current California environmental goals.

The decision (1) denies the Joint Settlement Agreement entered into by SoCalGas and the Office of Ratepayer Advocates; and (2) modifies SoCalGas' Application to establish a DERS Tariff. With the modifications to the terms and conditions, including the cost-based pricing methodology, enhanced mitigation measures, and reporting and accounting requirements, the DERS Tariff is in the public interest because it meets untapped demand in underserved markets for smaller customers who would benefit from CHP, offers additional choices to customers, and supports innovative business partnerships. The adopted DERS Tariff also guards against unfair competition and protects ratepayer interests consistent with the Commission's Affiliate Transaction Rules.

SoCalGas is authorized to offer the DERS Tariff for a 10-year period commencing on the date this decision is issued. Distributed energy resources

services agreements executed within this timeframe may remain in effect for the duration of the contractual terms.

This proceeding is closed.

1. Background

On August 8, 2014, Southern California Gas Company (SoCalGas) filed Application (A.) 14-08-007 (A.14-08-007 or Application) for California Public Utilities Commission (CPUC or Commission) approval of its proposed "fully elective, optional, nondiscriminatory tariff service which would provide its customers an opportunity to employ Distributed Energy Resources."[1] SoCalGas' proposed Distributed Energy Resources Services Tariff (DERS Tariff) would facilitate the adoption and use of "advanced energy systems including, but not limited to, combined heat and power (CHP), fuel cells, Waste Heat to Power (WHP), and mechanical drive technology applications" and provide opportunities for third-party participation.[2] These systems are fueled in whole (or in part) by natural gas, biogas, or other gaseous fuels (e.g., hydrogen, or hythane).

A brief description of technologies is as follows with links to CHP highlighted or italicized as appropriate:

> CHP: *CHP generates electricity at a customer facility, and recovers and utilizes waste heat to create hot water, steam and process heat*.[3]

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[1] Application at 1.

[2] Application at 1.

[3] In SCG-02 at 7, SoCalGas provides a more technical definition: "CHP, otherwise referred to as 'cogeneration,' generates electricity on-site (using a combustion turbine, internal combustion engine or fuel cell) and recovers waste heat that is used to produce another byproduct (such as hot water, chilled water, steam, et al.)."

> Fuel Cells: Fuel cells create electricity by way of an electrochemical reaction between hydrogen and the oxygen in ambient air. The hydrogen fuel can be created from various fuel stocks including natural gas and biogas. *Fuel cells can be configured for CHP as well as electric only generation.* They feature higher electrical efficiencies and lower WHP emission levels when compared to existing combustion technologies.
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> WHP: *WHP, sometimes referred to as "bottoming cycle CHP,"* is designed to capture residual (or 'waste') heard from combustion equipment (such as a boiler furnace or remaining useful heat from a CHP system) and produce electricity using off the shelf packaged units or custom-engineered equipment configurations. WHP systems increase system efficiency and reduce carbon emissions since electricity generated on-site partially offsets the need for electricity delivered by the grid.
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> Mechanical Drives: *Mechanical drives are a subset of CHP* in that, instead of generating electricity, produce mechanical (or shaft) work/horsepower for water-pumping, gas-compression or other applications or other applications. Similar to CHP, mechanical drives recover waste heat to produce another useful byproduct (such as hot water, steam, etc.).[4]

SoCalGas states the DERS Tariff would help potential tariff service customers overcome barriers such as "high upfront equipment costs, limited internal distributed energy resources management expertise, ongoing operation and maintenance expenses, and technology risk."[5] The DERS Tariff is designed to meet current and future onsite energy needs by providing advanced energy systems.

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[4] Ex. SCG-01 at 2-3.

[5] Application at 1.

To accomplish this purpose, "SoCalGas proposes to design, install, own, operate, and/or maintain advanced energy systems on or adjacent to the customer's premises pursuant to an agreement between SoCalGas and the customer."[6] SoCalGas proposes to offer "market-based pricing" for the service and make it available to all customer classes. At the same time, SoCalGas contends that the proposed tariff may not be a good fit for all customers. "The feasibility of various CHP/distributed energy resources solutions depends on a number of factors including a customer's class, size, gas and electric demand/profile, existing equipment/expansion plans, site location/utility infrastructure, technology options under consideration, and the customer's desire to increase overall efficiency."[7]

2. Procedural Background

On September 12, 2014, the Office of Ratepayer Advocates (ORA) and Shell Energy North America, LP (Shell Energy) filed protests to the Application. California Clean DG Coalition (CCDC), Bloom Energy (Bloom), and Southern California Generation Coalition (SCGC) filed responses. On September 22, 2014, SoCalGas filed a reply to protests and responses.

A Prehearing Conference (PHC) was held on November 3, 2014.

In response to questions raised at the PHC, on November 13, 2014, SoCalGas filed a supplemental informational filing pertaining to "CEQA" (California Environmental Quality Act) and "Tariff Safety Requirements."

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6 Application at 2.

7 Ex. SCGC-02 at 15.

On November 17, 2014, the assigned Commissioner issued a Scoping Memo. The Scoping Memo affirmed the preliminary categorization of the proceeding as ratesetting and need for hearings.

On January 9, 2015, SoCalGas filed a response to the Commissioner's Scoping Memo requesting that hearings be waived.

On January 9, 2015, ORA and Shell Energy filed motions requesting evidentiary hearings.

On January 27, 2015, ORA withdrew its request for evidentiary hearings, filed a reply to preserve right to evidentiary hearings, and stated that it will not admit testimony, oral or written, as evidence into the record.

On February 10, 2015, the Administrative Law Judge (ALJ) granted motions from ORA and Shell requesting evidentiary hearings.

On February 12, 2015, SoCalGas filed a notice of settlement conference to take place on February 20, 2015.

On February 25, 2015, SoCalGas and ORA filed a joint motion for adoption of a Joint Settlement Agreement. (Other parties, including Shell Energy, SCGC, CCDC, Bloom, and Independent Energy Producers Association (IEP) did not join the Joint Settlement Agreement.)

On February 26, 2015, ORA withdrew its motion requesting evidentiary hearings.

Evidentiary hearings were held on March 4 and 5, 2015.

On March 30, 2015, SoCalGas, SCGC, Shell Energy, Bloom, and IEP filed Opening Briefs.

On March 30, 2015, SoCalGas, Shell Energy, and IEP filed comments on the Joint Settlement Agreement.

On April 13, 2015, SoCalGas, SCGC, and Shell Energy filed Reply Briefs and the proceeding was submitted.

On April 13, 2015, SoCalGas filed Reply Comments on the Joint Settlement Agreement.

3. Commission Jurisdiction and Authority

As demonstrated in two previous Commission decisions Decision (D.) 12-12-037 and D.13-12-040,[8] the Commission's jurisdiction over this tariff filing is broad but guided by specific statutory provisions:

Pursuant to Public Utilities Code Section 701,[9] the Commission has broad regulatory jurisdiction over public utilities:

> 701. The Commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

Other statutes reinforce this broad authority. The jurisdiction of the Commission over the offering of new tariffed service by a regulated gas corporation is clear under Section 454:

> (a) Except as provided in Section 455, no public utility shall change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified.

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[8] D.12-12-037 "Decision Granting Application to Establish a Compression Services Tariff [CST] Subject to Certain Ratepayer Protections and to Rules to Ensure Fair Competition" issued December 26, 2013; D.13-12-040 "Decision Adopting Joint Settlement Agreement and Granting Southern California Gas Company's Application to Establish a Biogas Conditioning and Upgrading Services [BCS] Tariff" issued December 26, 2013.

[9] Unless otherwise specified, all section references are to the Public Utilities Code.

Further, Section 454.4 requires the Commission to establish special rates for gas used by cogeneration plants that are not "higher than the rates established for gas utilized as a fuel by an electric plant in the generation of electricity."

Effective January 1, 2006, § 740.8 was modified to require that health and environmental benefits, greenhouse gas emissions, and increasing alternative fuel use were to be among the interests of ratepayers that the Commission should consider in evaluating utility proposals:

> 740.8 As used in Section 740.3, "interests" of ratepayers, short- or long-term, mean direct benefits that are specific to ratepayers in the form of safer, more reliable, or less costly gas or electrical service, consistent with Section 451, and activities that benefit ratepayers and that promote energy efficiency, reduction of health and environmental impacts from air pollution, and greenhouse gas emissions related to electricity and natural gas production and use, and increased use of alternative fuels.

4. Issues Before the Commission

Through the Application, protests, responses, reply and follow-up discussions at the PHC, parties conducted an exchange that has helped to refine the scope of the Application:

1) Should the Commission grant approval to SoCalGas to establish a DERS tariff, including pro forma contracts?
2) Will the proposed DERS tariff provide safe and reliable delivery of energy to customers?
   a. Are the safety considerations in the Feasibility Analysis Agreement and DERS Agreement sufficient?
   b. Is the DERS tariff consistent with Pub. Util. Code § 451 and any other Commission direction on safety?

c. How should SoCalGas demonstrate that it has taken safety into consideration before entering into an agreement with a customer?

3) Does CEQA review apply to the DERS tariff?

4) Is it appropriate and in the public interest for SoCalGas to offer the DERS tariff as a regulated utility rather than through an affiliate subject to Commission affiliate transaction rules?

   a. Should a natural gas utility own electric generation facilities?

   b. Is the DERS tariff a proper "fit" within SoCalGas' portfolio of existing regulated utility "tariffed" services versus unregulated affiliate "non-tariffed" services? Do any affiliates offer services similar to the DERS tariff?

   c. Do Commission policies established in D.12-12-037 and D.13-10-042 Compressed Gas Services Tariff (CST) and D.13-12-040 Biogas Conditioning and Upgrading Services Tariff (BCS) provide an appropriate foundation upon which to structure a DERS tariff? Why or why not?

5) How does SoCalGas' proposed DERS tariff impact existing DERS markets (e.g., via other proceedings) and competition?

   a. To provide context, what are characteristics of the current DERS markets? Who provides services? Who are present and potential future customers? What services are currently and could be provided?

   b. How should the Commission ensure that policies determined in this proceeding are coordinated with other, related proceedings before the Commission to maximize tariff benefits?

6) Is the proposed tariff consistent with the Commission's anticompetitive policies?

   a. Do the mitigation measures proposed in this Application and approved in recent CST and BCS decisions (e.g., semiannual reports, competitively neutral web content, and neutral scripts to answer customer inquiries), provide adequate protection to guard against unfair competition?

7) Is it beneficial and useful for SoCalGas to provide an additional choice to customers and make DER services more widely available to its customers through the DERS tariff?

8) Based on the established "demand" stated in the SoCalGas' Application or similar market assessment, should the DERS tariff be limited to a target market of small commercial and industrial customers with projects of less than 20 megawatts (MW) and/or be limited to a pilot phase to approve the concept?[10]

   a. Should the DERS tariff be limited to only those technologies SoCalGas identifies in its Testimony (CHP, fuel cells, WHP, mechanical drives)?

   b. What is the anticipated demand for SoCalGas' DERS Tariff? What data and studies are appropriate to model this demand?

9) Is the proposed ratemaking proposal just and reasonable?

   a. On what basis should the "market based" ratemaking proposal be derived for the DERS tariff?

   b. Should the Commission place any restrictions on the pricing terms of the DERS tariff?

   c. Do the proposed tracking and balancing account and regulatory treatment of DERS tariff assets adequately protect ratepayers and ensure that non-participating customers bear none of the costs associated with the DERS tariff? Does the DERS tariff cover "fully loaded costs"[11] of the service?

10) Will SoCalGas' own utility system "at large" obtain any particular advantage through the offering of the DERS tariff?

11) Is the Application and proposed DERS tariff consistent with policies adopted by the Commission and California law, or do

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[10] Based on an ICF study, SoCalGas claims that these smaller projects currently provide 16% of the existing CHP capacity but 90% of the potential for tariff adoption. *See* SoCalGas' Chapter 1 Testimony at 4 and Chapter 2 Testimony at 17.

[11] "Fully loaded costs" includes "direct" costs of service plus all applicable "indirect" charges and overhead.

Commission policies or California law preclude the provision of DERS by SoCalGas?

12) What are the short- and long-term environmental benefits and costs of the DERS tariff?
    a. Should minimum efficiency standards apply to the generating systems developed under the DERS? If so, what are those standards?
    b. What is the expected lifetime of the DERS facilities and how far into the future would the tariff bring greenhouse gas emissions reduction and energy benefits?
    c. Should the Commission put provisions in place to ensure that facilities built pursuant to the DERS tariff provide greenhouse gas reductions and/or air quality benefits? How would this be measured?
13) Should the customer be able to export power from the DERS system to the grid?
    a. Will this tariff require any special rules for interconnection?
    b. If SoCalGas owns the DER facility and the customer owns the energy outputs, should either entity be eligible for state programs that pay for exported power (e.g., Assembly Bill (AB) 1613)?
14) What will be the benefits and risks to ratepayers and shareholders if the instant Application is granted?

In summary, the scope of the proceeding includes legal and policy issues concerning whether offering the service is consistent with Commission policies, and factual issues concerning whether the proposed tariff is priced at a level that is anticompetitive and whether the terms of the proposed tariff for this service are reasonable in relation to the cost of the service.

5. Consistency with Commission Policies and California State Law

A primary issue in this proceeding is whether the Application is consistent with the law and Commission precedent.

According to SoCalGas, "The proposed DERS Tariff conforms to clearly articulated State and Commission policy regarding environmentally beneficial uses of natural gas in end-use applications such as CHP, fuel cells, WHP, and mechanical drives."[12] SoCalGas states that the proposed DERS Tariff is consistent with, among other things, the following:[13]

1. Energy Action Plan (EAP), which identified CHP as a "preferred resource" and supported utility-owned CHP in the 2003 EAP and supports utility CHP tariff development in the 2004 EAP II.

2. The California Energy Commission's 2011 Integrated Energy Policy Report which demonstrated that CHP can reduce energy use by capturing waste heat pertaining to electricity production and using it to power industrial facilities, universities, hospitals, and other facilities.

3. California's environmental policies and goals embodied in AB 32 through increased CHP adoption. The Climate Change Scoping Plan, published by the California Air Resources Board in December of 2008, detailed various steps required to reduce greenhouse (GHG) emissions and set a statewide target of an additional 4,000 MW of installed CHP capacity by 2020. This would result in 6.7 million metric tons (MMT) of GHG emissions.[14]

4. Section 372(a), which encourages the state to support the development of cogeneration as an "efficient, environmentally beneficial, competitive energy resource that will enhance the reliability of local generation supply, and promote local business growth."

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[12] Ex. SoCalGas-1 at 5-6.

[13] Ex. SoCalGas-1 at 5-11.

[14] On April 29, 2015, Governor Brown issued Executive Order B-30-15 setting interim emission reduction target of 40 percent below 1990 levels by 2030 in order to make it possible to reach the ultimate goal of reducing emissions 80 percent under 1990 levels by 2050 as set forth in Order S-3-05.

5. AB 1613, which allowed the CPUC to establish a feed-in tariff for new, highly efficient CHP systems less than 20 MW. The tariff was established in D.09-12-042 and codified in Section 2840.

   As a result of this legislation, the CPUC initiated a rulemaking (R.08-06-024) which approved the rules for the utility feed-in tariffs and approved utility standard offer contracts to purchase excess electricity from eligible CHP systems.

6. D.10-12-035, which adopted the 2010 Qualifying Facilities and Combined Heat and Power Settlement and implemented a new Qualifying Facility (QF)/CHP program based on competitive solicitations and GHG emissions reductions.

7. State and Federal goals, including Governor Brown's campaign in 2010 campaign calling for 6,500 MW in new CHP capacity by 2030 and President Obama's 2012 executive order on energy efficiency that includes a national goal of 40 gigawatts of new, cost-effective industrial CHP by the end of 2020.

SoCalGas believes that the DERS Tariff is consistent with Commission policies and is not aware of any provisions of law which "preclude" the adoption of the DERS Tariff. "Previous Commission decisions approving both CST and BCS…conclusively found that the Commission has the authority to authorize tariff services such as the DERS Tariff which allow SoCalGas to provide particularized services to customers at their cost and at shareholder risk and that Commission authorization to approve these types of services is consistent with the Public Utilities Code."[15]

5.1. Parties' Comments

In response to SoCalGas' claims, IEP claims that SoCalGas' proposal may interfere with the achievement of the "competition first" goals that the

[15] SoCalGas Opening Brief at 12 citing D.12-12-037 at 18-22.

Commission set when it approved the QF/CHP Settlement (D.10-12-035) as a transition from the existing QF program, which was initiated in compliance with the Public Utility Regulatory Policies Act (PURPA) to a state-administered CHP program.

IEP points to specific language in D.10-12-015:

> Under the proposed Settlement, a new competitive procurement process will be adopted in lieu of the Commission-ordered contracts. In particular, the Proposed Settlement creates a CHP RFO [Request for Offers] process that allows the IOUs [investor owned utilities] to run competitive, transparent RFOs for CHP resources. This is a significant change in CHP procurement. It puts CHP resources into a process similar to the one currently used for conventional and RPS [Renewables Portfolio Standard] procurement. This process will result in competitive prices that are ultimately subject to Commission approval.[16]

Along these lines, IEP asserts that one of the basic premises of the QF/CHP Settlement was the adoption of a competitive process to supply the CHP needs of the state.[17] Additionally, IEP suggests that SoCalGas' intervention in the under 20 MW market is not justified because "as of 2012, SoCalGas had over 600 MW of CHP generation of 20 MW or less installed in its service area, none of which was owned or operated by SoCalGas."[18] (IEP claims that "investments in this market segment have accelerated since 2012 but did not provide evidence to support this claim.")[19] According to IEP, "In short,

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[16] D.10-12-035 at 40.

[17] IEP Opening Brief at 4.

[18] IEP Opening Brief at 4-5.

[19] IEP Opening Brief at 5.

SoCalGas has failed to explain why its intervention in this competitive market is necessary."[20]

SoCalGas refutes IEP's conclusion that the proposed DERS Tariff undermines the underlying competitive principles of the QF Settlement Agreement in D.10-12-035. SoCalGas argues that "the Commission has found that, under Commission oversight, utilities can offer tariff programs, such as the DERS Tariff, to the benefit of its customers without their implementation being unfairly competitive."[21] SoCalGas further argues that "IEP misses the point: SoCalGas is not building a QF facility to sell electricity."[22] It stresses that at SoCalGas' shareholder risk, it is offering the customer a competitive choice to build DG/CHP facilities for the customers' use and not the utility's use. In so doing, SoCalGas argues it is helping a customer achieve desired state environmental goals.

5.2. Discussion

We agree with SoCalGas that the DERS Tariff, if properly executed, could support federal and state policies regarding the environmentally beneficial use of natural gas in end-use applications of CHP, fuel cells, WHP, and mechanical drives. On a broad level, California law supports the granting of applications which reduce GHG and health and environmental impacts from air pollution, etc., as long as "utilities do not unfairly compete with non-utility enterprises."[23] With this in mind, this decision examines the competitive marketplace in the

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[20] IEP Opening Brief at 5.

[21] SoCalGas Reply Brief at 9.

[22] SoCalGas Reply Brief at 10.

[23] Section 740.3 applies to electric vehicles, but the underlying "principle" can be applied here.

context of current goals of the existing Affiliate Transaction Rules: "1) ensure utilities meet their service obligations at lowest possible cost; and 2) ensure that utilities do not favor or otherwise engage in preferential treatment of affiliates."[24] We evaluate the costs, proposed "market prices," and proposed mitigation measures to ensure no competitive advantage, as well as the overall benefits of the proposed service, to determine whether to approve the application.

We agree with SoCalGas that previous Commission decisions approving both the CST and BCS found that the Commission has broad authority to authorize tariff services such as the DERS tariff. However, there are both similarities and differences in the structure and application of the proposed DERS Tariff in comparison to the CST and BCS Tariffs. We explore the critical business implications of these finer details in subsequent sections of this decision.

We support overarching principles that promote competition and transparency, and appropriate market monitoring of ongoing Commission programs to ensure that program design and implementation details are in sync with each other. However, we see no reason that the provision of this tariff would impact the electric utilities' competitive solicitations for CHP energy and capacity that are required for the CHP Program. SoCalGas is not proposing to build a facility to sell electricity to the electric utilities as part of the CHP Program. Instead, it offers the customer the option for SoCalGas (or a third-party provider on behalf of SoCalGas) to build CHP for the customers' *own*

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[24] *See* R.05-10-030 "Order Instituting Rulemaking Concerning Relationship Between California Energy Utilities and their Holding Companies and Non-Regulated Affiliates" at 2.

use and not utility use. The customer, and not the utility, owns the fuel used to supply the facility, electricity, and output.

6. Commission Authority to Approve DERS Tariff through a Regulated Utility versus Unregulated Affiliate

A critical issue in this proceeding is whether the Commission has authority to allow a regulated utility to offer the DERS Tariff through a regulated utility versus unregulated affiliate. In response to this issue, SoCalGas argues that the Scoping Memo issues, such as this one, "are substantially similar to those raised and resolved by this Commission in its decisions approving SoCalGas' Biogas Conditioning Services (BCS) and Compression Services (CST)."[25] It further asserts that "these decisions provide solid precedent for adoption of the substantially similar DERS Tariff, which, if approved, will ensure that SoCalGas will offer the tariff in a non-discriminatory fashion and that SoCalGas does not gain an unfair competitive advantage in the provision of the service."[26] In its application, SoCalGas did not provide evidence that it can or could offer DERS as a "non-tariffed" service as defined in Affiliate Transaction Rules and as discussed in the following section.

6.1. Parties' Comments

Several parties do not believe that SoCalGas, a regulated utility, should offer the DERS Tariff. According to SCGC, the Commission's Affiliate Transaction Rules do not permit SoCalGas to offer the DER services on a "tariffed" basis as proposed by SoCalGas without any opportunity for the

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[25] SoCalGas Opening Brief at 6.

[26] SoCalGas Opening Brief at 6 referring to D.12-12-037 Findings of Fact (FOF) 11-13; D.13-12-04 Ordering Paragraph (OP) 5.

Commission to consider the rate to be charged to the DERS customer.[27] The Affiliate Transaction Rules state that a utility may only offer to sell four categories of products and services:

1. Existing products and services offered by the utility pursuant to tariff;
2. Unbundled versions of existing utility products being offered on a tariff basis;
3. New products and services that are offered on a *tariffed* [emphasis added] basis; and
4. Products and services which are offered on a nontariffed basis and which meet five conditions.[28]

SCGC claims that the third category above, "new products and services that are offered on a tariffed basis," should not apply to the DERS Tariff since the term "tariff" is defined specifically in the Affiliate Transaction Rules as referring to "rates, terms and conditions of services as approved by this Commission or the Federal Energy Regulatory Commission (FERC), whether by traditional tariff, approved contract or such approval process as the Commission or the FERC may deem appropriate."[29] "Given that Schedule No. GO-DERS does not contain any specification of rates, approval would not result in 'rates…approved by this Commission' as the phrase is used in the definition of 'tariffed' in the Affiliate Transaction Rules."[30]

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[27] SCGC Opening Brief at iv.

[28] D.06-12-029, Appendix A-3, Affiliate Transaction Rules Applicable to Large California Energy Utilities ("Affiliate Transaction Rules") (December 14, 2006).

[29] SCGC Opening Brief at 4 referring to Affiliate Transaction Rules at 19.

[30] SCGC Opening Brief at 4.

SCGC further elaborates that the provision of this service to a customer may fall within the definition of "tariffed" in Affiliate Transaction Rules if a completed Distributed Resources Service Agreement were submitted through a Tier 3 Advice Letter. Therefore, SCGC challenges SoCalGas' assertion that completed agreements will not be submitted to the Commission for approval.[31] SCGC concludes that, because the Commission does not have the opportunity to approve a "rate" to be charged for this new service, the provision of such service as proposed cannot be claimed as a "new" service "offered on a tariffed basis" as provided in the Affiliate Transaction Rules.[32]

SCGC discusses several options that would enable the provision of DER services to an unregulated affiliate. One option would be to offer the service through its unregulated affiliate that builds generation projects, Sempra U.S. Gas & Power. "In addition to building renewable generation projects, Sempra U.S. Gas & Power also builds natural gas-fired generation facilities and operates natural gas storage facilities."[33] A second option would be to offer the new service on a "non-tariffed" basis under the Affiliate Transaction Rules, subject to five conditions:

a. The nontariffed product or service utilizes a portion of the utility asset or capacity;

b. Such asset or capacity has been acquired for the purpose of and is necessary and useful in providing tariffed utility services;

c. The involved portion of such asset or capacity may be used to offer the product or service on a nontariffed basis without

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[30] SCGC Opening Brief at 4 citing Reporter's Transcript (Tr.) at 83.

[32] SCGC Opening Brief at 5.

[33] SCGC at Opening Brief at 5 citing Tr. at 20.

adversely affecting the cost, quality, or reliability of tariffed utility products and services;

d. The products and services can be marketed with minimal or no incremental ratepayer capital, minimal or new forms of liability or business risk being incurred by utility ratepayers, and no undue diversion of utility management attention; and

e. The utility's offering of such nontariffed product or service does not violate any law, regulation, or Commission policy regarding anticompetitive practice.[34]

According to SCGC, SoCalGas could offer a non-tariffed DER service if it meets the conditions specified in the Affiliate Transaction Rules. SCGC concludes that ratepayers would be "better off" if the DER service were offered through a non-tariffed basis as described in the Affiliate Transaction Rules rather than through a tariff as proposed by SoCalGas. It argues that it would be difficult to offer this service without adversely impacting ratepayers. If SoCalGas offers this service through an unregulated affiliate, it would have to replace existing utility personnel, hire a "third party service provider," or hire new employees.

SCGC provides a couple of reasons why it thinks that SoCalGas should offer the DER Services as a non-tariffed service. First, it argues that offering DER services on a non-tariffed basis, subject to the aforementioned conditions in the Affiliate Transaction Rules, would not allow the diversion of ratepayer funded utility resources away from business to provide the DER services. SCGC cautions that SoCalGas is fully considering the use of utility personnel to provide

[34] Affiliate Transaction Rules, Section VII.C.4 at 20.

the DER services.[35] According to SCGC, this raises the issue about who should or will replace SoCalGas personnel if they "diverted" them to the DERS program to do the work that they would ordinarily do for the utility.

Second, it argues that offering DER services on a non-tariffed basis would require a "reasonable mechanism for treatment of benefits and revenues from offering such services."[36] Such a mechanism may include an approach where stakeholders and ratepayers have a more equitable sharing of benefits and revenues derived from offering such a service. In this case, offering the DER service on a non-tariffed basis would protect ratepayers, ensure that utility or personnel are not unnecessarily diverted to provide DER services, and allow both ratepayers and shareholders to more equally share in both the risks and rewards associated with the program.

Similarly, IEP questions whether the DER service should be offered through an unregulated affiliate rather than through a regulated utility. It believes that potential negative impacts to competitive markets and possible ratepayer subsidies could be mitigated if the DER service is offered through an unregulated affiliate such as Sempra U.S. Gas & Power. IEP also takes issue with SoCalGas' approach to negotiate a price with the customer that is not subject to a "maximum" or "minimum" price that would typically apply to a tariffed service. It observes that there is little to distinguish the proposed DERS Tariff from an agreement that parties might negotiate in a competitive market. The key differentiating factor is that SoCalGas is the monopoly provider of natural gas

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[35] SCGC Opening Brief at 6.

[36] SoCalGas Opening Brief at 9 citing Affiliate Transaction Rules VII.d.2 at 20.

that is regulated because of its potential market power.[37] It argues that "SoCalGas should not be excused from the restrictions on utilities offering new products and services merely because it labels its proposal as a tariff."[38]

Like SCGC, Shell Energy observes that SoCalGas or a utility may not offer a new product or service unless it is offered through a "tariff" according to Affiliate Transaction Rules. SoCalGas would like to offer the DER service as a "tariff" but it proposes to negotiate the key terms of service, price, and other terms with each customer according to unique terms and conditions. Therefore, Shell Energy alleges that this proposed DER service is a "tariff" in name only.[39]

SoCalGas acknowledges SCGC, IEP, and Shell Energy concerns about SoCalGas entering into the DERS market as a regulated utility rather than through an unregulated affiliated subject to the Commission's Affiliate Transaction Rules. However, in response to these parties' claims, SoCalGas offers three reasons why they do not agree with their positions: First, SoCalGas argues that the protesting parties do not recognize that the "structure, terms, and specificity of the DERS Tariff and associated forms of agreement are substantially the same as other tariffs, approved by the Commission," such as the BCT or CST tariffs.[40] Second, SoCalGas contends that "the proposed tariff is consistent with the Commission's unfair competition policies." As it asserted in its original Application, the mitigation measures are "substantially similar" to those approved in the recent CST and BCS decisions which were designed to protect

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[37] IEP Opening Brief at 9.

[38] IEP Opening Brief at 9.

[39] Shell Opening Brief at 6.

[40] SoCalGas Reply Brief at 2.

against unfair competition.[41] Lastly, SoCalGas argues that the conclusions drawn in the CST decision should be the same in the DERS decision, if adopted:

> We are not persuaded that requiring a separate affiliate is necessary. The adopted balancing and tracking accounts will ensure that the ratepayers do not bear any risk or costs that arise from the provision service through the CST and that ratepayers do not subsidize the service. The adopted reporting requirements will allow us to monitor SoCalGas to ensure that all services needed in advance of installation of compression services are offered equally to those purchasing compression services from a third party and those buying compression services through SoCalGas. Prohibiting SoCalGas from using its bill insert to promote the CST and requiring the use of competitively neutral scripts in answering inquiries concerning the CST will ensure that SoCalGas does not have an unfair advantage. Our review of SoCalGas' web page listings and marketing scripts for competitive neutrally will ensure SoCalGas has no unfair advantage. With these adopted ratepayer protections and rules to ensure fair competition, it is not necessary for us to require SoCalGas to offer the compression service through an affiliate as the CST is consistent with the law and the public interest.[42]

6.2. Discussion

In this decision, we agree that many of the Scoping Issues in this proceeding are similar to those raised and resolved in Commission decisions approving SoCalGas' BCS and CST. Further, we agree that these decisions *may* provide a precedent for adoption of similarly structured tariffs. In the BCS and

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[41] SoCalGas Reply Brief at 2. As an example, in comportment with Pub. Util. Code § 740.3(c) SoCalGas cites eight Findings of Fact (FOF) in the CST decision that requires SoCalGas to prevent unfair competition.

[42] *See* D.13-10-042 "Order Modifying Decision (D.)12-12-037, and Denying Rehearing of the Decision, as Modified, and Denying Motion for Stay" at 32.

CST decisions, parties also raised issues regarding whether these tariffs should be offered by a regulated utility through a tariff or non-tariffed offering, or unregulated affiliate. As parties have demonstrated in this proceeding, there are advantages and disadvantages to all of these approaches.

We agree that offering the DER service through a non-tariffed offering, subject to specific conditions, would lessen the potential to divert ratepayer funded resources away from the utility to provide DER services. For example, currently, utility personnel have been "diverted" either to develop a tariff prior to the submission of an application (before the opening of a proceeding), or to litigate a tariff (following the close of a proceeding), as was the case with the CST decision. This problem is much more serious if diverted resources are not considered "surplus" and actually compromise utility work that would be accomplished otherwise. Second, offering the DER service through a non-tariff offering would allow an approach where stakeholders and ratepayers have a more equitable sharing of both risks and rewards associated with the program. Similarly, we are sympathetic to views that offering this DER service through an unregulated affiliate, especially above a specific megawatt range, could help foster competition and lessen potential for ratepayer subsidies.

The Commission's Affiliate Transaction Rules do not preclude the discussion of the proposed DERS Tariff. In the BCS and CST decisions, the Commission ruled that offering tariff services through a regulated utility is acceptable provided there are sufficient mitigation measures to guard against unfair competition and to protect ratepayer interests. Shareholders and customers are ultimately responsible for any costs associated with the program, and ratepayers should not and will not subsidize any direct or indirect program costs. For example, in this decision, we evaluate whether current mitigation measures, as originated in the CST and BCS decisions, are rigorous enough to meet their intended objectives. This issue will be further explored in Sections 10 and 11, or "Compatibility with Commission's Anti-Competitive Policies" and "Other Program Requirements."

Similarly, we are sympathetic to parties' views that a "new product or service" that would qualify as a "tariff" service should involve a "rates, terms and conditions of services" as approved by this Commission through a "traditional tariff," "approved contract," or such "approval process as the Commission may deem appropriate." As SCGC points out, because SoCalGas' application does not contain any specification of purported "market based" rates, approval of rates would not result in rates approved by the Commission. As IEP points out, there is no "maximum" or "minimum" price that would typically apply to a tariffed service so there is little to distinguish it from an agreement in a competitive market. In contrast, the approved CST tariff did not rely on "market based" pricing but rather on "well established [cost based] methodologies identical to those used in general rate cases [GRC]" that assure "just and reasonable rates."[43] This issue will be further explored in Sections 12 and 13, or "DERS Pricing Methodology" and "Additional DERS Cost Controls that Protect Ratepayer Interests."

7. Gas Utility Ownership of Electric Generation Facilities

A key issue in this proceeding is whether a gas utility should own, operate and maintain electric generation facilities on or adjacent to a customer's premises. The proposed DERS Tariff allows SoCalGas to design, install, *own*,

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[43] D.12-12-037 Conclusion of Law (COL) 16.

operate, and/or maintain advanced energy systems on or adjacent to the customer's premises pursuant to an agreement between SoCalGas and the customer.[44] In contrast, in the CST Application, SoCalGas states its offering will not conduct activities beyond the point of the customer's receipt of compression service, and as a consequence, will neither own, operate, or maintain facilities nor conduct business operations beyond the point of service delivery.[45]

In its original application, SoCalGas makes only limited reference to this issue when it states: "SoCalGas does not intend on becoming an electric utility."[46] On January 15, 2015, Energy Division sent a data request to SoCalGas asking SoCalGas to clarify whether SoCalGas' existing Certificates of Public Convenience and Necessity (CPCNs) allow SoCalGas to construct/own/operate electric generation facilities, or if the CPCN only relates to the provision of natural gas services. In response to this data request, SoCalGas responded as follows:

> A new CPCN is not necessary for the Commission to approve the DERS Tariff. SoCalGas' existing CPCN's allow for the utility to operate equipment that is necessary to provide utility service to its customers. Although a CPCN is generally required by California Public Utilities Code § 1001 for a utility to begin construction of a line, plant or system extension, a new CPCN is not necessary within SoCalGas' existing service territory.[47]

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[44] SoCalGas Application at 2. (Emphasis added).

[45] CST Application at 3.

[46] Ex. SCG-01 at 1.

[47] Ex. SCG-09 at 1.

In response to the same data request, SoCalGas emphasizes that it does not propose to own the energy provided to or produced from any of the systems. Looking to Commission precedent, they stated that "Since 1990, SoCalGas has been authorized to install, own, operate, and maintain natural gas fuel cells as part of an ongoing effort to develop and bring environmentally beneficial fuel cell technology to the market."[48]

7.1. Parties' Comments

In opening briefs, Shell Energy challenges SoCalGas' assertion that providing gas services and providing energy services to the customer would be a "logical extension of utility service" according to § 1001: "Electric generation is not a logical extension of SoCalGas' natural delivery function…SoCalGas is not in the electric generation business, any more than it is in the business of manufacturing gas-fired barbecues, gas-fired stoves, or natural gas-fueled vehicles."[49] Along a similar line of reasoning, Shell Energy challenges SoCalGas' position and contends that "SoCalGas ownership and operation of behind-the-meter DER services is not 'necessary' to provide utility service to any customer."[50] Shell Energy further alleges that the existing SoCalGas tariff states that customers and not SoCalGas are responsible for the "consumer equipment" downstream of the "service delivery point" according to SoCalGas Rule 1 ("Definition") and Rule 26.[51]

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48 Ex. SCG-09 at 1; Ex.SCG-10 "Excerpts from SoCalGas' 1990 GRC Decision Regarding SoCalGas' Fuel Cell Program for Nonresidential Applications (D.90-01-016)."

49 Shell Energy Opening Brief at 15.

50 Shell Energy Reply Brief at 4.

51 Shell Energy Opening Brief at 15, footnote 13.

On a more fundamental level, Shell Energy contends that the proposed DER service is not within the scope of the gas utility's "traditional utility function" or "obligation to serve" to customers in its service territory at the customer's end-use meter. According to Shell Energy, "SoCalGas' 'obligation to serve,' which includes the obligation to deliver natural gas to the customer's end-use facility, means that SoCalGas may not decline to provide gas service to an otherwise qualified customer located on its system."[52] Shell Energy argues that the proposed DERS service is not like the traditional utility service that SoCalGas typically provides to its customers in its service territory. Shell Energy warns that customers should be wary about "trusting" its energy provider that will propose a price that exceeds the utility's cost and may offer terms and conditions that could be "one sided" or unduly favor the utility.[53] For this reason, SCGC believes that this service should be provided by an affiliate or third-party provider.

In its reply brief, SCGC maintains that SoCalGas fails to show that it is certificated to design, own, control, or operate an electrical plant. It accuses SoCalGas of evading the issue about whether a natural gas utility should own electric generation facilities in its pleadings. SCGC also disputes whether SoCalGas, as a "gas corporation" who manages "gas plants" has the authority to own an "electrical plant" as defined by California Public Utilities Code Sections 221-222, 217.[54] SCGC also challenges whether Commission approval of a $2.1 million Fuel Cell Program in SoCalGas territory in a 1990 GRC

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[52] Shell Energy Opening Brief at 15.

[53] Shell Energy Opening Brief at 16.

[54] SCGC Reply Brief at 8-9.

provides an acceptable Commission precedent for the Commission to consider. The Commission approved the expenditure on the Fuel Cell Program by a settlement agreement between DRA[55] and SoCalGas and for this reason is "non-precedential." According to SCGC, this particular case is not dispositive on whether a gas corporation who runs gas plants can run an electrical plant. Further, SCGC claims that this "trivial expenditure in a 25-year old GRC" may not be the best example to resolve this same question. According to SCGC, referring to such an old case to prove a point is effectively an "admission" that it does not have authority to install electric generation facilities.

7.2. Discussion

SoCalGas' application has only one sentence about this issue: "SoCalGas does not intend on becoming an electric utility." However, the brevity of this statement may conceal the many policy implications to consider when one evaluates whether SoCalGas (who is in the business of natural gas distribution, transmission, and storage systems supplying natural gas through 20,000 square miles of service territory) should be able to own, operate, and maintain electric generation facilities on or adjacent to a customer's premises. To answer this question, one must consider the Public Utilities Code, Commission precedent in both regulated and unregulated arenas (to the extent that it is applicable on either a conceptual or practical basis), and business risk to both the shareholder and ratepayer.

Given the unique business model that the DERS Tariff presents, we are not convinced that a CPCN to own facilities on a customer's premises would be

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[55] "DRA" (Division of Ratepayer Advocates) is now called "ORA" or Office of Ratepayer Advocates.

necessary since SoCalGas does not plan to distribute electricity from a customer-owned facility for sale to external retail customers; nor does SoCalGas intend to own the energy provided or produced from the system or customer "microgrid." The provision of gas for electricity on a specific customer's property, especially on such a small scale, does not make SoCalGas an electric utility. Further, as SoCalGas presents in its testimony, CHP systems *displace* (and therefore do not *supplement*) purchased electricity and boiler fuel with self-generated power and thermal energy that is recovered and utilized. (Ideally, according to SoCalGas, "the value of reduced electricity costs more than offsets the incremental system cost, fuel cost, and other operating and maintenance costs throughout the life of the CHP system."[56])

In contrast, a utility typically files a CPCN when it engages into a new line of business (e.g., 1962 Southern California Edison Company (SCE) Application to acquire, construct and operate electric operations, gas operations, and Santa Catalina Island)[57] or expands its business into new territories (e.g., 1963 SoCalGas Application to extend its natural gas transmission and distribution system from a point northwest of Indio on its Blythe-Los Angles pipelines at Garnet, in Riverside County, to furnish gas service to the communities of Morango Valley, Yucca Valley, Joshua Tree…).[58] Neither of these illustrative examples reflect anything close to what SoCalGas has in mind for the DERS Tariff, either in terms of regulatory model ("non-traditional" regulatory model in which shareholder and customer burdens risk versus "traditional" regulatory

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[56] SCG-02 at 13.

[57] D.34420 at 1-2.

[58] D.66094 at 1-2.

model in which the ratepayer burdens the risk); structure ("customer" versus "utility" ownership of fuel or gas/electricity); type of product/service ("optional" or "elective" versus "obligation to serve"); or purpose (customer fuel is sized to load with limited ability to export to the grid versus "retail" electricity sales).

Second, based on a review of past/recent Commission decisions in recent years, we are not convinced that there should be a blanket prohibition of utility owned facilities on or outside customer's premises even it doesn't appear to be a "logical extension" of utility service. For example, during the last several years, there are a few instances where the Commission has allowed utilities to own facilities on customer premises (e.g., distributed fuel cells,[59] or distributed commercial solar).[60] In this decision, we allow SoCalGas to design, own, operate, and install electric facilities on customer premises on a limited basis in order to facilitate the adoption and use of CHP, WHP, and fuel cells (configured for CHP), subject to modifications, terms and conditions.

In this decision, the most salient issue is not whether utilities should be able to recover costs associated with ownership of facilities on customer premises via a regulated utility or unregulated affiliate, but whether such a policy choice is a smart business decision from the standpoint of both shareholder and ratepayer risk in accordance with the Commission's Affiliate Transaction Rules. For example, innovative business models in the pursuit of environmental objectives

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[59] D.90-01-016. *See* Exhibit SCG-10 "Excerpts from SoCalGas' 1990 GRC Decision Regarding SoCalGas' Fuel Cell Program for Nonresidential Applications."

[60] D.09-06-049 in A.08-03-015 adopted the first solar Photo Voltaic Program for SCE. The program was for 500 MW of direct current solar photovoltaic generation, with 250 MW to be owned by the utility and 250 MW to be owned by Independent Power Producers.

may lack solid precedent or industry experience and carry uncertainty that shareholders may not be willing to risk. Similarly, a gas utility may have limited expertise in selling and installing DERS so would need to rely on potentially more expensive third-party providers, which may not reflect the least cost solution or "win/win" economics between buyer and seller as was demonstrated in the commercial solar program some years ago.

Finally, complying with Affiliate Transaction Rules involves business risk because any approved similarly structured tariff, such as the CST, BCS or DERS tariffs, rely on limited availability and expertise of staff to review and approve mandated documentation and implement mitigation measures.[61] These staff activities ensure that ratepayers are protected from "hidden" subsidies and that SoCalGas doesn't assume an unfair competitive advantage compared to other providers who may provide a similar service.

8. Tariff Safety and CEQA Considerations

A primary issue in the proceeding is whether the proposed DERS Tariff is consistent with Section 451 and other directives on safety. Another issue pertains to whether the proposed DERS Tariff complies with CEQA requirements.[62]

<u>Tariff Safety</u>

Based on SoCalGas' DERS Informational Filing, "all work performed under the DERS Tariff by either SoCalGas or third-party contractors will comply with all applicable OSHA standards and in accordance with all applicable safety

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[61] *See* ORA Protest to Application at 4.

[62] SCGC Reply Brief at 8.

orders."[63] Pursuant to specific utility interconnection requirements, DERS customers have the option to interconnect with "requisite" electric utilities in SoCalGas' territory in accordance with Rule 21 or with Los Angeles Department of Water and Power (LADWP) interconnection standards. All DERS system extensions of gas utility service will comply with SoCalGas Rule 20 for main extensions and SoCalGas Rule 21 for service line extensions.

In response to SoCalGas' Opening Brief, SCGC observes that "SoCalGas provides no citations in the evidentiary record that supports the contention that SoCalGas or its third-party contractors would 'comply with all OSHA standards' and comply with 'all safety orders.'"[64] SCGC states that SoCalGas is a "gas utility" and is not an "energy services company" (ESCO) who has more expertise with the installation of electric generation facilities. SoCalGas does not currently own or operate CHP capacity in the SoCalGas service territory and will presumably rely heavily on third-party contractors to make sure that selected contractors would comply with all applicable OSHA standards and safety orders. So SCGC asserts that "SoCalGas fails to sustain its burden of proof on the issue."[65]

Discussion

SoCalGas shall ensure that its employees and third-party contractors are adequately trained to safely operate the distributed energy resources facilities consistent with Section 451. Energy Division shall review safety provisions for subcontractors and provide any enhanced language that SoCalGas should

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[63] SoCalGas DERS Informational Filing at 2.

[64] SCGC Reply Brief at 5.

[65] SCGC Reply Brief at 5.

provide in any agreements with third-party contractors. Following the issuance of this decision, SoCalGas is authorized to file a Tier 3 Advice Letter for a DERS Tariff that includes a standard agreement for third-party contractors that provides acceptable safety provisions that must be met in order to effectuate an agreement. In the Advice Letter, SoCalGas should specify the criteria it uses to select third-party contractors, including the safety history of the contractor and any other safety assessments.

Compliance with CEQA

SoCalGas asserts that CEQA does not apply to SoCalGas' DERS application.[66] SoCalGas points to the BCS application in which the original BCS Scoping Memo states, "Proceedings that focus on ratesetting and policy issues are not considered 'projects' pursuant to the California Environmental Quality Act (CEQA), as any direct or indirect impacts to the physical environment are speculative at this time."[67]

SCGC challenges SoCalGas' position and observes that the same BCS Scoping memo warned SoCalGas that they could be subject to CEQA and/or National Environmental Quality Act (NEPA): "SoCalGas is put on notice that the future implementation of the tariffed services contemplated in A.12-04-024 may result in permit requirements at the state, federal, or local level that are discretionary and may trigger environmental review to either CEQA or the National Environmental Quality Act (NEPA)."[68]

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66 SoCalGas DERS Informational Filing at 2.

67 A.12-04-024 Scoping Memo at 4.

68 A.12-04-024 Scoping Memo at 5.

Discussion

It is unclear whether the implementation of the DERS Tariff will result in a "project" under CEQA. However, in an abundance of caution, and following similar guidance provided in previous tariff decisions, SoCalGas is put on notice that the future implementation of the tariffed services contemplated in this proceeding may result in permit requirements at the state, federal, or local level that are discretionary and may trigger environmental review to either CEQA or NEPA. The appropriate permitting agency will provide any further guidance and the Commission makes no determination as to whether CEQA applies to the DERS Tariff.

9. Impact on Competitive Markets and Customer Choice

A critical question in this proceeding is how the proposed DERS Tariff would impact current competitive markets and customer choice.

9.1. SoCalGas Market Assessment

In its original application, SoCalGas sets the stage by referring to the AB 32 Scoping Plan which establishes a target for new CHP installations at approximately 4,000 MW statewide by 2020. However, there is limited potential to reach this goal:

> The rate of CHP adoption in California has been stagnant for some time, [according to ICF CHP Installation Database, 2012][69] and according to a California Energy Commission ("CEC") study, the state is expected to only develop an

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[69] California Energy Commission, "Combined Heat and Power: Policy Analysis and 2011-2030 Market Assessment," February 2012, prepared by ICF International, CEC-200-2012-002. According to SoCalGas base case forecast for SoCalGas territory was calculated by taking the summation of LADWP, SCE, and other south territories. Ex. SCG-02 at 6.

> additional 1,499 MW of CHP installed capacity by 2020 in its most conservative, base case (or 'business as usual') scenario, less than half the goals as envisioned.[70]

According to SoCalGas, unless there is a technology breakthrough that can significantly lower costs of new CHP system capacity, there is no indication that California can improve its current installation rate and achieve its 2020 CHP goal.[71]

During the 1980's and 1990's, the CHP market experienced tremendous growth with the introduction of the PURPA. However, SoCalGas claims that the CHP market has been stagnant since the end of PURPA despite the implementation of several programs which were designed to increase adoption. SoCalGas argues that providing another choice to customers through the DERS Tariff will help close the gap between ICF forecasted growth in CHP capacity and the state's goals.

Using the CEC/ICF 2012 installation database as a measure, SoCalGas extrapolates that the current installed CHP capacity in SoCalGas territory is 3,868 MW and the additional "technical" potential is 4,690 MW.[72] Based on a CHP market "adoption" forecast in SoCalGas territory, SoCalGas proposes to capture 10% of the 2020 market potential (medium case adoption) and thereby capture 30 MW in 3 to 5 years and 50-60 MW longer term;[73] forecasted technology breakdown includes CHP at approximately 80% of SoCalGas market

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70 Ex. SCG-02 at 5.

71 Ex. SCG-02 at 5.

72 Ex. SCG-02 at 9-10.

73 Ex. SCG-02 at 6-7.

potential, fuels cells at 15% (2 to 5 MW range) and mechanical drive technology at 5%.[74] Original testimony suggests that SoCalGas could offer approximately $60 million in incremental capital to the CHP sector by 2020. However, this number could be in the $50 to $100 million range if other technologies are included.[75]

Forecasted customer breakdown for CHP markets less than 20 MW includes 37% industrial; 29% institutional; 31% commercial and 3% multi-family residential. The primary market for smaller CHP systems lies in facilities such as commercial buildings, hospitals, university campuses, prisons, metal processing/forging/food processing, repowering opportunities (replacing antiquated CHP systems which are nearing end of their useful life), etc.

Further, as referred to above, SoCalGas believes that most of the untapped potential in this market is in the small, under 20 MW size range. "CHP projects under 20 MW represent 16% of the existing, combined total for CHP but 90% of the potential for tariff adoption."[76] The DERS Tariff is designed to address some key obstacles associated with this market segment, including high equipment capital costs, lack of on-site resources and expertise, technology risk, and unwillingness to operate energy systems. When asked whether there is a basis for the conclusion that there is an "underserved" market or "market failure" in this market segment, SoCalGas points out "that when you look at the numbers of

[74] Tr. at 172-173, 235, 262.

[75] Tr. at 235-236.

[76] Ex. SCG-02 at 10.

just how many have installed CHP systems versus the technical ability that was determined, it seems like there should be a lot more applications in that range."[77]

Conversely, many of the larger customers over 20 MW "own their own systems so the opportunity to engage in the DERS Tariff is less attractive. Larger customers have their own capital, energy management, and capabilities to install and operate those systems."[78] SoCalGas observes that adoption above this size has generally been adequate and utility participation is not necessarily warranted.[79] Further, "the number of companies offering DER services has been shrinking as fewer customers adopt CHP since the requisite five year payback for most transactions offered by these companies is a significant barrier."[80] SoCalGas observes that current and future customers come from multiple market segments, including multi-family residences, hospitals, commercial buildings, institutions, hotels, and industry.

To ascertain interest in the DERS program, SoCalGas indicates that it conducted "a small sampling of potential customers that have expressed interest in a SoCalGas DERS Tariff offering, indicating that it would increase their level of confidence with these energy systems and potentially impact their decision to adopt sooner rather than later."[81] Later, it explains that the small sampling included a "dozen or less" customer relating to various categories of customers

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[77] Tr. at 102-103.

[78] Tr. at 103.

[79] Ex. SCG-02 at 20.

[80] SoCalGas Opening Brief at 7.

[81] Ex. SCG-02 at 1.

including: 1) power developers; 2) on site developers; 3) equipment manufacturers; and 4) industry groups or associations.[82]

SoCalGas emphasizes its strong reputation as an ongoing energy service provider and its ability to leverage existing relationships to stimulate partnerships with other service providers. If the DERS program is implemented, SoCalGas believes it will help achieve state CHP goals established in the AB 32 Scoping Plan and the Governor's Clean Energy Jobs Plan. SoCalGas purports that the DERS Tariff will promote "customer choice" by expanding opportunities for third-party equipment and service providers who will be contracted to provide the "majority of design, engineering, equipment supply, construction, operation, and maintenance of facilities required to deliver the proposed tariff service."[83]

9.2. Parties' Comments

Based on SoCalGas' testimony, Shell Energy observes that there is approximately 3,868 MW of existing installed CHP capacity in the SoCalGas territory as of 2012. However, none of it is owned or operated by SoCalGas. (If the DERS Tariff is approved, SoCalGas intends to outsource much of the work to third-party vendors). With an additional market potential of 4,690 MW of additional CHP that can be developed in the SoCalGas territory and third-party potential to serve this market, Shell Energy questions whether SoCalGas' participation is necessary in this market. Thus, Shell Energy believes that SoCalGas' application should be rejected as "there is no reason why Sempra U.S.

[82] Tr. at 126.

[83] Ex. SCG-02 at 22.

Gas & Power, or some other Sempra affiliate, would not be able to offer the same behind-the-meter DER services that SoCalGas proposes to offer herein, subject to the requirements of the affiliate transaction rules."[84] IEP agrees.

IEP warns that "there is inevitable potential, at a minimum, for distortion of competitive markets, or, worse for the utility's unique position" if its dual roles as a "monopoly natural gas provider" and "would-be supplier of competitive electric generation" is abused.[85] This would be accomplished if SoCalGas uses its status as a "trusted energy advisor" with special access to customers and customer information to gain an unacceptable competitive advantage versus its competitors. IEP does not believe that SoCalGas is needed to overcome barriers for customers who would likely use smaller (under 20 MW) distributed generation systems. They argue that "non-utility entities are active in this market segment, and recent years have seen a significant increase in distributed generation resources of all types, including the opportunities targeted by SoCalGas' program."[86]

With appropriate pricing and properly structured contracts, Bloom believes that there will be strong demand for the DERS Tariff. Bloom suggests that the Commission refer to the Self-Generation Incentive Program (SGIP) and CHP programs as appropriate models to study and gauge potential demand.[87] The DERS program should adopt objectives related to GHG emission reduction and water conservation. Adopting minimum standards for tariff-eligible projects

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[84] Shell Energy Opening Brief at 15.

[85] IEP Opening Brief at 11.

[86] IEP Opening Brief at 11.

[87] Bloom Opening Brief at 5.

and technologies that align with the existing SGIP would be a step in the right direction. Bloom also believes that the DERS Tariff should take into account other proceedings such as the SGIP proceeding (R.12-11-005), Distribution Resources Plans (DRP) proceeding (R.14-08-013), and the Integrated Demand Response Proceeding (R.14-10-003). The DERS Tariff should be considered in the context of other efforts to advance distributed generation.

9.3. Discussion

We acknowledge that achieving a CHP target of 4,000 MW by 2020 and accomplishing AB 32 Scoping Plan objectives may be difficult given the CEC/ICF CHP Market Assessment that suggests "stagnate" CHP growth for the foreseeable future. Following the end of the PURPA, several Commission programs (e.g., CHP, SGIP) have supported CHP development and operation. However, we concur that their current growth trajectories based on the ICF study do not appear promising in the short term. Further, SoCalGas' conservative goal to capture 10% market share of a "medium" case adoption forecast by 2020 and add 5 MW a year thereafter is reasonable assuming that a broad range of players will penetrate the remaining 90% market share of the same forecast. IEP doubts the accuracy of CEC/ICF pessimistic forecasts as presented in testimony, but did not provide initial or rebuttal testimony or evidence to support more positive MW forecasts. Similarly, Bloom anticipates strong demand for CHP programs, but does not provide any market analysis to support its assertions. Bloom merely points to other Commission programs, such as the current SGIP and CHP programs, to obtain a needed framework to study the proposed DERS Tariff.

Similarly, based on the CEC/ICF CHP Market Assessment and given SoCalGas' analysis of growth in various customer classes in different MW ranges, SoCalGas' observation that the untapped potential in CHP lies in the small, under 20 MW range, is convincing. As they state in testimony, "CHP projects under 20 MW represent about 16% of the existing, combined total but 90% of the potential for tariff adoption."[88] Given this major underlying market assumption, and given the fact that no party refuted the untapped potential in the smaller market space, it is logical that the DERS Tariff was primarily developed to directly address this latent market demand. Further, given lack of realized CHP participation in some Commission programs (e.g., CHP Feed-in Tariff), it is apparent that projects under 20 MW constitutes an "underserved" market with robust market potential if one or more market barriers are overcome.

Even in proven technology markets such as CHP, SoCalGas makes persuasive arguments that smaller CHP customers have less access to long-term capital, resources, and financing. They have less knowledge about energy systems and may be less willing to operate equipment when compared to larger customers. In many cases, they have less knowledge about interconnection requirements and air quality emission regulations. In addition to meeting demand in underserved markets, the DERS Tariff provides incremental expansion of natural gas in the Los Angeles area, and additional choice to customers and third-party providers.

Although SoCalGas does not propose any upper or lower MW size limits in its application, there is insufficient evidence to warrant SoCalGas' participation in markets over 20 MW. We agree with SCGC that participation by

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[88] Ex. SCGC-2 at 10.

utilities in this range is not necessary. We agree with IEP that expansion of a DERS Tariff to market segments over 20 MW could subdue or "distort" competition by other viable market participants.

This proceeding heavily relies on the CEC/ICF CHP Market Assessment that identifies CHP technical potential and where markets may be "underserved." The technical "best case" potential does not consider screening for economics (e.g., authorized rate of return) or other limiting factors such as ability to retrofit, smaller customer interest in applying CHP or entering into DERS Tariff agreement with SoCalGas, customer ability to finance, natural gas availability, or variation of demand within a specific customer application/size class. Many of these economic issues would not be resolved until a later date when SoCalGas and the prospective customer explore a potential Feasibility Agreement.

We agree with Bloom that any directives in this decision need to be carefully coordinated and/or aligned with other proceedings such as the SGIP Proceeding, DRP Proceeding, and the Integrated Demand Response Proceeding, among others. Some of the design elements of the SGIP and CHP programs, for example, may be borrowed to facilitate more consistent efforts to advance distributed generation and to ensure various CHP programs are not working at cross purposes.[89]

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[89] *See* Section 11 "Other Program Requirements."

10. Compatibility with Commission's Unfair Competition Policies

A key issue in this proceeding, as it was in the CST and BCT proceedings, is whether the proposed DERS Tariff is consistent with the Commission's unfair competition policies.

10.1. SoCalGas Proposal

According to SoCalGas, "the mitigation measures, proposed in this Application, which are substantially similar to those previously approved in the Commission's recent CST and BCS decisions,[90] have been found by the Commission to provide adequate protection to guard against unfair competition."[91] More specifically:

> The Distributed Energy Resources Services Tariff will be promoted on a competitively neutral basis through SoCalGas' website, the use of competitively neutral scripts, and customer certifications. Information on the SoCalGas website and other promotional materials will state that other providers may offer the same or similar service. SoCalGas will deliver periodic reports to provide the Commission with the information needed for ongoing oversight.[92]

In its testimony, SoCalGas provides assurances that it would not "tie" the provision of the DERS Tariff to any other SoCalGas service; customers would supply their own gaseous fuel, particularly if the customer is a biogas producer. Information on the SoCalGas website and other promotional materials would

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[90] D.12-12-037 FOF 11-13; D.13-12-04 OP5.

[91] SoCalGas Opening Brief at 8.

[92] Ex. SCG-01 at 3.

state that the tariff is fully "optional" and not "tied" to other utility services.[93] SoCalGas emphasizes that the Commission will have continuing oversight of the operation of the DERS Tariff and the annual report would be means to ensure that all customers receive equal treatment in the distribution of services needed to support the DERS Tariff.[94]

10.2. Parties' Comments

Several parties, including IEP and Shell Energy, question whether these mitigation measures are sufficient to enhance competitive markets. IEP points out that SoCalGas has a special relationship with the customers that are targets of this program and is perceived to be the "trusted energy advisor." It observes that that SoCalGas regularly communicates with its customers through the distribution of monthly bills and other materials. IEP questions whether the competitively neutral interaction with customers through the SoCalGas website or competitively neutral scripts may actually be "inherently competitively biased." It concludes, "SoCalGas should not be allowed to use its position as the utility provider of natural gas to give it an unfair advantage in competitive markets."[95] It claims that even with competitively neutral scripts, SoCalGas representatives may favor its DER services over those of its competitors.[96]

Similarly, Shell Energy claims that the "competitively neutral script" fails to advise customers of the risks associated with the SoCalGas' proposed DERS program. Shell Energy notes "omissions" in the script and believes that it should

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[93] Ex. SCG-01 at 3.

[94] SCG Opening Brief at 8.

[95] IEP Opening Brief at 7.

[96] IEP Opening Brief at 8.

include information that many of the SoCalGas DER services will be "outsourced" to third-party vendors, that the cost may exceed actual system cost, and that SoCalGas my decline to offer DER services to any customer for any reason. Following the reading of any script and referring the potential DERS customer to a DERS "team," Shell Energy believes that SoCalGas account executives should inform customers about the types of DER services available and should specifically identify third parties who can help identify customer needs and help develop solutions, etc.[97]

Shell Energy argues that smaller customers requiring generating capacity less than 20 MW for the DER services program may not have the sophistication to appreciate that SoCalGas will not be limited to the price it may charge and has the potential for "predatory conduct."[98]

IEP also opines that SoCalGas will have access to customer information, including consumption patterns, which could give it advantage over its competitors who do not have the same information.[99] IEP believes that if SoCalGas wants to compete in this market segment, then it should do so through an unregulated affiliate that would be subject to nondisclosure and confidentiality provision of the Affiliate Transaction Rules.

10.3. Discussion

Because SoCalGas is proposing to operate outside of its traditional regulated utility space, a key goal in this decision is to ensure fairness of competition, among SoCalGas and other DERS providers.

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97 Shell Energy Opening Brief at 22.

98 Shell Energy Brief at 13.

99 IEP Opening Brief at 7.

We agree with parties' arguments that SoCalGas has unique access to the customer, but also believe it is possible through regulation and careful Commission oversight to eliminate or mitigate any unfair advantage. Accordingly, this decision can restrict the advantages that SoCalGas could leverage in its relationship with customers as both a "monopoly service gas provider" and "supplier of competitive electric generation." Accordingly, in this decision, we adopt SoCalGas' proposed mitigation measures (with some modifications to be discussed below), including but not limited, to a competitively neutral website, the use of competitively neutral scripts, and customer certifications. Information on the website and other promotional materials will state that other providers may offer the same or similar service. SoCalGas will deliver periodic reports and provide the Commission with the information needed for ongoing oversight. This decision will preclude SoCalGas from using bill inserts to market DER services.

We agree with IEP and Shell Energy that standard mitigation measures, such as those adopted in the CST and BCT decisions, are insufficient to enhance competitive markets in this instance. Accordingly, this decision builds upon content in past BCS and CST reporting templates and requires the following mitigation measures:

1) The Southern California Gas Company shall use competitively neutral scripts in answering inquiries concerning the DERS Tariff. The scripts, as modified according to Appendix A, shall be included as part of an advice letter seeking final approval of the tariff and shall be reviewed by Energy Division to ensure their neutrality.

2) In its annual reports, in addition to the information proposed in its application, SoCalGas shall provide the following:

a. Filled-out Excel table provided in Appendix B to show the status of the tariff project. SoCalGas must include one line for each project that has signed a Feasibility Analysis Agreement. SoCalGas must continue to update the information for each project in each subsequent report. SoCalGas must track the costs and revenues associated with each individual project at the time of report submission. If a customer has signed a Feasibility Analysis Agreement, but no Tariff Agreement, SoCalGas must explain why the project was not pursued, and which party declined to pursue it further.

b. A characterization of the DERS market, including the other service providers, and SoCalGas' estimate of its market share and how it developed the estimate.

c. The total volume of natural gas sold to customers who receive the Tariff.

d. Cycle time statistics showing the completion time for any pipeline upgrades required for DER tariff customers compared to the completion time for pipeline upgrades required for non-DER tariff customers.

e. If any information provided in the annual report is confidential pursuant to the Public Utilities Code Section 583, SoCalGas must cite the appropriate decision of law that allows the information to be treated as confidential.

Regarding the website and call center, this decision adopts the policy that the web postings and marketing scripts of SoCalGas should be reviewed by Energy Division as part of an advice letter for the tariffing of this service to ensure that they do not provide an unfair competitive advantage to SoCalGas. In particular, this decision requires the posting on the SoCalGas website a list of others offering the DER service within its territory and offering of this same information via the competitively neutral script.

The application and testimony describe the tariff as "non-discriminatory." Therefore, SoCalGas shall not tie the provision of the DERS Tariff to any other

SoCalGas-provided service. Accordingly, the "Applicability" section of the Tariff and Article 4 of the Tariff Services Agreement shall state:

> SoCalGas should provide the tariff on a non-discriminatory basis, dependent only on factors such as safety, system capacity, SoCalGas resource availability, technical feasibility, and acceptability of commercial terms.

11. Other Program Requirements

If the Commission does not adopt SCGC's recommendation to offer the program through an unregulated affiliate rather or as a non-tariffed service, SCGC advocates: "SoCalGas' projections of the size and scope of the DER Services Program should be adopted as limitations on the program, subject to reauthorization or extension of the program by the Commission upon application by SoCalGas after SoCalGas and the Commission gain experience with the program on a pilot basis."[100]

Since we are allowing SoCalGas to offer the DERS Tariff through the regulated utility, we adopt the following limitations to ensure competitive markets, etc.

11.1. Fuel Type Limitations

As referred to in the background section of this decision, SoCalGas proposes that it will install "advanced energy systems" including but not limited to CHP, fuel cells, WHP, and mechanical drive applications. In a data request response to Energy Division, SoCalGas stated that it intended to use equipment

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[100] SCGC Opening Brief at 10.

that operates *in whole or in part* by natural gas, biogas, or other gaseous fuels such as hydrogen or hythane.[101]

SCGC points out that while SoCalGas apparently intends to use gaseous fuels, the definition of "DER Facilities" in Schedule No. GO-DERS as proposed by SoCalGas lacks any limitation to facilities that use gaseous fuels.[102] As SCGC points out, "there is nothing in the proposed DERS Tariff to prevent SoCalGas from installing, for example, solar or wind facilities, as admitted by a SoCalGas witness."[103] During evidentiary hearings, SoCalGas said it would not object to a clarification that would define fuels in a manner that is clear and consistent with testimony.[104]

We agree this clarification should be made with a slight modification. Accordingly, SoCalGas will use equipment that operates *wholly* by natural gas, biogas, or other gaseous fuels such as hydrogen or hythane that support CHP applications.

11.2. 20 MW Cap on Project Installations

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[101] Ex. SCG-10 at 1. According to SoCalGas, hythane "is a combination of hydrogen and methane for use on company or on customer premise, owned and operated by the utility." Ex. SCG-02 at 222.

[102] *See* Ex. SCG-05; *See* SoCalGas Application Appendix A, Sheet 7. Facilities to be placed on premises include but are not limited to: "a. Primer movers, compressors, heat recovery equipment, condensers, thermal storage, chillers, steam generators, electrical conditioning equipment, balance of plant systems, and any other equipment needed to provide DER services; b. Integrated equipment that includes a prime mover and peripheral equipment related to Applicant's specific application; and c. Other associated equipment that may be requested by Applicant and agreed to by the Utility."

[103] Tr. at 33.

[104] Tr. at 97.

SoCalGas witnesses testified that the focus of the DERS program will be CHP systems sized below 20 MW. It touts a February 2012 California Energy Commission report prepared by ICF International, "Combined Heat and Power: Policy Analysis and 2011-2030 Market Assessment" (CEC/ICF CHP Market Assessment) as the basis of its current strategy: "Only 16% CHP systems are below 20 MW in size; however, 90% of the technical potential for CHP resides in systems below 20 MW."[105] In testimony, it corroborates this view when it states that "the DERS market is currently under-served and most of the untapped potential is in the small, under 20 MW size range."[106] SoCalGas claims that the number of companies offering DER services has been decreasing because fewer customers do not wish to adopt CHP due to various obstacles, such as the requisite five-year payback and higher pricing terms for most transactions. SoCalGas contends that one of the major benefits of the DERS Tariff is that it can be structured financially to accommodate a customer's need for a longer payoff term with lower pricing terms. These smaller customers do not have the same expertise as a large industrial facility, and may need assistance working through their energy problems. Further, they often lack the resources to provide on-site energy management and lack resources and capital to identify solutions to their problems.

SoCalGas also points out that customers with project sizes above 20 MW do not necessarily constitute an underserved market. These customers have their own capital, resources, and capabilities that enable them to install and own and

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[105] Ex. SCG-02 at 10.

[106] Tr. at 102.

operate these systems.[107] Various financial institutions, independent power producers, and ESCOs focus on larger projects because they can offer a greater rate of return. Because larger customers consume more energy, they can realize a greater payback.

However, in its reply brief, SoCalGas argues that "the DERS Tariff should not be subject to a size limit."[108] It maintains that the DERS Program could appeal to larger users; just a few of these in the SoCalGas portfolio could represent a significant amount of capacity as well as societal and environmental benefits. "Limitation on project size, based on lack of record, would be entirely arbitrary and serve no state or Commission policy purpose."[109]

Most other parties support a 20 MW size limit on DERS Projects. According to SCGC:

> Given the SoCalGas' frequently reiterated expressions of intent to focus on 'smaller customers' that would host installations having a capacity under 20 megawatts, given that 91 percent of the technical potential, for particularly, CHP applications reside in installations under 20 MW, given that the smaller customers are an underserved market for reasons explained by SoCalGas, and given that the larger customers are not an underserved market for the reasons also explained by SoCalGas, the DERS program should be limited to applications having a capacity under 20 MW.[110]

In contrast, referring to smaller or less than 20 MW CHP markets, IEP asserts that "SoCalGas' intervention is not required in this market…non-utility

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107 Tr. at 103.

108 SoCalGas Reply Brief at 6.

109 SoCalGas Reply Brief at 6.

110 SCGC Opening Brief at 15.

entities can provide the same services that SoCalGas cites justification for its proposed DERS Tariff..."[111] IEP notes that based on SoCalGas' analysis, SoCalGas had over 600 MW of CHP generation sized at 20 MW or less installed in its service territory, none of which was owned or operated by SoCalGas.[112] It argues that contrary to what SoCalGas asserts that "recent years have seen a significant increase in the distributed generation resources of all types."[113] IEP does not believe that the CHP market for projects less than 20 MW is either "underserved" or demonstrates a "market failure" that would allow SoCalGas to initiate possible penetration into this competitive market arena.

As to the 20 MW project size issue, Bloom states that it "is agnostic as to project size and scope of customers—though we believe that more choices for customers, regardless of size, is preferable."[114] It further opines that "the Commission may see fit to approve a 'pilot' or smaller tariff offering and Bloom would continue to see value in such an offering."[115]

<u>Discussion</u>

In light of our discussion about underserved markets in Section 9, we find there is a compelling reason to limit project size to 20 MW. Both SoCalGas and SCGC refer to the under 20 MW as "underserved." SoCalGas stated numerous times in original testimony and evidentiary hearings that it intends to focus on this "underserved" segment. Shell Energy, Clean Coalition, and ORA did not

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111 IEP Opening Brief at 4.

112 Tr. at 17.

113 IEP Opening Brief at 11.

114 Bloom Opening Brief at 5.

115 Bloom Opening Brief at 5.

offer comments on this issue and Bloom said that it was "agnostic" about this issue. Only IEP claims that the under 20 MW market is not "underserved."

There are several compelling reasons to limit project size to 20 MW in the DERS program. First, as the CEC/ICF CHP Market Assessment has demonstrated, because 90% of the market potential resides in this smaller CHP market segment, for example, it makes sense to target this market to achieve program MW goals and desired GHG reductions. Second, focusing on this market segment will help eliminate barriers that traditionally exist for smaller customers that may want to participate in this market, including: lack of capital, resources, long-term financing, operational and technology site expertise. Third, focusing on the larger market segment (i.e., over 20 MW) is not necessary because there is sufficient competition in this market space and larger customers have their own resources and capital to finance their own projects. Fourth, a number of factors and/or conditions that may hinder the success of the program warrant a "go slow" approach. Such factors and/or condition include lack of perfect knowledge about market and technology trends that support this market and/or related markets and programs (e.g., SGIP, CHP), and unproven success of other similar programs (e.g., CST[116] and BCS[117] programs) where the sales cycle time is long (approximately 24 months between contact with customer and beginning of contract) and a minimal number of customers have participated. Gaining more needed experience and applying "lessons learned" with similarly

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116 The most recent CST semiannual report filed on April 17, 2015 indicated that one customer has executed a CST agreement and there are no CST projects that are yet in operation.

117 The Commission required the first report on the BCS program to be submitted for four years after the program has been in effect; therefore, we have not received any data on this program. *See* D.13-12-040 at 30.

structured SoCalGas initiated programs will enable more success in the long term.

In summary, nameplate capacity of the CHP system must be less than or equal to 20 MW. If SoCalGas installs multiple systems on one customer's premises, the total nameplate capacity built on that premises must be less than or equal to 20 MW.

11.3. Technology Limitations

SoCalGas believes that to facilitate maximum environmental benefits and energy and operational efficiencies, the Commission should not adopt rules that restrict the range of technologies that could be utilized pursuant to the tariff. More program flexibility will enable higher adoption rates for DERS systems over time.

Parties' Comments

Parties have a wide range of responses regarding whether the DERS Tariff should require technology limitations. Bloom recommends that "rather than specifically calling out technologies or technology types, the DERS Tariff should be available to all commercial gas powered technologies that meet certain criteria—including GHG reductions."[118]

In response to Bloom's opening briefs, SoCalGas does not believe that the DERS Tariff should apply only to those technologies that have been certified by the California Air Resources Board (CARB). It believes that such a restriction would severely limit project size and technology type, and thereby limit the

[118] Bloom Opening Brief at 5.

range of DG solutions that the DERS Tariff could potentially provide.[119] It notes that "large turbines and internal combustion engines of all sizes" have yet to be involved in the CARB Distributed Generation certification program.[120]

Discussion

Due to lack of initial testimony presented by SoCalGas, lack of formal studies or market analysis pertaining to non-CHP technologies in the record, and limited stakeholder participation in this proceeding, it is not reasonable to offer the DERS Tariff to "non-CHP" technologies. The CEC/ICF CHP Market Assessment analyzes CHP, also known as cogeneration, which it defines as producing "electricity and useful thermal energy in an integrated system."[121] Similarly, the US Code of Federal Regulations defines a cogeneration facility as "equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy."[122] We find that the technical potential for CHP identified in the CEC/ICF CHP Market Assessment applies only to CHP technologies: those that produce both electricity and useful thermal energy.

Technologies that do not produce both electricity and useful thermal energy do not meet the definition of CHP, and should not be included in the tariff. The use of thermal energy in CHP applications may occur after the production of electricity, or in the reverse sequence. There is no evidence in the

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119 SoCalGas Reply Brief at 6.

120 SoCalGas Rebuttal Testimony at 3.

121 CEC/ICF CHP Market Assessment at 13.

122 18 CFR Section 292.202.1

record of this proceeding to show that the markets for technologies other than CHP have been underserved, so SoCalGas' intervention in markets for any other technology is not justified. For example, mechanical drive technology produces mechanical work and useful thermal energy, but does not produce electricity;[123] therefore, mechanical drive technology does not meet the technical description of CHP and is not eligible under the DERS Tariff. While mechanical drives are "similar" to CHP, they are not "subsets" of CHP as SoCalGas contends. The CEC/ICF CHP Market Assessment did not assess the technical potential for these types of non-CHP systems.

Any CHP technologies, including but not limited to topping- and bottoming-cycle applications, are eligible under the tariff.

11.4. Efficiency Standards

SoCalGas' testimony justifies the provision of the DERS Tariff, in part, to help increase CHP adoption in the state and to support GHG reduction goals. Bloom believes that the DERS Tariff should apply minimum efficiency standards "consistent with the most up to date standards from the state of avoidance of marginal emissions from the adoption of DERS."[124] Bloom Energy recommends that the Commission consider other standards in place, including the CARB Scoping Plan for AB 32 (437 Kg/MWh), or SGIP requirements of 398 Kg/MWh.[125] SoCalGas anticipates that the "vast majority" of potential DERS

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[123] *See* Exhibit SCG-02 at 12.

[124] Bloom Opening Brief at 6.

[125] Bloom Opening Brief at 7.

Tariff customers will subscribe to the SGIP for Tariff projects and be subject to the program's efficiency requirements.[126]

In response to Bloom's opening briefs, SoCalGas argues that it should not be subject to additional emissions requirements because CARB and Air Quality Management District (AQMD) emissions requirements are sufficient. SoCalGas believes that additional restrictions, beyond those already in place, would reduce technology options and overall participation in the program.

Discussion

The Commission has already defined minimum operating efficiency requirements, NOx emission standards, minimum efficiency standards, and GHG emission standards for customer-sited CHP facilities in the SGIP. Because these Commission standards already exist, and SoCalGas did not provide reasonable alternative emissions standards, nor assess whether existing CARB and AQMD standards would result in emissions reductions, it is reasonable to require conventional and renewable-fueled CHP systems provided through the DERS Tariff to meet prevailing SGIP efficiency and emission standards, which are in effect when the customer executes its DERS contract. Requiring Tariff projects to meet the prevailing SGIP standards ensures that the DERS Tariff achieves the Commission's environmental standards.

To ensure that facilities are not only built to efficiency standards, but continue to meet the standards once the facility is operational, as described in Appendix B, SoCalGas' annual report must provide the actual system efficiency

[126] SoCalGasGas Rebuttal Testimony at 2.

for projects that are operational using the minimum operating efficiency calculations contained in the latest version of the SGIP Handbook.

11.5. Program Sunset

SCGC suggests that the DERS Program should have a sunset date which will ensure that the Commission conducts a complete evaluation of the program to determine whether the program is working as it was designed and that ratepayer interests are protected. "Given that the SoCalGas projections of installed capacity and capital investment under the DERS program are generally for 2020, and given that the DERS program would be paired with SGIP which terminates at the end of 2020, an appropriate sunset date for the DERS program would be end of 2020."[127] Still further, SCGC contends that there are economic synergies between the current SGIP and the proposed DERS program: "SoCalGas would assist the customer to calculate the net present value of the payments to be made to SoCalGas under a DERS contract and compare the net present value to the incentive payment that the customer would receive under SGIP."[128]

SoCalGas does not believe that a sunset date is needed or supported by the record. "DERS projects have a sales cycle which lasts several years thus a sunset after 4-5 years would not allow the program to reach its full potential for increasing CHP adoption and would likely discourage projects."[129] SoCalGas concludes that "CHP goals exist not just for 2020 but for 2030 as well and unless

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[127] SCGC Opening Brief at 17.

[128] SCGC Opening Brief at 17 referring to Tr. at 240-241.

[129] SoCalGas Reply Brief at 7.

adoption rates change drastically, all CHP goals will require an extended timeline."[130]

Discussion

Consistent with approaches established for other similar programs, it is reasonable to establish a sunset date for the DERS program. Similar Commission programs have relatively "long" sunset dates for their programs, including BCS (initially authorized for 10 years or until 2023); CST (no sunset date established); SGIP (initially authorized for four years, 2001 through 2004);[131] and CHP (initially authorized for 9 years, end 2011 through end 2020).

In this decision, we consider a wide range of options, including the adoption of the same termination date as the SGIP in the short-term (most DERS customers are eligible for SGIP) or the adoption of extended termination dates that may run in parallel with a longer sales cycle for more complex agreements. We also consider adhering to a "middle ground" termination date. We are sympathetic to SoCalGas' view that a 4-5 year termination date may be too short since it may take two years from the date negotiations commence between SoCalGas and a prospective customer to the date an advanced energy system may be built on customer premises. We agree that having too short of a termination date may not allow the program to maximize its expected market penetration and may put a damper on the ability to gain project financing.

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130 SoCalGas Reply Brief at 7.

131 Senate Bill (SB) 861 amended Pub. Util. Code § 379.6. *See* Ordering Paragraph 1 of D.01-03-073. The California Legislature has repeatedly passed legislation extending SGIP, and the Commission has implemented a series of decisions to implement the legislation. Most recently, SB 861 extended SGIP program administration for six years from January 1, 2016 to January 1, 2021 (Public Utilities Code Section 379.6).

We do not support extending the program to coincide to the upper date range of various market forecasts that project market growth to 2030 and beyond. While the Scoping Memo specifically asked how far into the future the tariff would bring GHG emissions reductions and energy benefits, SoCalGas did not provide any analysis to show that this tariff service would continue to generate environmental benefits in the long-term, as the grid becomes cleaner. We do not have sufficient evidence on the record to support authorizing a program for longer than 10 years.

Accordingly, to provide the Commission with an opportunity to review the public interest impacts of the DERS Tariff and to help ensure that SoCalGas' actually realized market share does not unduly effect competition with third-party providers, we shall limit SoCalGas' authority under this decision for a ten-year period beginning from the issuance date of this decision. DERS agreements that the utility has executed during this ten-year period may remain in effect for the term of the agreement.[132]

11.6. Capital Investment Program Cap

SCGC notes that SoCalGas offered projections of the expected amount of CHP that it would install under the DERS Program. Based on the CEC/ICF CHP Market Assessment, SoCalGas estimates that it could capture approximately 10% of the market for CHP.[133] Using this assumption, SoCalGas could capture approximately 30 MW in 3 to 5 years (or by 2020) and 50-60 MW longer term (or

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132 *See* similar provision in D.13-12-040 at 31.

133 Ex. SCG-02 at 7; Tr. at 174.

by approximately 2030).[134] Not highlighted in its original application, but discussed during evidentiary hearings, SoCalGas also projected the amount of CHP at 80 percent of installed capacity versus other technologies at 20% (fuel cells at 15%, and mechanical drive technology at 5%).[135] Therefore, total projected DER capacity by 2020 would be 24 MW CHP, 4.5 MWs fuel cells, and 1.5 MW mechanical drive technology.[136]

If the Commission approves the DERS program, SCGC recommends that SoCalGas' projection of the capacity it would install by 2020 should serve as a cap on total installed capacity under the program, subject to revision in a subsequent application. "Establishing total installed capacity caps for the program would result in the program becoming, effectively, a pilot program to demonstrate the ability of SoCalGas to administer the program so as to capture the alleged benefits of the program without harm to ratepayers."[137]

SoCalGas disagrees with SCGC that there should be capital investment or capacity limits. SoCalGas claims that "in doing so, SCGC ignores evidence actually in the record that the state has fallen far behind in pursuit of CHP adoption goals and that SoCalGas has designed the DERS Tariff to address barriers in underdeveloped market segments in a way that will grow competitive

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134 Tr. at 175.

135 Tr. at 260.

136 Original SoCalGas testimony indicates that SoCalGas could offer $60 million incremental capital to the CHP sector by 2020. However, this capitalization number could be in the $50 to $100 million range if other technologies are included. SoCalGas estimates that a $10 million in capital investment in the CHP sector results in an annual reduction of 5,350 metric tons of GHG.) Ex. SCG-02 at 21.

137 SCGC Opening Brief at 16.

markets at no risk to ratepayers and should be permitted to stimulate DERS adoption to the furthest extent possible."[138]

Discussion

SCGC proposes a capital cap or MW cap to limit the tariff. Because SoCalGas is using shareholder funds and the economics are subject to further review and approval, it is unnecessary to limit the amount of capital they devote to this tariff. SCGC also recommends a pilot that ends in 2020. Bloom also supports the concept of a pilot. Given the long lead times associated with developing projects, a tariff sunset date of 10 years would address any concerns about the total MW they can build.

11.7. System Sizing and Electricity Exports

As stated in the CEC/ICF CHP Market Assessment, "the most efficient sizing for CHP is to match thermal output to baseload thermal demand at the site."[139] CHP systems built under the tariff should be appropriately sized to the customer's thermal demand. To ensure all systems built under the DERS Tariff are appropriately sized and match thermal demand, they must meet the criteria for new cogeneration facilities in Title 18 § 292.205(d) of the U.S. Code of Federal Regulations. While § 292.205(d) states that this section of the code is relevant to facilities seeking to sell electric energy pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978, we clarify that all facilities built under the Tariff must meet all provisions of § 292.205(d). Although § 292.205(d)(4) states that a facility 5 MW or smaller will be presumed to meet the fundamental use

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[138] SoCalGas Reply Brief at 20 citing Ex. SCG-02 at 1, 5, 14, 17, and 20.

[139] CEC/ICF CHP Market Assessment at 38.

test, we additionally require any facilities 5 MW or smaller built pursuant to the DERS Tariff to meet the fundamental use test. The fundamental use test demonstrates that the energy outputs are used primarily for industrial, commercial, or institutional purposes, and are not primarily intended for sale to an electric utility.

Because CHP systems should be sized to meet thermal load, some DERS Tariff customers may have excess electricity. SoCalGas believes that customers can decide if they want to sell excess power to the grid.[140] SoCalGas suggests that each installation will adhere to the Commission's Rule 21 standards and each customer will be eligible for state programs that export power to the grid if the system meets program requirements.

Bloom agrees with this position and states, "Yes, similar to other programs, (such as Renewable Market Adjusting Tariff (ReMAT) and CHP Tariff) the DERS Tariff should allow for some portion of the output to be 'sold'".[141] Allowing the sale of excess power to the grid could increase revenue streams to a customer, help the overall economics of projects and provide a source of power to meet local demand.

The Commission has several programs that allow for the export of power. The CHP Feed-in Tariff allows small, new, and highly efficient CHP facilities to sell excess electricity to an electric utility by signing a standard offer contract. According to statute, only facilities of 20 MW or less are eligible for the CHP

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140 SoCalGas Opening Brief at 14.

141 Bloom Opening Brief at 7.

Feed-in Tariff.[142] To be eligible for the tariff, CHP systems must achieve an energy conversion efficiency of 62 percent for topping cycle CHP and 60 percent for bottoming cycle CHP.[143] To date, only a few facilities have signed CHP Feed-in Tariff contracts with their respective utility.

The SGIP provides incentives to support existing, new, and emerging distributed energy resources. SGIP provides rebates for qualifying distributed energy systems installed on the customer's side of the utility meter. SGIP customers are permitted to export 25% of their output to the grid on an annual basis.[144] Systems that will export power to the grid will size their generators based upon 125% of the last 12 months of electrical consumption (kWhs) at the site.[145] There is no size limit on SGIP projects;[146] however, incentives are awarded on a maximum of 3 MW of project capacity.[147] There has been strong demand for SGIP incentives since the program was modified in 2011.

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[142] CA Assembly Bill (AB) 1613 (Blakeslee 2007) as amended by AB 2791 (Blakeslee 2008), codified in Public Utilities Code Section 2840, directed the CPUC, the California Energy Commission, and the Air Resources Board to implement the Waste Heat and Carbon Emissions Reduction Act. Pursuant to this Act, the CPUC to establish a feed-in tariff for CHP systems that are small (less than 20 MW), new (in operation after January 1, 2008) and highly efficient (operating above a 62% total efficiency).

[143] California Energy Commission. Guidelines for Certification of Combined Heat and Power Systems Pursuant to the Waste Heat and Carbon Emissions Reduction Act, Public Utilities Code, Section 2840 et seq. at 7. http://www.energy.ca.gov/2015publications/CEC-200-2015-001/CEC-200-2015-001-CMF.pdf.

[144] *See* D.11-09-015 at 58-61.

[145] 2015 SGIP Handbook V.1 at 55. http://www.cpuc.ca.gov/NR/rdonlyres/9E029D5B-3144-4FD4-925E-3B95FE9CAF3C/0/2015SGIPHandbookV1_Final.pdf.

[146] D.11-09-015 eliminated a previous size restriction on SGIP projects.

[147] D.11-09-015 at 38-39 describes a tiered incentive structure for incentive rates: 100% for 0-1 MW; 50% for 1-2 MW; 25% for 2-3 MW. The decision explains that "tiered incentive rates

Footnote continued on next page

Through California's RPS feed-in tariff, called the Renewable Market Adjusting Tariff (ReMAT), small renewable generators can execute a standard offer contract to export renewable energy to one of California's three large investor-owned utilities. By statute, the tariff is available to renewable generators up to 3 MW.[148]

Any facilities that export power under a standard offer contract, such as a CHP Feed-in Tariff Standard Power Purchase and Sale Agreement, must meet the standards specified in those contracts.

12. DERS Pricing Methodology

All parties in this proceeding took issue with some aspect of SoCalGas' proposed pricing and methodology.

12.1. SoCalGas Justification

SoCalGas proposes that "customers electing service under the Distributed Energy Services Tariff will be charged *market-based* [emphasis added] for the service."[149] SoCalGas argues that market-based rates will facilitate the best approach to ensure that the DERS Tariff is both "competitive and fair."[150]

SoCalGas describes its proposed pricing methodology as follows:

> Under this form of pricing, rates will be set through negotiation with the customer based on services provided under the tariff to that customer for that customer's particular needs in accordance with the current state of the market.

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are designed to ensure that SGIP funds are available to a larger number of potential beneficiaries."

[148] *See*, Section 10 (at 69) of D.12-05-035, as modified by Sections 4.8 (at 24) and 7.2 (at 69) of D.13-05-034.

[149] SoCalGas Application at 2.

[150] SoCalGas Rebuttal Testimony at 2.

> Using market based pricing will allow for maximum flexibility in reaching a deal with prospective customers and serve as a protection against unfairly competitive behavior since the rates will not be above or below market conditions.[151]

SoCalGas defends its market-based approach because it considers the tariff to be "fully elective, optional, and nondiscriminatory" which is offered to all customers, by their own choice and their own expense, to meet current and future onsite needs and achieve environmental goals by means of advanced energy systems. SoCalGas claims "the ratemaking methodology for SoCalGas's DERS Tariff is just and reasonable because there are provisions in place to ensure that DERS charges to DERS customers cover all costs and that SoCalGas bears all risks associated with the service."[152]

In its original application, SoCalGas did not propose a specific "risk adder" to augment its proposed pricing methodology; nor did it provide a business case that proposed CHP projects are "riskier" than other comparable projects or investments it may fund within its portfolio. However, SoCalGas maintains that "DERS projects contain several elements of risk including project risk, commodity price risk, regulatory and environmental compliance risk, operational performance risk, and customer creditworthiness risk, all of which can lead to a DERS customer default."[153] SoCalGas does not believe that a technology-based risk adder is necessary but believes that a capital expenditure

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151 SoCalGas Rebuttal Testimony at 2.

152 Opening Brief at 11.

153 SoCalGas Comments on PD at 7.

with a 10-12 year recovery term may increase the risk that a customer could go out of business and default on tariff payments.[154]

12.2. Parties' Comments

Various parties express strong concerns about the rationale for market pricing and its various components, and stress the need for transparency and Commission oversight.

Bloom supports SoCalGas' application but recommends that the Commission pay close attention to appropriate administrative fees, rate of return, and risk adders. It argues that administrative fees should not be particularly burdensome and final pricing needs to be "predictable, transparent, and competitive."[155] Any adjustment to a Risk Adder should be based on each technology's track record of deployment in California.

Shell Energy strongly objects to the concept of "market-based" pricing for the proposed DERS Tariff. According to Shell Energy, the market-based pricing denies price transparency and eliminates the protections that are typically provided by a tariff.[156] Shell Energy provides examples to support its positon including lack of a posted "default" price—a maximum and minimum price—that a customer can rely on if agreement between SoCalGas and the customer is not reached. Further, there is no "ceiling" on the rate SoCalGas may charge the customer because SoCalGas may offer a price that exceeds the projected cost to provide the service.[157] SoCalGas does not plan to advise the customer whether

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[154] SoCalGas Rebuttal Testimony at 2. Also *see* Tr. at 37-40.

[155] Bloom Opening Brief at 3-4.

[156] Shell Energy Opening Brief at 6.

[157] Shell Energy Opening Brief at 6 citing Tr. at 38.

the price exceeds the cost of service because the DER service is "not traditional cost-based service."[158] SoCalGas may "pick and choose" customers and offer prices for services that may differ based on particular "unique circumstances" of each customer. Individually negotiated contracts will not be subject to Commission approval.[159]

IEP also observes that the market based price is subject to negotiation between SoCalGas and the customer and not subject to a maximum or minimum price that would ordinarily apply to a tariff service.[160] According to IEP, "there is little to distinguish the proposed DER Service Tariff from an agreement that parties might negotiate in a competitive market, other than the significant fact that one of the parties is the monopoly provider of natural gas that is regulated because of its potential market power."[161] IEP believes that SoCalGas should not be "excused" from restrictions on utilities offering new products and services merely because it labels its proposal as a "tariff."

SCGC asserts that the proposed market-based rate is readily distinguishable from the cost-based rate that the Commission offers through the SoCalGas Compression Services Tariff. As SCGC states, "Although the Compression Services Tariff would utilize a 'pricing formula' rather than an explicitly stated rate for compression services, the Commission saw SoCalGas as using 'traditional ratemaking methodologies' to establish rates for compression services." Ordering Paragraph 2 of the CST decision is specific about a "cost

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158 Shell Energy Opening Brief at 6 citing Tr. at 44-55.

159 Shell Energy Opening Brief at 8 citing Tr. at 40-41.

160 IEP Opening Brief at 9.

161 IEP Opening Brief at 9.

based" approach to pricing.[162] Similarly, Conclusion of Law 18 in the same decision reinforces the theme that "the pricing methodology assures reasonable rates."[163]

SCGC further argues that "by approving a 'pricing formula' for compression services that would result in reasonable rates, the Commission saw itself as approving rates for compression services." SCGC relies on Section 454 of the Public Utilities Code that requires:

> Except as provided in Section 455, no public utility shall charge any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the Commission that the new that the new rate is justified.[164]

SCGC concludes: "Contrary to SoCalGas' claim, D.12-12-037 does not constitute a precedent for pricing without Commission approval as SoCalGas proposes in this proceeding."

In response to parties' objections, SoCalGas believes that the tariff is just and reasonable since there are sufficient provisions in place to ensure that DERS customers pay for all for the costs and SoCalGas shareholders bear all risks associated for the service.[165] Because the Commission has oversight over the program, SoCalGas does not believe that there should be any pricing restrictions.

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[162] D.12-12-037, OP 2 at 65.

[163] D.12-12-037, COL 18 at 64.

[164] D.12-12-037 at 19.

[165] Opening Brief at 11 citing Ex. SCG-03 at 3.

12.3. Discussion

All parties' in this proceeding express strong opinions concerning the "open-ended" and/or overly "flexible" market based approach that SoCalGas proposes. Various objections include, but are not limited to, the lack of consistency with other Commission programs; no minimum or maximum "default" price that would typically be associated with a tariff; no required Commission approval of individually approved contracts; lack of ratepayer protections that would eliminate "hidden" ratepayer subsidies; and, supposed "double speak" about what SoCalGas expresses on a conceptual level versus what it may actually do in practice on a program implementation level, if the Commission approves the DERS Tariff.

SoCalGas maintains that the CST is a solid precedent for adopting what SoCalGas claims is a "substantially similar DERS Tariff" with issues already raised and resolved in the CST proceeding. We disagree with SoCalGas that the proposed DERS pricing is the "same" or even "similar" to the Commission approved CST and BCS Tariffs. As referred to in parties' comments, the CST tariff is a "cost based" tariff or "formula" using traditional ratemaking methodologies rather than "market based" rate tariff (with no sunset date) using "whatever the market will bear" including any additional "premium" or "risk adder" that SoCalGas may impose on the customer at its discretion.

Similarly, the BCS Tariff is also based on a "cost of service" formulation established through negotiation between the BCS Tariff customer and SoCalGas: "The formulation will employ full overhead loaders and indirect charges using a capital charge rate no lower than the utility authorized weighted average cost of capital to ensure that the price charged for the charged for the provision of the biogas conditioning, and upgrading services is fully compensatory."[166]

According to the Affiliate Transaction Rules, the Commission must agree to "rates, terms, and conditions" by traditional tariff, approved contract or "such approval process as the Commission may deem appropriate." However, SoCalGas' proposed Schedule No. GO-DERS does not specify any rates for "new products and services." The rates for individual contracts would be individually negotiated without review or approval by the Commission as required by the definition of "tariffed" in the Affiliate Transaction Rules. Unless the Commission separately approves each utility contract with a prospective customer, a "no limitations" approach to pricing for each project would impair the Commission's ability to have sufficient oversight over the program as required by Affiliate Transaction Rules and to ensure that rates are "just and reasonable." In this decision, we do not condone "blanket approval" of "black box" pricing for specific DERS projects.[167] While the DERS Tariff is funded at the risk of SoCalGas' shareholders and customers, we do not agree with SoCalGas' contention that "there is no underlying necessity or obligation for the Commission to drive policy to manage downside risk of this tariff pricing in order to protect ratepayers."[168] This assertion is contrary to the basic principles of the Affiliate Transaction Rules which seek to accomplish the opposite.

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[166] D.13-12-040 at 9.

[167] Even SoCalGas' Transaction Based Storage Tariff (G-TBS) has price caps on the inventory, injection, and withdrawal services it offers and states that the tariff cannot continue longer than three years without Commission approval.

[168] D.13-12-040, OP 4 at 38. D.13-12-040 approved the Settlement Agreement with the provision that SoCalGas could also negotiate a capital charge rate "higher" than the utility authorized cost

Footnote continued on next page

Pursuant to Section 454, the Commission *must* review the pricing of all tariff services to ensure that the rate is justified. Commission policies must ensure that public utilities do not unfairly compete with non-utility enterprises. Thus, in order to address parties' concerns that the DERS Tariff would promote unfair competition or lack of transparency in pricing, we adopt a cost of service formulation that more closely matches the intent and actual language of the CST decision, with slight modification, as follows:

> Southern California Gas shall price the Distributed Energy Services Tariff through a service contract that includes cost and rate components, adjustments, performance requirements and payment terms agreed upon in advance by the customer and SoCalGas. SoCal Gas will use pricing methodologies *identical* [emphasis added] to those used in general rate cases.

The cost-based pricing methodology assures reasonable rates for smaller customers who constitute the primary "underserved" target market for the DERS program. As discussed further in Section 16.4.4 ("Discussion pertaining to Joint Settlement Agreement Between SoCalGas and ORA"), all costs of providing the Tariff service should be included in the cost of the Tariff, including factors for uncollectibles, operations and maintenance fees, and administrative and general feeds. If SoCalGas pays any standby charges or departing load charges to the electric utility as a result of operating the new CHP facility, these should be included in the costs.

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of capital although this contingency was not included in the OP. *See* "Joint Motion of Southern California Gas Company, Division of Ratepayer Advocates, Southern California Generation Coalition, and Agricultural Energy Consumers Association for Adoption of Settlement Agreement" at 12.

Even though SoCalGas did not propose a specific "risk adder," we acknowledge that proposed DERS projects may be subject to financial, business, and regulatory risks which, at a quick glance, may not appear to be accounted for in SoCalGas' authorized rate of return (ROR) for its capital projects.[169] As noted in D.12-12-034, SoCalGas had requested 90 basis points (.9%) to reflect its higher risk profile and perceived "additional risk" not specifically accounted for in the financial models used to calculate SoCalGas' authorized ROR for capital projects. However, D.12-12-034 denied this proposed "risk premium" because it argued that adopting a rate of return near the middle of the return on equity (ROE) ranges (adopted in the proceeding), derived from various financial models in the proceeding, adequately compensates the utility for these additional risks. D.12-12-034 also noted SoCalGas' contention that the Commission has generally allowed SoCalGas a higher ROE compared to the national average.[170] In addition, a utility may earn a higher ROR than its authorized return due to taking advantage of operational efficiencies, etc. In SoCalGas' case, it was authorized a ROR of 8.02% in 2013 and 2014, but earned a ROR of 12.10% and 9.97% for these years, respectively.[171] During 2003-2013, the average percentage difference between authorized and recorded ROE has been 3.03%. (For other

[169] *See* discussion in D.12-12-034 "Decision in Test Year 2013 Cost of Capital for the Major Energy Utilities" issued December 26, 2012 at 28-36. While "financial risk" is tied to a utility's capital structure, "business risk" reflects "new" uncertainties from competition and the economy. "Regulatory risk" pertains to "new" risks from future regulatory actions that the Commission and other regulatory agencies might take. Given SoCalGas' current capital structure, 90 basis points equates to approximately one half a percentage point in the calculation of a potential "risk adder" to the authorized ROR.

[170] D.12-12-034 at 41 (Footnote 112).

[171] Information received from SoCalGas via annual ED data request.

utilities, this range has been within the range of .03 and 1.06%). For proposed DERS projects that involve proven and mature CHP technologies, where demands of electricity and thermal demands have been met by traditional utilities (or its contractors) and optimized for cost for long periods of time and economies of scale, we believe that the existing authorized ROR is reasonable and attainable, and should adequately cover financial, business, and regulatory risk factors.

Additional Risk Not Covered by Authorized ROR and GRC Cost-Based Methodologies

We understand that SoCalGas may consider that the existing ROR and GRC cost-based methodology using the authorized weighted average cost of capital to compute the DERS rate components may not be sufficient to cover unforeseen costs or business risks associated with the development and execution of each DERS Tariff contract with a customer. Both the CST decisions and BCS decisions dealt with such "unlikely events" in a different manner, even though *both* the CST and BCS Tariffs employ a cost of service formulation for pricing.

For example, in the CST proceeding, given the hypothetical bankruptcy of a customer,[172] SoCalGas asked for permission to present to the Commission with the costs during a GRC, and to the extent the Commission deems the costs were incurred in the ratepayer interest, SoCalGas could recover these costs. For several reasons, the CST decision found that it is not appropriate for SoCalGas to seek the recovery of these uncollectible costs in the next GRC:

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[172] We choose this example since this particular risk factor was highlighted during evidentiary hearings and in SoCalGas comments on the PD.

> First, to do so could result in a ratepayer subsidy of the GRC. This would not be consistent with statutory provisions that require that utilities not have an unfair competitive advantage. Second, this opportunity to recover costs through a subsequent GRC does not seem necessary to the provision of this service. SoCalGas has itself stated that the event of revenue shortfalls is 'unlikely.' It is therefore reasonable and proper that SoCalGas assume this risk. Third, SoCalGas, through its tracking accounts has the ability to determine if it faces a revenue shortfall and amend its tariff to ensure that revenues exceed costs. Therefore, we will require SoCalGas to manage and respond to risks it is facing. Fourth, since SoCalGas has no obligation to provide this service, then in the event that revenue fail to meet costs, SoCalGas can file an Advice Letter seeking to withdraw this service.[173]

In contrast, the BCS Tariff Settling Parties asked for permission to not only authorize a tariff rate charged to the customer that is fully compensatory and cost based, but also for flexibility to compute a capital charge rate no *lower* than the utility authorized weighted average cost of capital, although the negotiated capital charge rate may be *higher* than the utility authorized cost of capital. The BCS Decision granted this authority with no percentage "cap." In sum, while the CST decision adopts a highly restrictive stance towards the cost treatment of additional risk and concludes that "SoCalGas should assume all risks with the provision of CST,"[174] the BCS decision gives more flexibility to SoCalGas by allowing them to negotiate a higher than authorized weighted cost of capital in the computation of its cost of service pricing formulation.

As discussed, while we believe that most "risk contingencies" are accounted for in the current approved cost based pricing methodology, there

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[173] D.12-12-037 at 41-42.

[174] D.12-12-037 at 42.

may be some limited circumstances (not yet defined) where some cost relief could be granted to SoCalGas, because it has less experience with this type of proposed DERS service than with compression services with which SoCalGas has significant experience. While we do not believe that we should add a half a percentage point to SoCalGas' already generous rate of return, based on its recent request in the Cost of Capital Proceeding (Test Year 2013), we will allow SoCalGas to use a BCS Tariff "type" cost-of service formulation, employing full overhead loaders and indirect charges, and using a capital charge rate, no lower than the utility authorized weighted average cost of capital to ensure that the charge for the provision of the DERS Tariff is not unfairly competitive. SoCalGas should have flexibility to negotiate a cost of capital higher than their authorized cost of capital to take into account the specific business risk associated with a tariff project when calculating a customer's tariff price. This approach constitutes a "hybrid" approach that combines both "cost of service" and "marketing" elements and should enable this tariff to be "workable" for this small CHP "underserved" market niche comprised of customers with projects sizes of 20 MW or less.

Upon request, SoCalGas shall retain and make available to Commission staff the analysis it used to develop the rate it charged each DERS customer that includes the cost–of-capital that was used in its development in comparison to its then authorized cost-of-capital. SoCalGas shall retain this analysis for the duration of the DERS program. Additionally, the annual report described in Section 10 shall specify the cost of capital that SoCalGas used to calculate the total tariff cost for each customer project. The narrative of the report shall compare SoCalGas' authorized cost of capital and the cost of capital used to calculate costs to explain any differences.

Because we are providing SoCalGas with the flexibility to charge DERS customers a cost-of-capital that takes into account the specific business risk associated with that line of business (although no lower than its prevailing weighted average cost of capital), the utility shall not argue it requires a higher weight average cost of capital for its entire operations to account for any DERS related risk in its periodic cost-of-capital proceedings.

13. Additional DERS Cost Controls that Protect Ratepayer Interests

Consistent with the CST and BCS decisions, SoCalGas believes that the balancing accounts and tracking accounts will adequately ensure the protection of ratepayers from all risks associated with the service. SoCalGas and ORA both maintain that the DERS Tariff, as modified by the proposed Joint Settlement Agreement, adequately protects ratepayers and should be approved. (*See* "Joint Settlement Agreement" Section 16 discussion). However, it is critical to note here that the more narrow terms of the proposed settlement agreement do not address other parties' concerns about other needed cost controls that protect ratepayer interests.

As discussed below, SCGC argues that further ratepayer protections, beyond the limited "clarification" that SoCalGas and ORA offer in its proposed Joint Settlement Agreement, are necessary limitations of the DERS program.

13.1. DERS Development and Litigation Costs

SoCalGas argues that it has adequate cost controls in place to properly administer the DERS Tariff. SoCalGas states, "To properly identify and segregate all costs associated with the DERS Tariff, specific internal orders will be created within the SAP financial system."[175] SoCalGas indicates that it will create an internal order for each individualized order for each DERS project and will also create an internal order for the DERS program itself through an appropriate accounting of both direct and indirect costs.[176]

However, SCGC expresses concern that "SoCalGas proposes that the internal order for the DERS program as a whole not be set up and used to record time spent on the DERS program until after the program is approved."[177] ORA also expresses a similar concern when it poses the question: "How much ratepayer funding has SoCalGas spent on the proceeding so far? Does SoCalGas include litigation and other costs to develop the DERS tariff?"[178] The consequence is that ratepayers, rather than shareholders or DERS customers, are currently bearing the cost of developing the DERS program.

In response, SoCalGas challenges SCGC's assertions and claims that "the Commission chose not to require SoCalGas to collect the analogous tariff development costs for the CST and BCF tariff services."[179] SoCalGas states that this is the proper approach since "tariff development" is a ratepayer funded activity. Although the DERS Tariff is a shareholder program, SoCalGas believes

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175 SCGC Opening Brief at 18 citing Ex. SCG-03 at 2.

176 According to SoCalGas, there are two accounting methods available to record the direct costs associated with the proposed tariff: "(1) direct charging, where the actual labor and non-labor spent in providing or supporting the DERS Tariff are recorded; and (2) [overhead] allocation, where the costs associated with the provision of labor and non-labor activities are determined by formula, such as percentage of some portion of direct costs." Ex. SCG-03 at 1.

177 SCGC Opening Brief at 19 citing Tr. at 247.

178 ORA Motion Requesting Hearings at 4.

179 SoCalGas Reply Brief at 7.

this is justified due to the "numerous benefits" that ratepayers receive in the form of GHG reduction and electric grid reliability.[180]

Discussion

While SoCalGas has claimed throughout its application and supporting testimony that shareholders and not ratepayers will bear the cost of providing this service, SoCalGas has admitted that all of the costs associated with developing the tariff to date have been borne by ratepayers.[181] Although ratepayers have funded the development costs, SoCalGas does not propose that they will receive any financial benefit from the project, nor does SoCalGas propose to exclude development costs from rates. We find that SoCalGas has not been forthcoming about the embedded ratepayer costs associated with the development of this Tariff, and that this is an inappropriate use of ratepayer funds.

SoCalGas does not require employees to separately track time spent in developing any particular new tariff. As such, SoCalGas currently has no reliable method to identify with particularity all the SoCalGas personnel who may have spent some time in developing the proposed DERS Tariff, the time each such person spent thereon, and their respective rates of compensation applicable from time to time over the course of the Tariff's development. Because of this, SoCalGas cannot provide the Commission with reasonable or reliable estimates of these charges.

SoCalGas' argument that shareholders should not pay for development costs of the Tariff because the program helps to reduce GHGs and promote grid

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[180] SoCalGas Reply Brief at 8.

[181] SoCalGas Reply Brief at 7-8.

reliability is not convincing. In principle, despite proclamation of environmental or grid reliability goals, SoCalGas ratepayers should not have to pay for any direct or indirect costs, including development costs, for the program. Through an ongoing dialogue among parties in this proceeding, it was not apparent until the filing of reply briefs that SoCalGas ratepayers, instead of shareholders, paid for the development of the CST and BCS Tariffs, and are currently paying for the development of the DERS Tariff. Such development costs include, but are not limited to the development of the original application, development of testimony that accompanied various exhibits, and participation in evidentiary hearings and various pleadings.

We do not think that ratepayers should be responsible for such costs if SoCalGas itself is true to its original pledge that shareholders and DERS customers should bear the costs of this service and not ratepayers. Given the structure of the DERS Tariff, and similarly structured tariffs, there remains the danger of having ratepayers "inadvertently" incur hidden costs that may not be easily detected or measured due to the timing of these costs, especially before the opening of a proceeding or following the conclusion of a proceeding. As an example, development costs in this proceeding have not been previously flagged, since they were incurred before the opening of this proceeding. Similarly, development costs in the BCS and CST proceedings, as well as post-CST proceeding litigation costs, were not discussed in the body of or identified in Ordering Paragraphs of the BCS and CST decisions. Therefore, it is clear that some "hidden costs" have been incurred by ratepayers and not shareholders and there should be additional protections to guard against this in the future.[182]

We agree that there should be an accurate accounting of both direct and indirect costs and internal order numbers not only for the program itself but also for separate projects. This will ensure that ratepayers are protected from incurring costs for both the development and implementation of the program from the beginning of the project to termination of the project. To ensure an accurate accounting of costs over time, especially "hidden" costs that may be overlooked, this decision requires that SoCalGas must create an internal order number for each specific DERS project once a customer signs the Feasibility Agreement. SoCalGas must track all costs and revenues associated with that customer project to its particular order number rather than using the general DERS Tariff program number.

To ensure adequate internal accounting protections, the proposed decision required SoCalGas to create an internal order number and begin tracking all costs associated with developing this tariff and participating in this proceeding to the new order number within five days of the decision. SoCalGas should track all costs, including but not limited to, direct costs and overhead costs.

Ratepayers should be credited for all costs associated with providing this tariff service, including direct and overhead costs. Direct costs are directly charged to the DERS Tariff project and include labor costs (e.g., employee salaries) and non-labor costs (e.g., purchased materials). Overhead costs shall be

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[182] If SoCalGas increases gas throughput on its system which necessitates increased infrastructure to support it, one could argue that shareholders rather than ratepayers, should pay its fair share of this additional investment. But right now, there is no obvious way to account for such a scenario and it may not be practical to do so.

allocated to the DERS Tariff project by a formula and include labor overheads (e.g., pension and benefits), non-labor overheads (e.g., cost of the purchasing department that purchased materials), and a fixed cost loader (e.g., company structures, computer equipment). (Exhibit SCG-03 at 1 and Tr. at 278-279.) All of the costs described here should be tracked to an appropriate SoCalGas internal order number so that ratepayers do not bear these costs.

If SoCalGas develops or proposes any similar tariffs in the future, both development costs and potential litigation costs, if any, are to be tracked and recovered from shareholders and not ratepayers. If SoCalGas proposes, through an application, any tariff in which shareholders assume the risks and benefits of the tariff, SoCalGas shall begin tracking the costs to provide the tariff to a new internal order number at least 60 days prior to the submission of the application to the Commission. SoCalGas must create an internal order number to track all employee time and resources associated with developing the tariff or litigating the tariff, so these costs of developing or litigating the tariff are borne by shareholders and not ratepayers.

13.2. Decommissioning Costs

SCGC notes SoCalGas' proposed DERS Tariff and DERS Agreement, subject to applicable law, both require the utility and its contractors to remove DERS facilities at the end of the term of the Agreement or any extensions. Therefore, it contends sufficient time should be allowed to accomplish this task.[183]

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[183] SCGC Opening Brief at 22 citing Ex. SCG-05, Schedule No. GO-DERS, Sheet 5 and Ex. SCG-07, Distributed Energy Resources Agreement at 5.

SCGC expressed concerns during evidentiary hearings that SoCalGas' witnesses did not discuss how the costs of decommissioning will be dealt with following decommissioning of a DERS facility upon termination of a DERS Agreement. According to SCGC, "The cost of decommissioning or removing a DERS facility should be charged to the DERS internal order for the project and should be the responsibility of SoCalGas shareholders and the DERS customers, not ratepayers."[184]

Discussion

Article 4.4 of SoCalGas' proposed Tariff Agreement states that "upon expiration or termination of this Agreement…Utility or its subcontractors or agents shall be responsible for safely decommissioning or removing the DER Facilities…" We agree with SCGC that this decommissioning cost should be charged to the internal order number for the project. When SoCalGas develops a Preliminary Statement for the new balancing account to track costs associated with this Tariff as described below, it should include decommissioning costs.

13.3. Balancing and Tracking Account Treatment of DERS Costs

SCGC believes that SoCalGas should reinforce its commitment that all DERS costs associated with ratepayer-funded utility personnel and assets will be recorded in a balancing account for refunding to customers. Otherwise, ratepayers, and not shareholders or DERS customers, would be responsible for at least a portion of the costs.[185] SCGC observes that SoCalGas did not submit a proposed preliminary statement for the new balancing account that could be

[184] SCGC Opening Brief at 22.

[185] SCGC Opening Brief at 22.

used to refund the ratepayers the costs of ratepayer funded personnel and assets used for the DERS program. However, during evidentiary hearings a SoCalGas witness agreed that such a balancing account should be created as reflected in its application.[186] As the SoCalGas witness stated:

> The purpose of the balancing account is to credit ratepayers for any General Rate Case (GRC) embedded costs used in providing the DER Tariff. The balancing account will be an interest bearing account on SoCalGas' financial statement. Additionally, in each annual October regulatory account balance update filing, SoCalGas will amortize the projected year-end balance effective January 1 of the following year.[187]

Additionally, SoCalGas proposes to create a tracking account to "allow SoCalGas to track the difference between the revenue collected from DERS Tariff customers and the actual operations and maintenance and capital-related revenue requirements associated with providing the DER Tariff."[188]

Discussion

SoCalGas' testimony states that it is requesting the creation of tracking and balancing accounts;[189] however, SoCalGas did not propose a preliminary statement to create either account. Balancing and tracking accounts are necessary to monitor the DERS Program. Therefore, consistent with SCGC's recommendations, SoCalGas shall develop a Preliminary Statement for a balancing account which includes the following elements: (1) The costs of developing the DERS Program and providing the DERS Tariff to customers that

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186 SCGC Opening Brief at 22 citing Ex. SCG-03 at 2-3.

187 SCGC Opening Brief at 23 citing Ex. SCG-03 at 2-3.

188 Ex. SCG-02 at 2.

189 Ex. SCG-03 at 2.

are recorded to the internal order numbers for the DERS Program should be recorded in the DERS balancing account for refunding to customers; (2) The costs of ratepayer-funded personnel or assets and any third-party contractor work, including associated overheads that are recorded in DERS internal orders, should also be recorded in DERS balancing account for refunding to ratepayers; and (3) The balancing account should be an interest bearing account amortized annually as proposed by SoCalGas.

SoCalGas shall develop a Preliminary Statement for a tracking account to record (1) all revenues collected from DERS Tariff customers, (2) all costs associated with developing the DERS Program and providing the DERS Tariff to customers that are recorded to the DERS Tariff balancing account, and (3) any additional costs SoCalGas incurs to provide the tariff service, such as third-party contract services.

14. DERS Tariff Environmental and Other Benefits

SoCalGas contends that the program goal of increased CHP/distributed energy adoption not only aligns with California policy but also provides benefits to Californians, including reduced GHG emissions:

> Attainment of the CEC medium case deployment forecast (projected 3,013 MW of new CHP by 2020) in the 2011 CHP Market assessment report will result in an estimated annual reduction in GHG emissions of 3.2 million metric tons CO2 GHG statewide by 2020. Based on SoCalGas' estimates of CHP system costs and the GHG reductions calculated by the CEC, every $10 million in capital investment in the CHP

> sector results in annual reduction of 5,350 metric tons of GHG.[190]

This same CEC/ICF CHP Market Assessment purports that adoption and penetration of CHP/distributed energy provides additional benefits, including but not limited to, new investment that stimulates the economy, improved electric utility operations impacts pertaining to decreased congestion and improved reliability, greater resource adequacy, improved stability and power quality, transmission and distribution (T&D capacity investment deferrals), and reduced electricity supply costs resulting from decreased power. Through the use of biomethane and renewable natural gas, which are used as fuel sources for the DERS Tariff facility, SoCalGas customers would have an even greater opportunity to support California renewable goals.[191]

ORA disputes SoCalGas' claims, stating:

> Whether the environmental benefits, for which SoCalGas references Public Utilities Code § 399.11, are justified and as beneficial as SoCalGas claims. Specifically:
>
> The current Application is general and lacks measurements to determine the extent of any environmental benefits.
>
> The Commission has already established numerous programs to further environmental policies, would this particular Application result in more effective and reasonable use of ratepayer funding.[192]

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190 Ex. SCGC-02 at 20 citing *Combined Heat and Power*: *2011-2030 Market Assessment*; ICF International, Inc.; sponsored by the California Energy Commission; 2012.

191 Ex. SCGC-02 at 20-21.

192 ORA Protest at 3.

In response, SoCalGas states that "the environmental benefits of natural gas fired distributed energy resources, such as Combined Heat and Power, have been recognized by the California Air Resources Board and the Department of Energy."[193] It suggests that the application does not require more reasonable and effective use of ratepayer funding since its Application relies on shareholder funding. SoCalGas relies on a California Court of Appeals case which ruled regarding the environmental benefits of the CST to support its argument: "We also conclude substantial evidence supports the PUC's findings the Compression Services Tariff will increase natural gas use and thereby reduce air pollution and greenhouse gas emissions."[194]

Discussion

In this proceeding, parties challenged assumptions about potential market demand and growth in the CHP sector, but did not provide significant evidence that growth in the CHP sector would not result in environmental benefits.

Although environmental benefits were not heavily contested in this proceeding, recent Commission decisions discuss the long-term benefits of CHP within the context of the changing market portfolio and increased integration of renewables into the grid. D.15-06-028 "Decision on Combined Heat and Power Procurement Matters," issued June 15, 2015, points out the following:

> While we do not speculate today on the relative cost of GHG emissions reductions compared to other procurement options, we agree with the IOUs and ORA that there are significant concerns about the cost-effectiveness of future CHP

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[193] SoCalGas Reply to Protests at 7.

[194] SoCalGas Reply to Protests at 6 citing Opinion of the Court of Appeal of the State of California (G048820) at 2.

> procurement. We also agree that other preferred resource technologies are reasonably likely to provide greater emissions reduction potential in future years. Further, recent changes in the electric grid such as the potential for reliability problems resulting from over-generation point in the direction of a lower mandate for CHP in the future, as CHP resources have a significant potential to contribute to the over-generation concern.[195]

D.15-06-028 also concludes that many GHG benefits will be drawn from existing CHP facility operations, rather than new CHP facility operations.[196] In this decision, we support SoCalGas' assertions that the development of CHP and other distributed energy resources, generally helps to reduce GHG emissions in the near term. However, in the long-term, environmental benefits of CHP need to be reevaluated in the context of a changing supply portfolio, new technologies, and overall supply/demand conditions.

In the short-term, depending on how many customers subscribe to these projects, it is reasonable to assume that ratepayers may benefit from the DERS Tariff Program on a broad basis due to increased use of renewables, stimulation of the economy, decreased congestion on the grid, improved reliability, and greater resource adequacy.

While CHP may generally provide GHG benefits, we agree with ORA that SoCalGas has not adequately demonstrated how it would ensure that individual DERS Tariff projects would lead to GHG emissions reductions. As part of the feasibility analysis, SoCalGas should assess the ability of a project to reduce GHG emissions. Section 1.1 of SoCalGas' proposed Feasibility Analysis Agreement

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195 D.15-06-028 at 15-16.

196 D.15-06-028 at 22.

shall be updated to include an estimate of potential GHG emissions reductions as an outcome of the feasibility analysis.

Section 10 and Appendix B of this decision describe annual reporting requirements for the DERS Tariff, including a requirement for SoCalGas to report estimated GHG emissions reductions that will result from a project developed pursuant to the DERS Tariff. In the annual report, SoCalGas must report the expected GHG reductions attributable to each project, and provide supporting documentation to show how the reductions were calculated.

15. Commission Review and Oversight

In its application, SoCalGas requests not only authorization for its proposed SoCalGas' DERS Tariff Proposal and Ratemaking Proposal, but also pro forma contracts.[197] SoCalGas states that when it enters into an agreement with the customer the contract term and price are negotiable, but many of the other standard terms and conditions for the Feasibility Agreement and DERS Agreement are not negotiable.[198] Further, SoCalGas states that it did not intend each proposed contract be submitted for Commission approval.[199]

Shell Energy contends that many of the mandatory terms of the proposed agreements are "one-sided" and/or "tilted" in SoCalGas' favor. It points out various examples to support this claim pertaining to rights of termination, breach of contract and liquidated damages, force majeure, dispute resolution, and pricing. As to the liquidated damages section, when SoCalGas was asked why the remedy provisions are different for SoCalGas and for the customer, SoCalGas

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[197] SoCalGas Application at 6.

[198] Ex. SCG-1 at 178.

[199] Ex. SCG-1 at 83.

testified that "it's the customer's choice whether they want to elect [SoCalGas] to provide the service…It's fully up to the customer whether they want to do business with SoCalGas."[200]

SCGC points out that another feature that distinguishes the compression services from the DER services is "that while SoCalGas explicitly denies that it will submit the DERS Agreements to the Commission for approval, it appears that SoCalGas will present compression services agreements for Commission review and approval."[201] It refers to Advice Letter 4337 which SoCalGas presented to the Commission asking for approval of a Compression Services Agreement with the Los Angeles Unified School District. Energy Division approved the agreement in a letter order on June 3, 2013.

Discussion

In both the CST and BCS decisions, the only advice letters the decisions require are those that update the tariffs and supporting documentation to conform them to the additional requirements the decision sets on the tariffs. Because both the CST and BCS decisions have cost-based pricing rather than market based pricing, these respective decisions do not require the filing of Tier 3 Advice Letters that would necessitate direct Commission oversight and/or review of individual agreements. Accordingly, neither decision requires SoCalGas to file advice letters to seek approval to execute individual tariff agreements.

Because DERS pricing shall be primarily cost based on not market priced, and SoCalGas' annual reporting will provide detailed project information, we do

200 Tr. at 195.

201 SCGC Reply Brief at 15.

not require SoCalGas to file a Tier 3 Advice Letter for each contract executed pursuant to the Tariff, which would necessitate increased Commission oversight of individually negotiated contracts.

Because we are implementing a tariffed service, we do not consider it appropriate to approve contract terms that unfairly disadvantage smaller customers who may have limited resources and/or access to legal expertise. Therefore, it is imperative that the standard terms and conditions are not one-sided and promote principles of fairness and equity.

We agree with Shell that some of the contract terms appear to be one-sided, favoring SoCalGas over the customer. While we do not prescribe language or changes here, we expect SoCalGas to file a revised pro forma agreement that balances the interests of SoCalGas with that of the customer. For example, we do not see any good reason to limit potential litigation to Los Angeles, which may be convenient to SoCalGas, but not to its customers.

As discussed throughout this decision, SoCalGas' proposed Tariff and supporting materials are insufficient to adequately protect ratepayers and ensure the program achieves the GHG emissions reductions it purports to be the central justification for providing the service. If SoCalGas wishes to provide the Tariff service, it must revise its materials to include the additional provisions contained in this decision and resubmit them for Commission approval. SoCalGas is authorized to file a Tier 3 Advice Letter for a Distributed Energy Service Tariff within six months of the effective date of this decision. The advice letter filing shall contain the following documents, as modified per this decision:

1. Revised DERS Pro Forma Agreement
2. Revised Feasibility Analysis Agreement
3. Revised DERS Tariff Sheet

4. Revised Annual Reporting Template
5. Preliminary Statement to create a balancing account to track costs associated with the Tariff
6. Proof of creation of internal tracking numbers
7. Standard Agreement for third-party contractors to perform DERS Tariff Work

16. Joint Settlement Agreement Between SoCalGas and ORA

16.1. SoCalGas/ORA Settlement Agreement Proposal

On February 12, 2015, SoCalGas filed a notice of settlement conference. On February 25, 2015, SoCalGas and ORA (Settling Parties) filed a joint motion for adoption of a Joint Settlement Agreement. Other parties, including Shell Energy, SCGC, CCDC, Bloom, and IEP, did not join the Joint Settlement Agreement.

In the motion, Settling Parties state that the Settlement "resolves ORA's only concern with the DERS Tariff."[202] Specifically, "SoCalGas agreed to revise [or amend] the DERS Tariff, specifically page 5 of the tariff under the heading 'Rates,' to include language to better identify those costs which are not borne by ratepayers, thereby addressing ORA's concerns in this proceeding."

> The rate structure shall be designed to recover costs including, but not limited to, depreciation, returns to capital, income taxes, property taxes, Operation and Maintenance (O&M) expense, repair expense, Administrative and General (A&G) expense, Franchise Fees, Uncollectibles, and insurance. Upon early termination of the Distributed Resources Energy Resources Services Agreement other than Utility's default under the Distributed Energy Resources Services Agreement, Utility shall recover from Applicant an amount based on

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[202] SoCalGas and ORA Joint Motion at 3.

Utility's unrecovered ownership and removal costs and any early-termination provisions in Utility's subcontracts.[203]

Settling Parties request that the proposed Settlement be appended to the Commission's decision in this proceeding. They believe that the amended tariff language will mitigate ratepayer risk as follows:

I. DERS project rates shall be established through special contracts with DERS customers.

II. SoCalGas shareholders shall bear the risk associated with providing the DERS Tariff.

III. Non-participating SoCalGas ratepayers shall bear no costs or risks from the provision of this service.

IV. Incremental costs and revenues associated with providing the DERS Tariff shall be excluded from base rates determined in SoCalGas' general rate case proceedings.

V. DERS Tariff costs shall be excluded from future rate cases and costs associated with the provision of DERS Tariff be recovered only from DERS Tariff customers.[204]

The Settling Parties urge the Commission to approve the Settlement Agreement because they believe it is complies with Article 12, Rules 12.1 through 12.7. The Settling Parties also believe the Settlement Agreement "fairly represents the affected interests," and "provides the Commission with sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests."[205] The Settling Parties state that "in

203 SoCalGas and ORA Joint Motion at 8.

204 SoCalGas and ORA Joint Motion at 4.

205 SoCalGas and ORA Joint Motion at 3.

particular, the terms of the Settlement are simple and require no complex ratemaking."[206]

The Settling Parties maintain that they devoted time and effort to gain a common understanding of the range of issues in dispute, the various options to resolve them, and opportunities to develop "compromise" positions that would permit resolution of the disputed issues.[207] To achieve this outcome, the Settling Parties relied on prepared testimony provided by parties up to the time the Settlement was agreed upon.

16.2. Parties' Comments

Non-settling parties oppose the proposed Settlement Agreement. Shell Energy states "the proposed Settlement Agreement between SoCalGas and ORA should be given no weight by the Commission."[208] IEP argues "the Settlement fails to meet the standards the Commission has established for approval of settlements."[209]

Following is a topical summary of Shell Energy and IEP's arguments why the proposed Settlement Agreement should be rejected:

<u>Agreed Upon Language Does not Alter SoCalGas' Position or Obligation Under the Proposed Tariff</u>

Both Shell Energy and IEP challenge whether the two sentence addition to the tariff sheets actually constitutes a compromise of conflicting positions disputed in the proceeding. According to Shell Energy, "the single issue that is

[206] SoCalGas and ORA Joint Motion at 4.

[207] SoCalGas and ORA Joint Motion at 5.

[208] Shell Energy Opening Brief on proposed Settlement at 1, 4.

[209] IEP Opening Brief on proposed Settlement at 1.

addressed in the proposed settlement is not an issue that was in dispute between SoCalGas and ORA."[210] "Although ORA and SoCalGas claim that the agreed upon additional tariff language 'clarifies' SoCalGas' position respecting the 'design' of SoCalGas' DER services rates, SoCalGas witness Goodman acknowledged that the agreed upon language does not alter SoCalGas' position or obligation under the proposed tariff." This same witness testified that the agreed upon tariff language by SoCalGas and ORA is "a more detailed representation of what is in my [SoCalGas] testimony."[211] Further, "there is no further agreement between ORA and SoCalGas beyond what is stated in the settlement agreement's proposed additional tariff language."[212]

IEP agrees with Shell Energy's position: "Although the Settlement purports to resolve all issues raised by SoCalGas's proposed DER Service Tariff, the only change to the tariff that the Settlement makes is to define the costs that must be recovered in the negotiated rates and to allow SoCalGas to recover its unrecovered ownership and removal costs in the event of an early termination."[213] IEP opposes a DERS program that would be designed and operating through a regulated gas utility rather than gas affiliate and so opposes the entire Settlement on this basis alone.

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210 Shell Energy Opening Brief at 1.

211 Shell Energy Opening Comments on proposed Settlement at 5 citing Tr. at 150.

212 Shell Energy Opening Comments on proposed Settlement at 5 citing Tr. at 152.

213 IEP Opening Comments on proposed Settlement at 1.

Proposed Settlement Represents an Abdication of Responsibility to Represent and Protect Ratepayers

Both Shell Energy and IEP strongly oppose a proposed Settlement Agreement that does not resolve other major disputed issues, such as the appropriate application of Affiliate Transaction Rules or necessary ratepayer protections, including, but not limited to the following: 1) "cost-based" pricing; 2) appropriate identification of and accounting of costs to be borne by shareholders or customers/ratepayers (e.g., DERS Tariff development costs, appropriate overhead allocation rates); 3) mutually beneficial contract terms; and 4) Commission review of contract terms. All of these issues are discussed in; this decision and there is no need to repeat the detail here.

Shell Energy also suggests that the proposed Settlement "reflects a capitulation by ORA, on most, if not all, issues raised in ORA's September 12, 2014 'protest' the SoCalGas application, and ORA's January 9, 2015 motion for an evidentiary hearing."[214] It points out that other issues identified in the Scoping Memo are not addressed. Shell Energy notes that the proposed Settlement addresses a "single, narrow issue" and should not determine whether the entire Application should be approved or not.

IEP agrees with Shell Energy's assessment: "The Settlement is an unsuccessful attempt to address one of these issues, the potential subsidies from ratepayers, but the other issues are ignored by the Settlement." In addition, as IEP contends, the Settlement does not meet the Commission's minimum requirements for the following reasons.[215]

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214 Shell Energy Opening Comments on proposed Settlement at 3.

215 IEP Opening Comments on proposed Settlement at 2.

1) The Settlement is Not Reasonable in Light of the Whole Record

IEP asserts that the Settlement is limited to the insertion of a single paragraph into the tariff. It points out that the record, which includes testimony following the filing of the Settlement, raises a substantial number of issues that are not addressed by the Settlement. Therefore, IEP asserts that "the whole of the record does not support SoCalGas' proposal."

2) The Settlement is Not Consistent with the Law

IEP believes that the Settlement conflicts with two decisions that demonstrate the Commission's policies: 1) D.10-12-035, which approved the CHP/QF Settlement Agreement and a competitive process for CHP facilities; and 2) D.07-12-052, which adopted the Commission's "competitive markets first" policy and emphasizes reliance on private entities in competitive markets.[216] IEP also claims that SoCalGas is attempting to skirt the Affiliate Transaction Rules for reasons discussed in Section 6 "Commission Authority to Offer DERS Tariff through a Regulated Utility versus Unregulated Affiliate."

3) The Settlement is not in the Public Interest

IEP opines that adopting the SoCalGas/ORA Proposed Settlement would disrupt the Commission's "competitive markets first" policy and replace it with reliance on a tariff that amounts to a "take-it-or-leave-it agreement" that heavily favors the utility.[217] It argues that markets are better served when there are many rivals competing for the best service at the lowest cost.

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[216] IEP Opening Comments on proposed Settlement at 3.

[217] IEP Opening Comments on the proposed Settlement at 4.

In response to Shell Energy and IEP's opposition to the Settlement, SoCalGas states that "such an argument is unfounded and illogical on its face."[218] It claims that the Settlement adds greater "specificity" to the DERS Tariff to ensure better ratepayer protections. In its reply comments, ORA claims that "neither IEP nor Shell provides opposition to why the language in the tariff is improper, legally incorrect, or not in the public interest" consistent with the Rule 12.2 "three-prong test."[219]

16.3. Standard of Review for Settlements

Rule 12.1 of the Commission's Rule of Practice and Procedure sets the standard for review of settlements:

> 12.1(d) The Commission shall not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

16.4. Discussion

As explained in this section, in light of the record, we do not find the proposed Settlement Agreement reasonable nor in the public interest.

16.4.1. Reasonable in Light of the Record

We do not find that the proposed two-sentence agreement, within the context of a settlement agreement, to be reasonable in light of the record. We agree with Shell Energy and IEP that the two sentences do not accurately reflect a compromise of conflicting positons disputed in the proceeding. The actual language reflects a *clarification* or additional detail in the tariff sheet to define the

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218 SoCalGas Reply Comments on proposed Settlement at 2.

219 ORA Reply Comments on proposed Settlement at 2-3.

costs that must be recovered in negotiated rates, and do not allow SoCalGas to recover its unrecovered ownership and removal costs in the event of an early termination. Although the proposed language seeks to ensure that non-participating ratepayers do not bear DERS Tariff costs, the agreed upon language does not alter SoCalGas' position or obligation proposed under the tariff in original testimony. As SoCalGas acknowledges:

> Tariff customers will pay a negotiated service that captures, at a minimum, the full system cost, including both capital and O&M over the contract term…
>
> SoCalGas is not proposing to charge any of the costs of this service to it general ratepayers.[220]

In its Joint Motion, SoCalGas argues that the additional language settles a dispute to avoid costly and protracted litigation. However, SoCalGas' argument is not convincing since it is difficult to believe that a mere clarification of existing testimony is contentious in and of itself. Further, this simple clarification is a narrow issue and SoCalGas and ORA fail to address how it fits in with "compromise positions" related to other disputed aspects of the *entire* proceeding. In fact, both SoCalGas and ORA are silent in this regard.

On the basis of the record in this proceeding and the CST and BCS proceedings, there is sufficient evidence to add the simple clarification to the tariff sheet outside the framework of the proposed Settlement Agreement. The proposed tariff language is not unique or new, nor represents a "compromise." As a SoCalGas witness verified, the proposed language is identical to the

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220 Ex. SCG-02 at 3-4.

language contained in the BCS decision.[221] There does not appear to be any reason why this language was either intentionally or unintentionally omitted or not carried forward from similarly structured tariff sheets (e.g., CST) to the current proposed DERS tariff sheet. Without as much fanfare, this "oversight" could have been flagged through the normal course of the proceeding via stakeholder pleadings and/or advisory staff review. In this case, a careful comparison by advisory staff of proposed DERS tariff sheet language versus language contained in the present CST tariff sheet revealed this inconsistency. Thus, the Commission could adopt DERS Tariff sheet language, with language from the CST GO-48862-G, Sheet 4, as supported by existing testimony and verified through ministerial review, rather than through the rubric of a separate Settlement Agreement. We agree with SoCalGas that there is no discernable reason to oppose increasing ratepayer protections. Ensuring language in tariff sheets matches what is in SoCalGas' original testimony and application is prudent and necessary.

In this decision, the proposed Settlement Agreement does not meet the condition of an "all party" settlement because it does not have the unanimous sponsorship of all active parties in this proceeding. While all other active parties on the service list (SCGC, Shell Energy, IEP, Clean Coalition, Bloom) were asked to join the settlement agreement negotiations, these parties chose not to participate for different reasons. In particular, Shell Energy and IEP strongly object to the proposed settlement agreement because it failed to address many

[221] Tr. at 306. Language is actually borrowed from the CST decision. *See* GO-48862-G, Sheet 4.

ratepayer protections issues that these parties and ORA had raised in similar pleadings.

Because the proposed Settlement Agreement does not adequately address needed ratepayer protections and competitive market considerations, it is not reflective of many of the issues identified in the original Scoping Memo and subsequent pleadings. In SoCalGas' Reply Comments, it suggests that the Settlement Agreement "alleviates" ORA's concerns about ratepayer protections in the DERS application.[222] This language may suggest an admission by ORA that some, but not all, ratepayer protections have been resolved through various proposed provisions contained in the DERS application.

In its Joint Motion, SoCalGas and ORA present the proposed Settlement Agreement as a whole and suggest that no modification should be made that would alter "other provisions" of the Settlement. Further, they suggest that modification of any part of the Settlement would harm the balance of interests and compromises achieved in the Settlement. However, it is not clear what these "other provisions" are, other than the existing positions in SoCalGas' original application. SoCalGas' and ORA's arguments that the Commission leave other aspects of the Application "as is," especially those related to ratepayer protections, are not persuasive. As the discussions in previous sections of this decision demonstrate, not addressing these other aspects harms ratepayer interests.

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[222] SoCalGas Reply Comments on proposed Settlement at 2.

16.4.2. Consistent with the Law

We agree that the proposed Settlement Agreement is consistent with the law and only provides greater detail regarding the direct and indirect costs that should be borne by shareholders and customers, rather than ratepayers.

The proposed tariff sheet language in the proposed Settlement Agreement is adapted from D.12-12-037, so it does not contravene statutory provisions or prior Commission decisions. The proposed tariff sheet language is simple and does require complex ratemaking. The parties themselves should be able to able to enforce the terms of the agreement with stronger Commission oversight, more rigorous compliance methodologies, and related annual report metrics that ensure accountability and transparency in SoCalGas' dealings with existing and potential customers.

16.4.3. In The Public Interest

The proposed Settlement Agreement only addresses a narrow issue and does not address more highly contentious and disputed issues relating to ratepayer protections, such as the just and reasonableness of a market-based approach versus a cost-based approach to pricing; appropriate identification and accounting of costs to be borne by shareholders or customers/ratepayers (e.g., DERS Tariff development costs, appropriate overhead allocation rates) ; mutually beneficial contract terms versus "one-sided" contract terms; and Commission review of contract terms versus no Commission review of contract terms). Based on these considerations, the proposed Settlement Agreement is not in the public interest and should not be adopted.

Through a "give and take" process in the settlement process,[223] ORA capitulated on most of the issues it raised in its September 12, 2014 protest to the Application and January 9, 2015 motion for an evidentiary hearing, as demonstrated by its motion to withdraw its pleadings following the reaching of a Settlement Agreement. In this decision, we deny ORA's February 25, 2015 request to withdraw its motion requesting evidentiary hearings. We consider the list of issues that ORA identified in its earlier pleadings a critical accounting of important issues in this proceeding even though ORA did not fully participate in this proceeding through initial testimony, evidentiary hearings, or briefs. In its testimony, ORA said that once a settlement agreement was reached, it no longer had concerns about the "13 issues" it had identified. We are sympathetic to ORA's stated staffing constraints in the context of a tight proceeding schedule.[224] However, ORA's argument that the Commission should accept the Settlement Agreement without explaining how these other issues were resolved is not convincing and is not in the public interest.

16.4.4. Conclusion

Based on the above analysis, we find that the proposed Joint SoCalGas/ORA Settlement Agreement is not reasonable in light of the *whole* record and is not in the public interest primarily because it fails to address other needed ratepayer protections not covered by the settlement and which are

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[223] Tr. at 307.

[224] PHC Tr. Appendix (Preliminary Scoping Questions and Schedule) at 5. Despite tight proceeding schedule at the outset of the proceeding, ALJ did grant ORA request to allow approximately 90 days between concurrent rebuttal testimony and evidentiary hearings.

addressed in previous sections of this decision. Consequently, the proposed Settlement Agreement is rejected.

Nonetheless, the proposed SoCalGas/ORA tariff sheet language, which adds greater specificity to existing testimony, is supported by the record, and should be added to the proposed tariff sheet. Thus, the proposed tariff sheet should be modified to add the following language to Schedule No. GO-DERS, Sheet 5, under Section 8. "Utility Responsibilities"/"Rates":

> The rate structure shall be designed to recover costs including, but not limited to, depreciation, returns to capital, income taxes, property taxes, Operation and Maintenance (O&M) expense, repair expense, Administrative and General (A&G) expense, Franchise Fees, Uncollectibles, and insurance. Upon early termination of the Distributed Resources Energy Resources Services Agreement other than Utility's default under the Distributed Energy Resources Services Agreement, Utility shall recover from Applicant an amount based on Utility's unrecovered ownership and removal costs and any early-termination provisions in Utility's subcontracts.

Rejection of the proposed Settlement Agreement, while adopting the proposed tariff language changes, both addresses the main concern that ORA raises and preserves consideration of other needed ratepayer protections, as addressed in this decision. We deny ORA's February 25, 2015 motion to withdraw its pleadings that highlight other concerns not addressed by the Settlement Agreement. ORA and other parties identified many important issues in protests and subsequent pleadings which aided prompt Commission resolution of outstanding issues in this proceeding. We consider all of ORA's pleadings, especially those that seek to protect ratepayer interests, an important component of record development in this proceeding.

17. Categorization and Need for Hearing

The Commission preliminarily categorized this matter as ratesetting with a need for hearings pursuant to Rule 7.1. (Resolution ALJ 176-3340, dated August 14, 2014). The parties did not oppose the Commission's preliminary categorization and this decision affirms this categorization. As detailed in the procedural history of this decision, parties had mixed views about the need for hearings. SoCalGas and ORA reached a Settlement that covered only a limited issue pertaining to needed ratepayer protections. Consequently, the ALJ determined that hearings were necessary to address issues not covered in the Settlement Agreement.

18. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on August 3, 2015 by SoCalGas, Bloom, Shell Energy, and IEP. Reply comments were filed on August 10, 2015 by SoCalGas, SCGC, and Shell Energy.

The decision has been revised as necessary, in response to comments. Among others, we have made the following clarifications and substantive revisions.

1) Clarifies that SoCalGas proposes to capture 10% of CHP market "adoption" forecast of approximately 30 MW in by 2020, and 50-60 MW by 2030 (2012 CEC/ICF Forecast Installation Data Base).
2) Emphasizes that no party made a case that non-CHP markets (e.g., electricity-only fuel cells) are underserved (the CEC/ICF CHP Market Assessment did not project market demand or technical potential of non-CHP systems).

3) Clarifies that SoCalGas shall only install combined heat and power technologies, including but not limited to topping- and bottoming-cycle applications.

4) Removes the requirements for CHP technologies deployed through the tariff to be SGIP-eligible. Technologies must still meet SGIP emissions and efficiency requirements.

5) Removes the requirement that all systems must be sized to meet the 25 percent SGIP export limit. Replaces this with a requirement that all facilities meet the "fundamental use test" as defined in the federal definition of cogeneration, which requires the energy outputs from the system to be useful.

6) Consistent with D.12-12-034, states that SoCalGas' existing authorized rate of return should be adequate to compensate the utility for additional financial, business, regulatory risks associated with the DERS program.

7) Gives SoCaGas flexibility to negotiate a cost of capital higher than their authorized weighted cost of capital to take into account the specific business risk associated with a tariff project. Accordingly, the pricing methodology shall use a cost-of-service formulation, employing full overhead loaders and indirect charges, using a capital charge rate, no lower than the utility authorized weighted average cost of capital (although the capital charge rate may be higher than the utility authorized cost of capital) to ensure that the price charged for provision of the DERS Tariff is not unfairly competitive.

8) Upon request, requires SoCalGas to retain and make available to Commission staff the analysis it used to develop the rate it charged each DERS customer that includes the cost–of-capital that was used in its development in comparison to its then authorized cost-of-capital. SoCalGas shall retain this analysis for the duration of the DERS program. Additionally, the annual report described in Section 10 shall specify the cost of capital that SoCalGas used to calculate the total tariff cost for each customer project. The narrative of the report shall compare SoCalGas' authorized cost of capital and the cost of capital used to calculate costs to explain any differences.

9) Clarifies the purpose of the tracking account.

10) If SoCalGas proposes, through an application, any tariff in which shareholders assume the risks and benefits of the tariff, requires SoCalGas to begin tracking the costs to provide the tariff to a new internal order number at least 60 days prior to the submission of the application to the Commission.
11) Reduces and/or delays staff burden to implement and oversee the DERS Tariff by: a) requiring SoCalGas to file annual instead of semiannual reports; b) postponing the due date of the first report from six months after the date of the decision to six months after the date of the Commission Resolution (or possible subsequent advice letters) that authorizes SoCalGas to provide the Tariff service and approves all associated documents; and c) increasing the amount of time SoCalGas has to file its Tier 3 Advice Letter from three months to six months after the effective date of this decision.
12) Given uncertainties about appropriate interpretation of current Affiliate Transaction Rules in the context of current market conditions and emerging technologies, provides Commission guidance for potential new Tariff Applications (see below).

Commission Guidance for Potential New Tariff Applications

Following the approval of this decision, should SoCalGas have an interest in seeking a different outcome following this proceeding (e.g., inclusion of non-CHP technologies and/or "emerging technologies" not supported by the formal evidentiary record in this proceeding), it has the option to file a Petition for Modification (PFM) or new Application. As to guidance pertaining to what questions the Applicant should consider and what perceived deficiencies should be overcome in meeting its "burden of proof" in its PFM or Application, the detailed scoping memo questions as detailed in Section 4, "Issues Before the Commission," provide a good start subject to the discretion of the Assigned Judge and Assigned Commissioner. In addition, the Applicant may wish to consider how a potential non-CHP tariff may align with "underserved market" arguments for specific technologies, customer classes, and project sizes based on verifiable studies. As stated in the PHC for this proceeding, we encourage parties to engage early to help develop a record and ensure "due process" principles are followed consistent with PUC Code and the Commission's Rules of Practice and Procedure. If a proposed Settlement is offered in any new Application, it must meet the Commission's Rule 12.1 standard for review of settlements: be reasonable in light of the record, consistent with the law, and in the public interest.

As discussed in this decision, SoCalGas also has the option to consider other venues to advance its corporate strategic goals including the provisions of DERS through an unregulated affiliate and or on a "non-tariffed" basis subject to the five conditions for offering non-tariffed products and services that are specified in the Affiliate Transaction Rules. In principle, we endorse the transition from ratepayer subsidized programs of existing and new technologies to non-ratepayer subsidized competitive markets.

Affiliate transaction rules, as amended nearly a decade ago, aim to "1) ensure that the utilities meet their public service obligations at the lowest reasonable cost, and 2) ensure that the utilities do not favor or otherwise engage in preferential activity toward the utilities."[225] As currently written and interpreted through recent Commission decisions, the Commission's Affiliate Transaction Rules enable a very broad interpretation of "rates, terms, and conditions" that constitute a "tariff" according to "whatever approval process

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[225] *See* R.05-10-030 "Order Instituting Rulemaking Concerning Relationship Between California Energy Utilities and Their Holding Companies and Non-Regulated Affiliates" filed October 27, 2005 at 2.

the Commission may deem appropriate."[226] However, given new technologies, market changes, and emerging innovative partnerships among utilities and third-party providers and various industry participants, it is important to review the current rules and redefine terms (i.e., what is the appropriate definition of a "tariff"), clarify how the existing rules can be improved to provide better guidance in a present day context, and explain the objective behind the rules in order to provide a more coherent framework for utility actions.[227] Any positive reforms in this regard will provide needed clarity in light of current market conditions and facilitate appropriate interpretation of the rules (especially when opinions vary so widely among stakeholders with competing interests) and save staff time "diverted" to the potential review and evaluation of future applications.

19. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Colette E. Kersten is the assigned ALJ in this proceeding.

Findings of Fact

1. The purpose of the proposed DERS Tariff is to facilitate the adoption and use of advanced energy systems including, but not limited to, CHP, fuel cells,

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[226] Other Commission references to the definition of tariff also appear to be overly broad. In GO 96 B "'tariffs' are collectively referred to the sheets that a utility must file, maintain, and publish as directed by the Commission, and set forth the terms and conditions of the utility's services to its customers; 'tariffs' may also refer to the individual rates, tolls, rentals, charges, classifications, special conditions, and rules of a utility." (General Rules).

[227] *See* Northstar Consulting Group "2010 and 2011 Affiliate Transactions Audit of Southern California Gas Company Final Report" prepared for the California Public Utilities Commission, October 31, 2014. A key recommendation of this report is to conduct workshops (i.e. open a Commission proceeding) that would provide better guidance pertaining to future utility actions.

WHP, and mechanical drive applications, and provide opportunities for third-party participation.

2. The proposed DERS Tariff is structured to help potential tariff service providers overcome barriers such as high upfront equipment costs, limited internal distributed resource management expertise, ongoing operation and maintenance expenses, and technology risk.

3. SoCalGas proposes to design, install, own, operate and maintain advanced energy systems on or adjacent to the customer's premises pursuant to an agreement between SoCalGas.

4. In the BCS and CST decisions, the Commission found that offering tariff services through a regulated utility is acceptable provided there are sufficient mitigation measures to guard against unfair competition.

5. SoCalGas did not provide any evidence that it can or could offer DERS as a "non-tariffed" service as defined by Affiliate Transaction Rules.

6. It is anticipated that all risks and costs associated with evaluation of design, installation, ownership, operation, and maintenance of advanced energy systems on customer premises, shall be borne by DERS customers and shareholders, and not general ratepayers.

7. There are few Commission precedents that provide guidance regarding whether SoCalGas should be allowed to install, build, operate, and maintain electric generation facilities on customer premises.

8. SoCalGas does not plan to distribute electricity from a customer-owned facility for sale to external retail customers; nor does SoCalGas intend to own the energy provided or produced from the system or customer microgrid.

9. Determining whether SoCalGas should install, build, operate, and maintain electric facilities on customer premises involves a comprehensive assessment of business risks to both ratepayers and shareholders.

10. SoCalGas plans to heavily rely on third-party equipment and service providers to provide much of the DER services.

11. The future implementation of DER services may result in permit requirements at the state, federal, or local level that are discretionary and may trigger environmental review through either CEQA or the NEPA.

12. The current installed CHP capacity in SoCalGas territory is 3,868 MW and the technical potential is 4,690 MW.

13. The CEC/ICF technical market "best case" potential does not consider screening for economics (e.g., authorized rate of return) or other limiting factors such as ability to retrofit, smaller customer interest in applying CHP or entering into DERS Tariff agreement with SoCalGas, customer ability to finance, natural gas availability, or variation of demand within a specific customer application/size class.

14. SoCalGas proposes to capture 10% of the CHP market "adoption" forecast of approximately 300 MW (2020) to 500/600 MW (2030), which equates to approximately 30 to 50/60 MW.

15. Based on analysis of CHP growth in various customer classes in different MW ranges, untapped potential lies in the small, 20 MW or less facility size range.

16. The market for CHP projects under 20 MW is underserved.

17. SoCalGas' participation in CHP projects larger than 20 MW may subdue or distort competition in this segment by other viable market participants.

18. SoCalGas did not make a case that non-CHP markets (e.g., electricity-only fuel cells) are underserved.

19. There is a lack of perfect knowledge about market and technology trends, and unproven success in other companion programs (e.g., CST and BCS programs) where the sales cycle is long and a minimal number of customers have participated.

20. The design elements of the Commission's SGIP and CHP programs should be considered in the DERS market to ensure consistency in the various CHP programs.

21. The CEC/ICF CHP Market Assessment analyzes CHP, also known as cogeneration, which it defines as producing electricity and useful thermal energy in an integrated system.

22. The DERS Tariff has measures that guard against unfair competition and are substantially similar to those previously approved by the Commission in the CST and BCS decisions.

23. SoCalGas would have an unfair competitive advantage in the provision of DER services if it were allowed to promote the DERS tariff in bill inserts.

24. Various efficiency standards exist for CHP facilities including the Commission's SGIP requirements.

25. It is reasonable to require CHP facilities built under the DERS Tariff to comply with the prevailing SGIP emissions and efficiency standards.

26. Other Commission programs that promote CHP and other gas-fueled technologies have sunset dates.

27. SoCalGas did not provide any analysis to show that the DERS Tariff service would continue to provide benefits in the long-term, as the grid becomes cleaner.

28. SoCalGas proposal to deploy approximately $60 million in incremental capital to the CHP sector by 2020 could result in approximately $50 to $100 million range if SoCalGas is permitted to include other technologies in the DERS Tariff.

29. The most efficient sizing for CHP is to match thermal output to baseload thermal demand at the site.

30. The market-based pricing that SoCalGas proposes does not provide assurances that such prices will be transparent, predictable, or competitive.

31. SoCalGas did not propose a specific "risk adder" to augment its proposed market based pricing methodology; nor did it provide a business case that proposed CHP projects are "riskier" than other comparable projects or investments it may fund in its portfolio.

32. The pricing of the DERS Tariff should use established cost of service pricing methodologies identical to those used in GRCs, employing full overhead loaders and indirect charges, and using a capital charge no lower than the utility authorized weighted average cost of capital (although the negotiated capital charge rate may be higher than the utility authorized cost of capital) to ensure that the price charged for the provision of the BCS Tariff is not unfairly competitive.

33. The most recent Cost of Capital decision (Test Year 2013) indicates that SoCalGas' authorized ROR adequately compensates the utility for financial, business, and regulatory risks.

34. Because both the CST and BCS decisions primarily have cost-based pricing, these respective decisions do not require the filing of Tier 3 Advice Letters seeking approval of individually negotiated agreements.

35. Ratepayers have been burdened with both development and litigation costs of the CST and BCS Tariffs either before, after, or during the CST and BCS proceedings.

36. Balancing and tracking accounts are necessary to monitor the DERS Program.

37. The increased deployment of efficient CHP may create public benefits through the reduction of GHG emissions.

38. It is difficult to quantify the benefits associated with increased use of efficient CHP.

39. While the DERS Tariff promotes the reduction of GHG in the short-term, in the long-term, the environmental benefits of CHP and other distributed energy resources need to be reevaluated in the context of changing electricity market portfolio, new technologies, and overall supply/demand conditions.

40. SoCalGas has not adequately demonstrated how it would ensure that DERS Tariff projects would lead to GHG emissions reductions.

41. With the exception of contract term and price, SoCalGas proposes that many of the standard terms for the Feasibility Agreement and DERS agreement are not negotiable.

42. Certain contract provisions, such as those pertaining to rights of termination, breach of contract and liquidated damages, force majeure, dispute resolution, and pricing are "one-sided" or tilted in SoCalGas' favor.

43. SoCalGas' Application does not contain sufficient ratepayer protections and assurances that the program achieves GHG emissions reductions.

44. The proposed two sentence settlement agreement language does not alter SoCalGas' position or obligation as originally proposed.

45. The Joint Settlement Agreement fails to address how other disputed areas in the proceeding were resolved.

46. The proposed Joint Settlement Agreement is consistent with the law.

47. The Joint Settlement Agreement does not reflect a compromise of conflicting positions disputed in the proceeding.

48. The proposed Settlement Agreement is not reasonable in light of the record.

49. The proposed Settlement Agreement is not in the public interest because it does not address the full range of issues associated with the DERS Tariff, including additional ratepayer protections, enhanced mitigation measures, and increased Commission oversight.

50. Based on the record in this proceeding and prior CST and BCS proceedings, there is sufficient evidence to add the simple clarification to the tariff sheet outside the context of a Joint Settlement Agreement.

Conclusions of Law

1. Section 701 confers the Commission broad regulatory jurisdiction over public utilities and the services that they offer.

2. Section 454 mandates that the Commission review the pricing of all tariff services to ensure that the new rate is justified.

3. The Commission's Affiliate Transaction Rules (D.06-12-029) are designed to ensure that utilities meet their public service obligations at the lowest reasonable cost and to ensure that utilities do not favor or otherwise engage in preferential treatment of their affiliates.

4. The Commission's Affiliate Transaction Rules do not preclude the offering of new products and services under a tariff.

5. Pursuant to Section 740.8, the interests of ratepayers include reducing the health and environmental impacts from air pollution and increasing use of alternative fuels.

6. Consistent with Rule 12.1, the Commission shall not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law and in the public interest.

7. The proposed Settlement between SoCalGas and ORA is not reasonable in light of the record nor in the public interest. The proposed Settlement Agreement should be rejected.

8. After a preliminary assessment of business risks to both ratepayers and shareholders, it is reasonable to allow SoCalGas to design, own, operate, and install electric facilities on or adjacent to customer premises, on a limited basis, in order to facilitate the adoption and use of CHP technologies, including but not limited to topping- and bottoming-cycle applications.

9. Given the unique circumstances that the DERS Tariff offers, a new CPCN is not necessary to approve the DERS Tariff because SoCalGas will not distribute electricity from a customer-owned facility for sale to external retail customers; nor does SoCalGas intend to own the energy provided or produced from the system or microgrid.

10. SoCalGas' existing CPCN allows the utility to operate equipment that is necessary to provide enhanced utility service to a small segment of customers during a limited term.

11. Because SoCalGas will rely heavily on third-party contractors to provide DER services, it is reasonable to require SoCalGas to offer a Standard Contract for third-party contractors subject to OSHA standards and Commission safety policies and orders.

12. SoCalGas should use equipment that operates wholly by natural gas, biogas, or other gaseous fuels such as hydrogen or hythane that support CHP applications.

13. The enhanced mitigation measures for the DERS Tariff should provide greater Commission oversight and safeguards to ensure customers have non-discriminatory access to the DERS Tariff.

14. SoCalGas should provide an annual report to the Commission's Executive Director and to the service list in this proceeding demonstrating equal treatment of all customers and no unfair advantage in the provision of DER services.

15. Because the Commission will review the web page listings, and marketing scripts in any advice letter filing implementing the DERS Tariff, it can ensure that SoCalGas receives no unfair advantage.

16. The additional protections adopted in this decision ensure that SoCalGas receives no unfair competitive advantage in offering DER service.

17. It is reasonable and in the public interest to authorize the DERS Tariff subject to the reporting, cost tracking, and marketing restrictions adopted in this decision.

18. No law or policy adopted by the Commission precludes the provision of natural gas, biogas, or other gaseous fuels such as hydrogen, and methane, pursuant to the DERS Tariff proposed by SoCalGas.

19. It is reasonable to limit DERS Tariff CHP projects to 20 MW or less of nameplate capacity since this appears to capture an "underserved" market, helps overcome barriers to efficient CHP adoption, and provides expanded choices to customers.

20. Technologies that do not produce both electricity and useful thermal energy do not meet the definition of CHP, and should not be included in the

DERS Tariff. The use of thermal energy in CHP applications may occur after the production of electricity, or in the reverse sequence.

21. It is reasonable to require CHP facilities built under SoCalGas' DERS Tariff to comply with the prevailing SGIP minimum operating efficiency requirements, NOx emission standards, minimum efficiency standards, and GHG emission standards, which are in effect when the customer executes its DERS contract.

22. CHP systems built under the tariff should be appropriately sized to the customer's thermal demand.

23. There should be a sunset date for the DERS program, as SoCalGas has not provided justification for a longer-term program.

24. The DERS Tariff should end 10 years after the issuance date of this decision.

25. Consistent with objectives of the Commission's Affiliate Transaction Rules, it is reasonable to price the DERS Tariff using established pricing methodologies identical to those used in GRCs and consistent with a similarly structured SoCalGas tariffs (e.g., CST, BCS); it is reasonable to employ a cost-of-service formulation, employing full overhead loaders and indirect charges using a capital charge rate, no lower than the utility authorized weighted average cost of capital to ensure that the charge for the provision of the DERS Tariff is not unfairly competitive.

26. SoCalGas should have flexibility to use a cost of capital higher than their authorized cost of capital to take into account the specific business risk associated with a tariff project when calculating a customer's tariff price.

27. If ratepayers bear risks that arise from the provision of the DERS Tariff by SoCalGas, then SoCalGas would have an unfair advantage in the provision of this service.

28. SoCalGas' existing ROR is reasonable and attainable, and should adequately cover financial, business, and regulatory DERS project risk factors.

29. Ratepayers should not be burdened with either development or litigation costs associated with the DERS Tariff because that contradicts SoCalGas' commitment that only DERS customers and shareholders will pay for costs associated with the tariff.

30. More stringent internal accounting protections are needed to ensure that all costs, including direct costs and overhead costs are accounted for and not paid for by ratepayers.

31. SoCalGas DERS customers and shareholders, and not ratepayers, should pay for the cost of the decommissioning or removal of a facility upon termination of a DERS agreement.

32. SoCalGas should establish balancing accounts and tracking accounts to ensure that ratepayers who are not participating in the DERS Tariff bear no risk or costs that arise from the provision of the service. The Preliminary Statements used to create the balancing account and tracking account should describe all of the costs associated with development and provision of the tariff.

33. If SoCalGas proposes, through an application, any tariff in which shareholders assume the risks and benefits of the tariff, SoCalGas should begin tracking the costs to provide the tariff to a new internal order number at least 60 days prior to the submission of the application to the Commission.

34. The Commission should ensure that SoCalGas' status as a utility does not provide it with an unfair competitive advantage in offering DER services.

35. The cost-based pricing methodology, enhanced mitigation measures, and reporting and accounting requirements, adopted in this decision prevent SoCalGas from acquiring an unfair advantage.

36. It is reasonable to require SoCalGas to file a revised pro forma agreement that balances the interests of SoCalGas with that of customers.

37. The DERS Tariff is consistent with Section 740.8.

38. The DERS Tariff should be adopted, with modifications approved in this decision, because it is in the public interest.

39. ORA's motion to withdraw its pleadings should be denied because they highlight additional concerns not addressed by this Settlement Agreement.

40. A.14-08-007 should be closed.

O R D E R

IT IS ORDERED that:

1. The Joint Motion by Southern California Gas Company and Office of Ratepayer Advocates to adopt the Settlement Agreement between Southern California Gas Company and the Office of Ratepayer Advocates is denied.

2. Southern California Gas Company's Application to offer the Distributed Energy Resources Services Tariff is approved subject to the conditions specified in this decision.

3. Under the Distributed Energy Resources Services Tariff, Southern California Gas Company shall only install combined heat and power technologies, including but not limited to topping- and bottoming-cycle applications.

4. Southern California Gas Company must ensure that all combined heat and power systems provided through the Distributed Energy Resources Services (DERS) Tariff meet the prevailing minimum operating efficiency requirements, NOx emission standards, minimum efficiency standards, and greenhouse gas emission standards of the Commission's Self-Generation Incentive Program,

which are in effect when the customer executes its DERS contract.

5. Southern California Gas Company shall only install combined heat and power facilities that are fueled wholly by natural gas, biogas, or other gaseous fuels such as hydrogen or hythane.

6. The nameplate capacity of the installed combined heat and power system shall be less than or equal to 20 Megawatts (MW). If Southern California Gas Company installs multiple systems on one customer's premises, it must limit the total nameplate generating capacity built on that premises to less than or equal to 20 MW.

7. The combined heat and power systems installed through Southern California Gas Company's Distributed Energy Resources Services Tariff shall meet the requirements of Title 18 § 292.205(d) of the U.S. Code of Federal Regulations, even if the facility does not seek to sell electricity and even if the facility is smaller than five megawatts.

8. The Southern California Gas Company is authorized to file a Tier 3 Advice Letter for a Distributed Energy Resources Services Tariff within six months of the effective date of this decision that offers combined heat and power systems to all classes of customers. The Advice Letter filing shall comply with the policies and regulations in Ordering Paragraphs 3 through 22.

9. The Southern California Gas Company Tier 3 Advice Letter shall include the following as modified herein:

a. Revised Distributed Energy Resources Services Pro Forma Agreement;

b. Revised Feasibility Analysis Agreement;

c. Revised Tariff Sheets;

d. Revised Competitively Neutral Materials;

e. Preliminary Statements to create a tracking account and balancing account to track costs associated with the Tariff;

f. Proof of creation of tracking numbers; and

g. Standard Agreement for third-party contractors.

10. The Southern California Gas Company (SoCalGas) shall price the Distributed Energy Resources Services (DERS) Tariff to include cost and rate components, adjustments, performance requirements and payment terms agreed upon in advance by the customer and SoCalGas. SoCalGas shall use well established cost-based methodologies identical to those used in general rate cases, to set the price of the service, employing full overhead loaders and indirect charges using a capital charge rate, no lower than the utility authorized weighted average cost of capital (although the negotiated capital charge rate may be higher than the utility authorized cost of capital) to ensure that the charge for the provision of the DERS Tariff is not unfairly competitive.

11. Southern California Gas Company (SoCalGas), shareholders shall bear the risk associated with providing the Distributed Energy Resources Services (DERS). SoCalGas customers not participating in the DERS Tariff shall bear no costs or risks from the provision of this service.

12. Southern California Gas Company (SoCalGas) shall exclude any incremental costs and revenues associated with providing the Distributed Energy Resources Services (DERS) Tariff from rate bases determined in SoCalGas' general rate case proceedings, including:

a) Ongoing development and potential litigation costs shall be excluded from future general rate cases, and costs associated with the DERS shall be recovered only from DERS Tariff customers or SoCalGas shareholders.

b) Decommissioning or removing a DERS facility shall be charged to the DERS internal order for the project and shall be the

> responsibility of SoCalGas shareholders and the DERS customers, and not ratepayers.

13. Southern California Gas Company's Rates Section of the Distributed Energy Resources Services Tariff Sheet shall include the following sentence:

> The rate structure shall be designed to recover costs including, but not limited to, depreciation, returns to capital, income taxes, property taxes, Operation and Maintenance (O&M) expense, repair expense, Administrative and General (A&G) expense, Franchise Fees, Uncollectibles, and insurance. Upon early termination of the Distributed Resources Energy Resources Services Agreement other than Utility's default under the Distributed Energy Resources Services Agreement, Utility shall recover from Applicant an amount based on Utility's unrecovered ownership and removal costs and any early-termination provisions in Utility's subcontracts.

14. The proposed decision issued on July 14, 2015 ordered that within five days to the mailing of the proposed decision Southern California Gas Company (SoCalGas) create an internal order number and begin tracking all costs associated with developing this tariff and participating in this proceeding to the new order number as soon as the order number is created. SoCalGas shall continue to track costs associated with developing the Distributed Energy Resources Services (DERS) Tariff and participating in this instant proceeding to the internal order number. SoCalGas shall ensure thereby that non-participating customers bear none of the costs and risks associated with the DERS Tariff, including tariff development and any potential litigation costs associated with this proceeding.

15. If Southern California Gas Company (SoCalGas) proposes, through an application, any tariff in which shareholders assume the risks and benefits of the tariff, SoCalGas shall begin tracking the costs to provide the tariff to a new internal order number at least 60 days prior to the submission of the application

to the Commission.

16. Southern California Gas Company shall use competitively neutral scripts in answering inquiries regarding the Distributed Energy Resources Services (DERS) Tariff. The script (refer to sample language in Attachment A) shall be included as part of the Tier 3 Advice Letter seeking final approval of the DERS tariff. Energy Division shall review and approve the script to ensure its neutrality.

17. Southern California Gas Company shall provide information on its website concerning the Distributed Energy Resources Services Tariff in a competitively neutral way. The information for the website shall be included as part of the Tier 3 Advice Letter seeking final approval of the tariff and shall be reviewed by the Commission to ensure neutrality. Information on the website and other promotional materials shall state the tariff is fully optional and not tied to other utility services, and that other providers may provide the same or similar service.

18. To ensure no discrimination in the offering of the Distributed Energy Resources Services Tariff, the "Applicability" section of Southern California Gas Company's (SoCalGas) Tariff and Article 4 of the Tariff Services Agreement shall be revised and state:

> SoCalGas shall provide the tariff on a non-discriminatory basis, dependent only on factors such as safety, system capacity, SoCalGas resource availability, technical feasibility, and acceptability of commercial terms.

19. Southern California Gas Company (SoCalGas), as a condition for offering Distributed Energy Resources Services (DERS), shall serve on parties to this proceeding and provide to the Commission's Executive Director (copy to the Commission's Energy Division Director and service list) an annual report pertaining to its provision of services. The first report shall be due six months

from the effective date of the Commission Resolution (or possible subsequent advice letters) that authorizes SoCalGas to provide the Tariff service and approves all associated documents to offer the Tariff. Subsequent reports shall be due every year thereafter for the duration of the DERS program. In addition to items listed in its application, the annual report shall also include the following information:

a. Filled out Excel table provided in Appendix B to show the status of the tariff project. SoCalGas must include one line for each project that has at least signed a Feasibility Analysis Agreement. SoCalGas must continue to update the information for each project in each subsequent report. SoCalGas must track the costs and revenues associated with each individual project at the time of report submission. If a customer has signed a Feasibility Analysis Agreement, but no Tariff Agreement, SoCalGas must explain why the project was not pursued, and which party declined to pursue it further.

b. A characterization of the DERS market, including the other service providers, and SoCalGas' estimate of its market share and how it developed the estimate.

c. The total volume of natural gas sold to customers who receive the Tariff.

d. Cycle time statistics showing the completion time for any pipeline upgrades required for DERS tariff customers compared to the completion time for pipeline upgrades required for non-DERS tariff customers.

e. If any information provided in the annual report is confidential pursuant to the Public Utilities Code Section 583, SoCalGas must cite the appropriate decision of law that allows the information to be treated as confidential.

f. Upon request, SoCalGas shall provide to Energy Division any supplemental information that Commission staff deems appropriate to implement the terms and conditions of this decision.

20. Southern California Gas Company (SoCalGas) shall retain and make available to Commission staff upon request the analysis it used to develop the rate it charged each Distributed Energy Resources Services (DERS) customer that includes the cost-of-capital that was used in its development in comparison to its then authorized cost-of-capital; SoCalGas shall retain this analysis for the duration of the DERS program.

21. The authority for Southern California Gas Company (SoCalGas) to offer the Distributed Energy Resources Services Tariff to new customers shall terminate 10 years from the issuance date of this decision. Service agreements executed within the timeframe may remain in effect for the duration of their term. SoCalGas may file an application requesting a continuation of service as provided for herein.

22. All outstanding motions and requests not yet ruled on in this proceeding are deemed denied.

23. Application 14-08-007 is closed.

This order is effective today.

Dated October 22, 2015, at Sacramento, California.

MICHAEL PICKER
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
LIANE M. RANDOLPH
Commissioners

APPENDIX A

Distributed Energy Resources Services Tariff
Competitively Neutral Script

In response to customer inquiries regarding the Distributed Energy Resources Services Tariff, SoCalGas will use the following competitively neutral script to respond to customer questions:

Customer Question: What is the Distributed Energy Resources Services Tariff?

SoCalGas Response: The Distributed Energy Resources Services (DERS) Tariff is an optional cost- based tariff service for customers that allows SoCalGas (or third-party provider on behalf of SoCalGas) to plan, design, procure, construct, own, operate, and/or maintain distributed energy equipment on or adjacent to customer premises to satisfy onsite energy requirements as requested by the customer and agreed to by SoCalGas. Non-utility service providers may offer services that are the same or similar to the DERS Tariff and customers are encouraged to explore these service options. To assist customers in understanding all of their service options, SoCalGas maintains and provides customers with a list of non-utility service providers that can be found on our website at ______________. (This list includes the Department of Energy's Qualified List of Energy Service Companies which have been qualified by a qualification review board comprised of Department of Energy staff.)

Customer Question: What are some examples of technologies that would use this tariff?

SoCalGas Response: SoCalGas can provide combined heat and power (CHP) technologies, including but not limited to topping- and bottoming-cycle applications.

Customer Question: Is the Distributed Energy Resources Services Tariff mandatory if customers want to have a distributed energy system?

SoCalGas Response: No. Customers may elect to install and maintain their own distributed energy equipment or engage a third party to install and maintain their distributed energy equipment rather than take the Distributed Energy Resources Services Tariff from SoCalGas.

Customer Question: Does enrollment in this tariff result in any preferential treatment when it comes to getting gas service?

SoCalGas Response: No. The Distributed Energy Resources Services Tariff is a fully elective, optional, non-discriminatory tariff service that is neither tied to any other tariff or non-tariff services the customer may receive from SoCalGas nor will it change the manner in which these services are delivered. As an example, requests for natural gas service are processed on a "first come, first served" basis for all customers, including customers that elect to take the Distributed Energy Resources Services Tariff and customers that do not.

Customer Question: Can anyone receive service under the Distributed Energy Resources Services Tariff?

SoCalGas Response: The Distributed Energy Resources Services Tariff is not restricted to a particular customer class. Any agreement to provide service under the Distributed Energy Resources Services Tariff is at SoCalGas' discretion and will depend on nondiscriminatory factors such as safety, system capacity, SoCalGas resource availability, technical feasibility, and acceptability of commercial terms.

Customer Question: Under this service, would SoCalGas be responsible for all equipment connected to the distributed energy facilities?

SoCalGas Response: No, this service will not cover any activities upstream of the Distributed Energy Resources Services Tariff Receipt Point where fuel is delivered to the distributed energy system or downstream of the DER Point of Service Delivery where energy outputs are delivered to the customer.

Customer Question: What other limitations apply to the Distributed Energy Resources Services Tariff?

SoCalGas Response: Other limitations that apply to the DERS Tariff include, but are not limited to, the following:

1) Combined heat and power systems provided through the DERS Tariff will meet the California Public Utilities Commission's Self-Generation Incentive Program (SGIP) efficiency and greenhouse gas emission standards.
2) SoCalGas will only install combined heat and power facilities that are fueled wholly by natural gas, biogas, or other gaseous fuels such as hydrogen or hythane.
3) The nameplate capacity of the installed combined heat and power system will be less than or equal to 20 Megawatts (MW). If SoCalGas installs multiple systems on one customer's premises, the total nameplate generating capacity built on that premises must be less than or equal to 20 MW.
4) The combined heat and power systems installed through the DERS Tariff will meet the requirement that all facilities meet the "fundamental use test" as defined in the federal definition of cogeneration, which requires the energy outputs from the system to be useful.

(End of Appendix A)

Appendix B
Distributed Energy Resources Service Tariff
Annual Report Template

Reporting Template Requirements

SoCalGas must provide this file, in Excel format, with each DERS Tariff annual report. Any confidential information should be marked as such, and SoCalGas must cite the appropriate decision or law that allows the information to be treated as confidential.

This file must include one row for each customer that has signed a Feasbility Analysis Agreement (or continued beyond the Feasibility Analysis phase). In each annual report, SoCalGas must update the information for each customer to reflect project status and the best available information. SoCalGas must provide all available information for each project at the time of report submittal.

For any customers that signed a Feasibility Analysis Agreement, but do not continue with the project, SoCalGas must indicate in the "Status and Comments" field (1) who decided not to pursue the project: the customer or SoCalGas, and (2) the reason for not pursuing the project.

Once SoCalGas calculates the price of the tariff using the cost-based methodology, it should report the cost of capital it used to develop the tariff price for the customer in the "SoCalGas Cost of Capital Used to determine Tariff Costs" column for the project. The narrative summary should compare SoCalGas' authorized cost of capital and the cost of capital used to calculate costs to explain any differences.

Narrative Summary Requirements

SoCalGas must provide a narrative summary to accompany this file. The narrative summary must include (1) a characterization of the DERS market, including the other service providers, and SoCalGas' estimate of its market share and how it developed the estimate; (2) the total volume of natural gas sold to customers who receive the Tariff; and (3) cycle time statistics showing the completion time for any pipeline upgrades required for DERS Tariff customers compared to the completion time for pipeline upgrades required for non-DERS Tariff customers.

Basic Customer and Project Information							Customer Agreement Information							Project Tracking							Notes
Customer Name	Customer Facility Address (Street Address, City, Zip)	CHP Technology Type	Project Nameplate Capacity (MW)	System Efficiency (Useful Energy Output/ Fuel Input)	GHG Emissions Reductions (MT)	Other SoCalGas Tariffs customer has	Feasibility Analysis Agreement Execution Date	Feasibility Analysis Completion Date	Tariff Agreement Execution Date	Term of the Agreement (Years)	Projected SoCalGas Project Costs	SoCalGas Cost of Capital Used to determine Tariff Costs	Projected SoCalGas Project Revenues	Internal Order Number	DERS System Construction Start Date	DERS System Online Date	Actual SoCalGas Project Costs to Date	Actual SoCalGas Project Revenues to Date	justification for any Deviation between Projected and Actual Costs and Revenues	Actual System Efficiency (Useful Energy Output/Fuel Input)	Status and Comments

(End of Appendix B)