

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Agenda ID: 19692
RESOLUTION E-5163
August 19, 2021

R E S O L U T I O N

Resolution E-5163. San Diego Gas & Electric Combined Heat and Power Procurement Pursuant to D.10-12-035 and D.15-06-028

PROPOSED OUTCOME:

- This Resolution acknowledges that San Diego Gas & Electric Company (“SDG&E”) did not meet the megawatt capacity target or the greenhouse gas emissions reduction targets established in D.10-12-035 and modified in D.15-06-028. Because we do not find the failure to be justified, SDG&E will be required to hold an additional combined heat and power solicitation.

SAFETY CONSIDERATIONS:

- There are no safety considerations associated with this resolution.

ESTIMATED COST:

- There are no costs associated with this resolution.

By Advice Letter 3668-E, filed on December 29, 2020, and supplemental Advice Letter 3668-E-A, filed on March 29, 2021.

SUMMARY

This Resolution acknowledges SDG&E's failure to fully meet the Combined Heat and Power (CHP) procurement and emission reduction targets adopted in Decision 10-12-035 and modified in D.15-06-028. This resolution orders SDG&E to conduct an additional CHP-only solicitation in 2021.

BACKGROUND

Background on Relevant History of the CHP Settlement

On December 16, 2010, the Commission adopted the Qualifying Facility and Combined Heat and Power (CHP) Program Settlement Agreement (Settlement) with the issuance of Decision (D).10-12-035. The Settlement resolved several longstanding issues regarding the contractual obligations and procurement options for facilities operating under legacy and qualifying facility contracts and created a CHP Program. Among the objectives of D.10-12-035 was to effectuate state policy encouraging the development of CHP as an efficient, environmentally beneficial, and competitive energy resource.¹

The Settlement established megawatt (MW) procurement targets² and greenhouse gas (GHG) emissions reduction targets³ investor-owned utilities (IOUs) are required to meet by entering contracts with eligible CHP Facilities.

Pursuant to D.10-12-035, the three large electric IOUs must procure a minimum of 3,000 MW of CHP and reduce GHG emissions, consistent with the California Air Resources Board (CARB) Scoping Plan, by 4.8 million metric tons (MMT) by the end of 2020.⁴

The CHP procurement program created by D.10-12-035 included both an Initial Program Period (from November 23, 2011, until November 23, 2015) and a

¹Pub. Util. Code § 372(a); see D.10-12-035 FoF 3 and D. 15-06-028 FoF 5.

²MW targets are for capacity.

³ The Commission uses the double benchmark methodology for CHP to determine if the combined production of heat and electricity is more or less efficient than producing the two products separately. If it is more efficient, the facility is reducing GHG emissions. See D.15-06-028 p.35 for a more detailed discussion of the GHG accounting methodology.

⁴ See D.15-06-028 FoF 6.

Second Program Period (from November 24, 2015, until December 31, 2020).⁵ As described in Section 3.4 of D. 10-012-035, the IOUs were directed to conduct Requests for Offers (RFOs) for CHP resources as one means of achieving their MW and GHG Emissions Reduction Targets.⁶

D.15-06-028, adjusted the CHP program for the Second Program Period to account for changes to the electric grid and market. In this decision, the GHG Emissions Reduction Targets were revised to collectively achieve 2.72 MMT of emissions reductions from CHP facilities by December 2020.⁷ D. 15-06-028 also established a schedule of annual competitive solicitations for CHP facilities during the Second Program Period, until the GHG Emissions Reduction Target is achieved.⁸

SDG&E Targets

D.15-06-028 revised SDG&E's MW target and GHG emissions reduction target for the Second Program Period of the CHP settlement by reducing both targets from previously set levels. The decision also required SDG&E's target of 51 MW to be procured no later than 2018.⁹ The Commission stressed that these new, lower targets were now reasonable and achievable, and required that any showing to justify failing to meet the new targets be significant.¹⁰

⁵ See D.15-06-028 FoF 2.

⁶ See D.15-06-028 FoF 20 (describing the methods of CHP procurement that count towards the utilities' targets); see also Section 4.2 of the Settlement Term Sheet for RFO provisions.

⁷ D.15-06-028 OP 1 and 6.

⁸ D.15-06-028 OP 7.

⁹ D.15-06-028 OP 8.

¹⁰ D.15-06-028 COL 19.

Combined Heat and Power Target	Initial Target Amount	Current SDG&E Target Amount Achieved	% of target met
MW	211 MW	138 MW	65%
GHG	0.283 MMT	0.02 MMT	7%

The Settlement included a provision which addressed potential justifications for an IOU to fail to meet its procurement goals, including lack of sufficient offers, and offer prices in excess of the levels determined by the settlement,¹¹ but did not specify a process for a utility to make such a showing. D.15-06-028 established a process for a utility to make such a showing and for the Commission to determine whether it is justified. If unable to meet the MW Target or GHG Emissions Reduction Target, a utility is required to file a Tier 3 Advice Letter demonstrating key indicators justifying the target failure.¹² Additionally, a CHP Auditor may be appointed to examine the competitive solicitation choices if a utility fails to meet a target.¹³

On December 29, 2020, SDG&E filed a Tier 3 advice letter, asserting that it was unable to meet the capacity target or the GHG Emissions Reduction Target. SDG&E states that it failed to meet its targets due to 'lack of sufficient offers.' SDG&E asks the Commission to accept that SDG&E cannot meet the MW or GHG Emissions Reductions Targets and to find that SDG&E has met its obligations under the CHP Settlement. On March 29, 2021, SDG&E supplemented its advice letter to include Independent Evaluator Reports and summaries of offers from SDG&E's CHP RFOs.

¹¹ Settlement 5.4, 6.9.

¹² Settlement 9.1.2.

¹³ Settlement 5.4, 6.9.

NOTICE

Notice of both AL 3668-E and AL 3668-E-A were made by publication in the Commission's Daily Calendar. SDG&E states that copies of the Advice Letter and Supplement was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

Advice Letters 3668-E and 3668-E-A were not protested.

DISCUSSION

On December 29, 2020, SDG&E filed Advice Letter 3668-E, stating that the utility did not meet either the MW or GHG targets established, as revised by D.15-06-028. SDG&E also requested that the Commission find that SDG&E's failure to meet the targets was justified under section 5.4 of the Settlement and that SDG&E has met its obligations under the CHP Settlement.

Requirements to show failure to meet a target

D.15-06-028 requires an IOU to submit a Tier 3 advice letter, with all confidential documents related to its solicitations and CHP facilities in order to prove a failure, stating that "any such showing of failure to meet a target needs to be significant."¹⁴ SDG&E's original submission did not include these documents. After communication with Energy Division, SDG&E filed a supplemental letter, AL 3668-E-A, which included the necessary required documentation.

The Settlement states that the Commission may consider the conclusions of the CHP Auditor in reviewing a utility advice letter for the failure to meet the targets.¹⁵ No CHP Auditor has been appointed, and we are not aware that SDG&E or any CHP stakeholder has requested a CHP Auditor's review, thus

¹⁴ D.15-06-028 p. 41.

¹⁵ Settlement 9.1.4.1.

there are no Auditor's conclusions for the Commission to consider in this resolution addressing the facts of SDG&E's falling short of both targets.

D.15-06-028 also requires an IOU to provide notice at the earliest practicable time based on its expectation that it will not achieve any one of its targets. SDG&E conducted its most recent all-source request for offers (RFO) from December 2019 to May 2020. SDG&E received no CHP offers at that RFO. It was also clear from the public, semi-annual reports that SDG&E filed with the CPUC in 2019 and 2020 that SDG&E was not meeting the targets due to repeated contract failure.

SDG&E's justification for not meeting targets

A utility can justify the inability to meet either target because of price, GHG reduction potential, lack of offers, or facility inefficiency. A utility can additionally justify the failure to meet the GHG Emissions Reduction Target because of lack of need or portfolio fit.¹⁶ SDG&E states that its failure to meet its targets is justified by a 'lack of offers.'¹⁷

SDG&E recounts that it conducted four CHP-only solicitations total, held in 2012, 2013, 2015 and 2016. However, D.15-06-028 recommended that four be held in the Second Program Period (November 14, 2015 – December 31, 2020)¹⁸. The 2016 solicitation is the only CHP-only RFO held in the Second Program Period. It resulted in 17 offers from five parties, a situation the independent evaluator described as "sufficiently robust."¹⁹ SDG&E shortlisted one offer, from Applied Energy LLC (AEI). The independent evaluator of SDG&E's 2016 RFO cautioned SDG&E about only shortlisting one offer, noting that "if there were any complications with completing the negotiations, such a singular shortlist would leave SDG&E with no options from this solicitation."

¹⁶ D.15-06-028 p. 39; see Term Sheet Sections 5.4, 6.9, and 9.1.2.

¹⁷ Settlement 5.4

¹⁸ D.15-06-028 p.32-34.

¹⁹ AL 3668 E-A, Attachment G.

In further support of SDG&E's justification of a lack of offers, SDG&E describes its history of projects that have failed:

- In 2014, a power purchase agreement (PPA) for 56 MW expired by its own terms.
- In 2016, one 26.65 MW project was counted as capacity toward the MW target, but the Commission deemed it as ineligible for counting toward the GHG Emissions Reduction Target.²⁰
- SDG&E had contracted a project with Applied Energy LLC that would have allowed SDG&E to fulfill its MW target but the power purchase tolling agreement (PPTA) was canceled in September 2018 by the other party as permitted under the terms of the contract.²¹

In July 2019, SDG&E informed the Procurement Review Group that it intended to launch a CHP solicitation to address its deficiency in meeting its targets. In November 2019, the Commission issued D.19-11-016, *Decision Requiring Electric System Reliability Procurement for 2021-2023*, which required the IOUs to conduct all-source Integrated Resource Plan (IRP) solicitations for the 2021-2023 period. For SDG&E, the IRP procurement allocation specified in D.19-11-016 was 292.9 MWs and included CHP. Given this requirement, SDG&E did not conduct a CHP-only solicitation. SDG&E conducted the 2021-2023 all-source reliability RFO in December 2019 but did not receive any CHP offers.

By providing these details and submitting a Tier 3 advice letter, we consider SDG&E to have fulfilled its procedural disclosure obligations from ordering paragraph 13 of D.15-06-028. We will therefore turn to whether SDG&E's submission demonstrated key indicators justifying the target failure.

²⁰ Resolution E-4799.

²¹ Resolution E-4901 approved the contract, AL 3246-E filed July 5, 2018, sought to amend the contract and was withdrawn on September 7, 2018, after the cancellation.

Analysis of Justification

SDG&E states that it was unable to meet the targets because of contracts that failed for reasons beyond its control after the 2016 CHP-only RFO and the lack of offers received in its most recent all-source reliability RFO to amend the shortfall.

SDG&E knew for at least two years before the end of the Second Program Period that SDG&E was not close to meeting its targets for that period as set forth in D.15-06-028. AEI terminated its PPTA with SDG&E on September 7, 2018. SDG&E opened the all-source reliability RFO on December 13, 2019. The previous RFO which included CHP was issued on February 19, 2016.

It is understandable that SDG&E had an agreement with AEI that would have allowed it to meet its MW procurement target and that the unanticipated loss of that contract would undermine SDG&E's ability to fulfill the MW obligations under the CHP settlement. But even if SDG&E had been able to maintain its contract with AEI, it would not have met its GHG Emissions Reductions Target. The gap in CHP RFOs conducted by SDG&E between February of 2016 and December 2019 is concerning, especially when D.15-06-028 anticipated yearly solicitations.

It seems that SDG&E did lack offers in the all-source reliability solicitation issued at the end of the Second Program Period. However, that solicitation contained requirements for incrementality that may have been difficult to meet for CHP that would fulfill the GHG Emissions Reductions Target.²² SDG&E conducted only one CHP-only RFO in the Second Program Period and only shortlisted one project from that solicitation. It would have been preferable to conduct additional CHP-only solicitations during this period until the targets were met or shortlist additional projects from the one CHP-only RFO held. SDG&E states in its response to a data request from Energy Division that "by the time that bids were received for the 2019 All-Source RFO, there was insufficient time prior to

²² D.19-11-016, OP 7.

the expiration of the Settlement Period on December 31, 2020 for SDG&E to run a new [CHP] RFO.”²³

For this reason, we direct SDG&E to conduct one additional CHP-only RFO for the purpose of meeting SDG&E’s MW and GHG emissions reduction targets set forth in D.15-06-028.

SDG&E did make an effort to procure additional CHP before the end of the Second Program Period with the all-source reliability RFO, but that may have been an inappropriate venue. Conducting an additional CHP-only RFO will provide an opportunity for any CHP that did not qualify for the all-source RFO to participate. Public Utilities Code § 372 states that the policy of the state is to encourage and support the development of cogeneration as a competitive energy resource, and an additional CHP-only RFO will promote this goal.

2021 CHP RFO

SDG&E should conduct this RFO before the end of 2021. Considering the current situation that the state is facing in terms of extreme weather and reliability, the Commission urges procurement of resources that can come online promptly.

In response to the data request from Energy Division, SDG&E states that “it is not aware of any CHP facilities in its service territory that are not under a power purchase and sale agreement with SDG&E.”²⁴ If this is the case, and SDG&E receives no offers, SDG&E must submit a Tier 2 advice letter to the Commission with the results of the RFO and all confidential documents related to the solicitation. Any contracts resulting from the RFO must be submitted by Tier 3 advice letter for Commission approval.

²³ SDG&E Data Response, July 2, 2021.

²⁴ SDG&E Data Response, July 2, 2021

COMMENTS

Public Utilities Code section 311(g)(1) provides that this Resolution must be served on all parties and subject to at least 30 days public review.

Any comments are due within 20 days of the date of its mailing and publication on the Commission's website and in accordance with any instructions accompanying the notice. Section 311(g)(2) provides that this 30-day review period and 20-day comment period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day review and 20-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS

1. D.15-06-028 directed SDG&E to file a Tier 3 Advice Letter to provide notice to the Commission that it is deficient in meeting its MW procurement and GHG Emissions Reductions targets adopted in D.10-12-035 and modified in D.15-06-028.
2. As of December 31, 2020, SDG&E has met 65% of its MW Procurement Target and 7% of its GHG Emission Reduction Target.
3. D.15-06-028 revised SDG&E's GHG Emissions Reduction Target to 0.283 MMT and its MW Target to 51 MW.
4. SDG&E conducted four CHP-only RFOs in 2012, 2013, 2015, and 2016, respectively, and only the 2016 RFO was in the Second Program Period (November 24, 2015 – December 31, 2020).
5. D.15-06-028 anticipated up to four CHP-only RFOs to be held annually in the Second Program Period until the targets were achieved.
6. In July 2019, SDG&E informed the Procurement Review Group that it intended to hold a CHP-only solicitation to address its deficiency in meeting the MW and GHG emissions reduction targets; SDG&E did not conduct this solicitation.
7. SDG&E conducted an all-source RFO that began on December 13, 2019, which received no CHP offers.

8. The Commission expects that utilities will contract procurement as authorized.
9. No CHP Auditor was appointed to investigate SDG&E's claim, and there are no CHP Auditor findings to consider.
10. SDG&E documented that an existing CHP contract under the settlement was cancelled by the other party.
11. SDG&E entered into multiple contracts in order to fulfill its obligation under the Combined Heat and Power Settlement and the MW or GHG targets.
12. Incrementality requirements for the all-source reliability RFO conducted in accordance with D.19-11-016 may have discouraged additional CHP offers.
13. SDG&E did not have enough time to complete an additional CHP-only RFO between the end of the all-source reliability RFO and the end of the Settlement Period.
14. Public Utilities Code § 372 states that the policy of the state is to encourage and support the development of cogeneration as an efficient, environmentally beneficial, and competitive energy resource.
15. SDG&E did fulfill the obligation to file a Tier 3 Advice Letter and provide facts as to why it was unable to fulfill the MW and GHG reduction targets; however, we find these facts do not justify the failure to meet the targets.
16. It is reasonable for SDG&E to conduct an additional CHP-only RFO for the purpose of meeting SDG&E's MW and GHG reduction targets.
17. A Tier 2 Advice Letter certifying that SDG&E received no offers from a subsequent CHP-only RFO would justify failure to meet targets due to a lack of offers.
18. Any contracts resulting from the subsequent CHP-only RFO must be submitted by a Tier 3 Advice Letter.

THEREFORE IT IS ORDERED THAT:

1. The request regarding SDG&E's obligations under OP 13 of D.15-06-028 is approved, conditioned on SDG&E holding one additional CHP-only RFO.
2. SDG&E is ordered to conduct the additional CHP-only RFO before December 31, 2021, for the purpose of meeting the MW and GHG emissions reductions targets established for SDG&E pursuant to D.15-06-028.

3. If no contracts result from the CHP-only RFO, SDG&E must submit a Tier 2 Advice Letter with the results of the RFO and all associated documentation. In the case of no contracts resulting from the RFO, approval of SDG&E's Tier 2 Advice Letter will serve as justification for its failure to meet targets under the CHP Settlement.
4. If the CHP-only RFO results in any contracts, SDG&E must submit them to the CPUC for approval via a Tier 3 Advice Letter.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on August 19, 2021; the following Commissioners voting favorably thereon:

Rachel Peterson
Executive Director