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



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Application of San Diego Gas & Electric Company
(U 902 E) for Authority to Partially Fill the Local Capacity
Requirement Need Identified in D.14-03-004 and Enter
into a Purchase Power Tolling Agreement with Carlsbad
Energy Center, LLC.

Application 14-07-009
(Filed July 21, 2014)

**OPENING COMMENTS OF CARLSBAD ENERGY CENTER LLC ON
THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE YACKNIN**

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TO THE PROPOSED DECISION**

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Carlsbad Energy Center LLC (“Carlsbad Energy”) submits its opening comments on the Proposed Decision of Administrative Law Judge Yacknin mailed March 6, 2015 (“Proposed Decision”).¹ Carlsbad Energy recommends modification of the Proposed Decision to approve the application of San Diego Gas & Electric Company (“SDG&E”) in this proceeding (“Application”).

The Proposed Decision correctly finds that the terms and conditions of the power purchase tolling agreement for the 600 megawatt (“MW”) Carlsbad Energy Center (“PPTA”) are reasonable, and that the PPTA is a reasonable means to meet SDG&E’s local capacity requirements (“LCR”) need. (Proposed Decision at 6-7, 25.) The Proposed Decision errs, however, by misinterpreting Decision 14-03-004, which recognized the Commission’s statutory responsibility to ensure reliability and gave SDG&E flexibility to procure up to 600 MW of conventional resources to meet LCR need in 2018. The Proposed Decision also errs by failing to recognize uncontroverted evidence demonstrating the need to install new natural gas-fired

¹ Under Rule 14.3, opening comments on the Proposed Decision are due March 26, 2015. Carlsbad Energy is filing its opening comments early to afford parties the opportunity to address Carlsbad Energy’s alternative proposal in their opening comments rather than only in reply comments.

capacity by 2018 to avoid reliability problems after retirement of the 965 MW Encina Power Station (“Encina”) at the end of 2017. The Proposed Decision also errs by failing to recognize that waiting for the results of SDG&E’s 2014 request for offers (“RFO”) would delay the Carlsbad Energy Center’s online date until two years after the date when Encina will retire to comply with mandatory restrictions on the use of once-through cooling technology (“OTC”). As discussed below, correcting these errors in the Proposed Decision supports approval of the Application as proposed without delay based on the Proposed Decision’s findings that the PPTA terms are reasonable.

Carlsbad Energy also presents an alternative proposal for approving the Application and requiring modification of the PPTA to apply to five generating units of the Carlsbad Energy Center to meet 500 MW of LCR need, with the sixth unit to be included automatically under the PPTA to meet an incremental 100 MW of LCR need if the RFO will not produce more than 200 MW of feasibly available and cost effective preferred resources and energy storage capable of meeting reliability needs.

II. DISCUSSION

A. The Proposed Decision should be corrected to recognize that Decision 14-03-004 emphasized the Commission’s statutory responsibility to ensure reliability, and gave SDG&E flexibility to procure up to 600 MW of conventional resources to meet LCR need in 2018.

The Proposed Decision correctly finds that the PPTA is a reasonable means to meet SDG&E’s LCR need, but errs by interpreting Decision 14-03-004 as requiring SDG&E first to show that it is not possible to procure more than 200 MW of preferred resources and energy storage through the RFO. Decision 14-03-004 did not impose this requirement. To the contrary, Decision 14-03-004 emphasized the importance of preserving reliability, expressly authorized SDG&E to meet a significant portion of its LCR need through conventional generation, and concluded that reliability should not be compromised through excessive procurement of preferred resources. Decision 14-03-004 adopted the following Findings of Fact:

- “Authorizing SDG&E to procure between 500 and 800 MW in its portion of the SONGS service area is within the range of prudent procurement,” and “It is necessary that a significant amount of this procurement level be met through conventional gas-fired resources in order to ensure LCR needs will be met” (Findings of Fact 81 and 82);
- “Pursuing procurement of preferred resources consistent with the Loading Order must be balanced by ensuring that grid operations are not potentially compromised by excessive reliance on intermittent resources and resources with uncertain ability to meet LCR needs” (Finding of Fact 83); and
- “Procurement needs may become critical as early as 2018, and certainly by 2020” (Finding of Fact 91).

Decision 14-03-004 also adopted the following Conclusions of Law requiring a gradual increase in preferred resources and energy storage to ensure a continued high level of reliability, and giving SDG&E flexibility to procure gas-fired resources to meet LCR need:

- “It is prudent to promote preferred resources to the greatest extent feasible, subject to ensuring a continued high level of reliability” (Conclusion of Law 37);
- “A prudent approach to reliability entails a gradual increase in the level of preferred resources and energy storage into the resource mix” (Conclusion of Law 38);
- “Consistent with D.13-02-015, it is reasonable to provide a level of flexibility to SCE and to ensure procurement consistent with ISO reliability standards by expanding the range of procurement specified in D.13-02-015 for gas-fired resources, preferred resources and energy storage,” and “A similar range of procurement flexibility should be provided to SDG&E as to SCE” (Conclusions of Law 39 and 40); and
- “SDG&E should be authorized some flexibility to procure gas-fired, preferred and energy storage resources to meet reliability needs” (Conclusion of Law 43).

The Proposed Decision ignores these Findings of Fact and Conclusions of Law, and improperly relies on *dicta* from Decision 14-03-004 to conclude that it is not reasonable to approve conventional generation unless SDG&E first completes the RFO and rules out all possibilities for adding preferred resources and energy storage in excess of the amounts required in Decision 14-03-004. (Proposed Decision at 11.) The Proposed Decision selectively relies on *dicta* from Section 2.2 of Decision 14-03-004, appearing under the heading “Statutory Requirements, Energy Action Plan and the Loading Order,” where the Commission summarized

the statutory requirements applicable to procurement decisions. The Proposed Decision focuses on the Loading Order discussion, and ignores the first part of Section 2.2 of Decision 14-03-004, where the Commission stated that “a primary responsibility of the Commission is to ensure safety and reliability in the electrical system,” and “California law repeatedly emphasizes the importance of maintaining the reliability of the electric grid,” citing the following examples from the California Public Utilities Code:

- “Reliable electric service is of utmost importance to the safety, health, and welfare of the state’s citizenry and economy.” (§ 330(g))
- “It is important that sufficient supplies of electric generation will be available to maintain the reliable service to the citizens and businesses of the state.” (§ 330(h))
- “Reliable electric service is of paramount importance to the safety, health, and comfort of the people of California.” (§ 334)
- The CAISO “shall ensure efficient use and reliable operation of the transmission grid” (§ 345) and shall “ensure the reliability of electric service and the health and safety of the public.” (§ 345.5(b))
- The Commission “shall ensure that facilities needed to maintain the reliability of the electric supply remain available and operational.” (§ 362(a))

(Decision 14-03-004 at 12-13.)

After citing these statutory mandates for ensuring reliability, Decision 14-03-004 recognized that the Commission also has a statutory mandate to implement procurement-related policies to protect the environment, including through application of the Loading Order. The Proposed Decision quotes language in Decision 14-03-004 describing the Loading Order, but ignores the Commission’s emphasis on its primary statutory responsibility to ensure reliability. The Proposed Decision also fails to recognize that in the sections of Decision 14-03-004 that follow the quoted passage, and specifically in the section describing how the authorized LCR need should be filled, the Commission applied the Loading Order to require SDG&E to fill its authorized LCR need using a minimum of 200 MW of preferred resources and energy storage. (Decision 14-03-004 at 96.) The Commission adopted 200 MW as the minimum level instead of

the 120 MW that SDG&E recommended. (*Id.*) The Commission concluded as a matter of law that: “Requiring SDG&E to procure at least 200 MW from preferred resources or energy storage is consistent with the authority granted to SCE herein and consistent with the Loading Order.” (*Id.* at Conclusion of Law 44.) This shows that the Commission factored compliance with the Loading Order into the minimum procurement level required for SDG&E, and concluded that procurement of 200 MW of preferred resources and energy storage satisfies the Loading Order.

The Proposed Decision also misconstrues Decision 14-03-004 as determining that SDG&E “should procure” up to 100 percent of its LCR need with preferred resources and energy storage, and as finding implicitly that all resources are equally effective to meet LCR need. (Proposed Decision at 13, 18.) Although Decision 14-03-004 allowed SDG&E to exceed the minimum 200 MW of preferred resources and energy storage, it did not require it. To the contrary, as reflected in the Findings of Fact and Conclusion of Law cited above, the Commission expressly affirmed that it is necessary that a significant amount of the procurement level be met with conventional gas-fired resources, and concluded that the Loading Order must be balanced to avoid excessive reliance on intermittent resources with uncertain ability to meet LCR needs. (*See also* Decision 14-03-004 at 90.) Decision 14-03-004 therefore gave SDG&E flexibility to procure a significant amount of conventional generation. As shown by these findings, the Commission determined that the capabilities of gas-fired generation – such as dispatchability and flexible operating characteristics – are required to ensure a continued high level of reliability.

The Proposed Decision should be corrected by adding references to the Findings of Fact and Conclusions of Law from Decision 14-03-004 that are quoted above. Applying the procurement authorization reflected therein, the Proposed Decision should be modified to conclude that SDG&E acted in accordance with Decision 14-03-004 by negotiating a bilateral

contract with the only natural gas-fired resource large enough to meet the LCR need and achieve commercial operation in time to avoid reliability problems in 2018.

B. The Proposed Decision should be modified to recognize uncontroverted evidence demonstrating the need to install new natural gas-fired capacity by 2018 to avoid reliability problems after Encina retires.

The Proposed Decision misinterprets the findings in Decision 14-03-004 regarding the need for new generating capacity to account for the loss of 965 MW at Encina. The Proposed Decision acknowledges that Encina uses OTC and is subject to the State Water Resources Control Board (“Water Board”) State Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling, which requires Encina to demonstrate compliance with stringent water use standards by December 31, 2017. (Proposed Decision at 11.) Encina’s only compliance path is to retire all OTC units on or before the deadline. (*Id.* at 11-12.) The Proposed Decision acknowledges that SDG&E and the California Independent System Operator Corporation (“CAISO”) “maintain that the Encina retirement will create a potential reliability issue in the event that it is not immediately replaced with generation facilities at or near its location.” (*Id.* at 12.) The Proposed Decision recognizes that the Carlsbad Energy Center has an online date of November 1, 2017, which will avoid a reliability gap, and accepts that projects bid into the RFO cannot match this online date. (*Id.*)

Despite recognizing that this reliability problem exists in 2018, the Proposed Decision declines to take action to address it. This reflects two errors. First, the Proposed Decision misinterprets prior Commission decisions and mistakenly concludes that reliability needs arising from Encina’s retirement have already been resolved. Citing Decisions 13-03-029 and 14-02-016, the Proposed Decision mistakenly concludes that the Commission already fully accounted for Encina’s retirement by approving SDG&E’s contract with the Pio Pico Energy Center. (*Id.* at 14-15.) The Proposed Decision then mistakenly concludes that Decision 14-03-004 did not include a Commission determination that SDG&E’s incremental LCR need is driven by Encina’s retirement at the end of 2017. (*Id.* at 16.) The Proposed Decision ignores the

significant change in circumstance that precipitated Track 4 of the long-term procurement plan proceeding and the need determination in Decision 14-03-004, namely the early and unexpected retirement of the 2,246 MW San Onofre Nuclear Generating Station (“SONGS”). The loss of the Encina units, when coupled with the loss of SONGS, means that Pio Pico is not sufficient to ensure reliability after Encina retires. This was confirmed in Decision 14-03-004, which acknowledged the addition of Pio Pico and still found that “Procurement needs may become critical as early as 2018, and certainly by 2020.” (Decision 14-03-004 at Finding of Fact 91 and pages 11, 113, 134.) The Proposed Decision also ignores the Commission’s statement on page 113 of Decision 14-03-004 directing SDG&E to begin procurement as soon as possible, and to expeditiously pursue procurement of any gas-fired generation expected to take several years to develop. This was in direct response to SDG&E’s position that “moving forward on an expedited basis with a bilateral contract to address a portion of LCR need would support the policy goals of the State related to timely retirement of OTC facilities and would promote system reliability – the sooner new local resources are added to the portfolio, the lower the reliability risk.” (*Id.* at 95-96.) This shows that the Commission recognized a need for incremental, expedited procurement to meet LCR need arising due to the combined loss of SONGS and the OTC units in SDG&E’s service area – namely Encina. Had Pio Pico met all of the need related to Encina’s retirement, Decision 14-03-004 would not have authorized further procurement through bilateral contracts to meet needs arising as early as 2018.

Second, the Proposed Decision errs by ignoring evidence in this proceeding demonstrating that a significant amount of new natural gas-fired generating capacity is needed by 2018 to meet the LCR need after Encina retires. The CAISO’s unrefuted testimony demonstrates that 600 MW of new generating capacity is needed to ensure reliability needs are met in 2018 after Encina retires. (CAISO/Sparks, Exhibit (“Ex.”) 4 at 6:27-28.) The CAISO’s

modeling shows that this 600 MW is needed in addition to the 308 MW at Pio Pico, and is still not sufficient to meet all remaining LCR need. (*Id.* at 3:4 through 6:11.)

The Proposed Decision errs by declining to consider the CAISO's testimony as evidence demonstrating a need for new generation in 2018, and instead considering it only for the purpose of confirming that new transmission projects identified in the CAISO's 2013-2014 Transmission Planning Process ("TPP") do not reduce the LCR need adopted in Decision 14-03-004. (Proposed Decision at 16) The Proposed Decision should be modified to give weight to the CAISO's testimony. The CAISO's witness Robert Sparks testified that reliability problems will occur in 2018 unless new capacity is added at or near the Encina site. Mr. Sparks explained that in the 2013-2014 TPP studies, the CAISO modeled the addition of a 558 MW combined cycle gas plant located in the Carlsbad area. (CAISO/Sparks, Ex. 4 at 3:20-24.) This combined cycle configuration reflects the plant design originally proposed for the Carlsbad Energy Center. Mr. Sparks confirmed that the revised 600 MW simple cycle project contemplated in the PPTA provides similar, and in some cases superior, operational benefits in terms of capacity and flexibility. (*Id.* at 7:17-20.) Mr. Sparks testified that "600 MW of new resource capacity is needed before summer 2018 along with the transmission projects in Table 1 to ensure LCR needs are met." (*Id.* at 6:27-28.) Mr. Sparks also explained that the Carlsbad Energy Center "is expected to be operational in November, 2017, prior to the summer 2018 period in which the CAISO has identified system reliability issues." (*Id.* at 7:14-15.) This online date occurs in time to replace Encina, and ensures sufficient capacity will be operational prior to the 2018 summer peak period when it will be needed for reliability. (*See* CAISO Opening Brief at 8-9.) The Proposed Decision should be modified to recognize that the record shows a need for 600 MW of new natural gas-fired generating capacity to be operating in the Carlsbad area by the time Encina retires to avoid reliability problems in 2018.

C. The Proposed Decision should be modified to find that it is not prudent to wait for completion of the RFO because this would delay the Carlsbad Energy Center's online date until two years after Encina's OTC compliance deadline.

The Proposed Decision also errs by assuming that reliability needs can be satisfied by extending the OTC deadline and continuing to operate Encina beyond 2017. While acknowledging the potential for a reliability gap to occur if procurement is delayed beyond Encina's retirement date of December 31, 2017, the Proposed Decision states that the CAISO could request an extension of Encina's OTC compliance deadline, and presumes that Encina would continue operating, albeit at a potential cost to ratepayers due to the need to undertake deferred maintenance. (Proposed Decision at 16-17 and footnote 11.)

This approach abdicates the Commission's statutory responsibility to ensure reliability and relies on the CAISO and the Water Board to solve reliability needs in 2018 and beyond through a change in law (*i.e.*, the Water Board's extension of the Encina OTC compliance deadline), and a forced delay of Encina's long-expected retirement. This is contrary to the OTC regulation requiring the elimination of OTC in California by year-end 2017 in the case of Encina, a deadline that the Commission concurred in through its participation on the Water Board's Statewide Advisory Committee on Cooling Water Intake Structures. It also contradicts the Commission's stated intent to authorize procurement that facilitates the timely phase-out of OTC use, and its prior findings that Encina's continued operation beyond its OTC compliance deadline would be "undesirable" and "would only occur as a response to an emergency." (*See* Decision 13-02-015 at Finding of Fact 10, and Decision 14-06-053 at Ordering Paragraph 12.)

Importantly, the delay associated with waiting for the RFO results would not be "brief" as some parties have claimed. The RFO schedule calls for SDG&E to submit an application for approval of the RFO results in first quarter 2016, with a Commission decision to follow at the end of 2016 under a best case scenario. (Carlsbad Energy/Valentino, Ex. 2 at 8:24-28.) This means that construction of the Carlsbad Energy Center could not start until 2017 after the

Commission approves the renewed application for approval of the PPTA. This would delay the Carlsbad Energy Center online date until mid or late 2019 or potentially later, resulting in a reliability gap of two years or more after Encina's OTC compliance deadline. (*Id.* at 9:1-7.)

The Commission should not assume that Encina's OTC deadline could be extended for two years to wait for completion of the RFO process. The CAISO explained that the process for suspending compliance with the OTC regulation is fraught with uncertainty and is not a realistic alternative to developing the Carlsbad Energy Center. (CAISO Reply Brief at 5-7.) The claim that Encina could keep operating for two years beyond its compliance deadline also contradicts the evidence in this proceeding confirming that Encina has reached the end of its useful life and will retire at the end of 2017. (Carlsbad Energy/Piantka, Ex. 3 at 4:22-23.) The Proposed Decision should be modified to recognize that it is not prudent to risk reliability by relying on a lengthy extension of the OTC deadline and a forced delay of Encina's retirement.

D. The Proposed Decision should be modified to conclude that the public interest in ensuring reliability outweighs the potential for the RFO to produce more than 200 MW of preferred resources and energy storage.

The Proposed Decision creates and applies a balancing test to conclude – incorrectly – that the public interest in ensuring reliability is outweighed by the potential benefits of waiting to see if additional preferred resources might materialize through the RFO. (Proposed Decision at 14, 17.) This balancing test is predicated on the Proposed Decision's incorrect interpretation of Decision 14-03-004 as directing that SDG&E "should procure" up to 100 percent of the LCR need from preferred resources and energy storage. (*Id.* at 13, 18.) As discussed above, Decision 14-03-004 balanced the Commission's statutory responsibilities and determined that compliance with the Loading Order would occur through procurement of 200 MW of preferred resources and energy storage. (Decision 14-03-004 at Conclusion of Law 44.) Under the correct interpretation of Decision 14-03-004, the Loading Order does not require another balancing of the benefits of adding even more preferred resources and energy storage before approving a contract that has been shown to be needed to ensure reliability.

If the Proposed Decision's balancing test is applied, the Commission's primary statutory responsibility to ensure reliability dictates a reversal of the outcome in the Proposed Decision, namely a finding that the public interest in protecting reliability outweighs the potential benefits of waiting to see if additional preferred resources might materialize through the RFO. Reliability mandates swift action to facilitate timely construction of new capacity to meet the LCR need. As described above, the State cannot afford a strategy that relies on delaying Encina's OTC compliance deadline for two years, and forcing Encina's OTC units to continue operating. SDG&E is required to procure 200 MW of preferred resources and energy storage which, combined with other programs, creates a balanced portfolio of approximately 608 MW of preferred resources and energy storage that shows a strong commitment to resources ranked high in the Loading Order. (SDG&E Opening Brief at 16-17.) Adding gas fired generation at this time is necessary to ensure the LCR need is met after Encina retires. As required in Decision 14-03-004, this outcome balances the Commission's primary responsibility to ensure reliability with its duty to implement procurement that protects the environment.

The Proposed Decision's balancing test also ignores the environmental consequences of continuing to operate the Encina OTC units. Consideration of the environmental benefits of retiring the OTC units on time as required by the OTC regulation is an additional factor that warrants immediate approval of the Application.

E. Correcting the Proposed Decision's interpretation of Decision 14-03-004, and upholding the Commission's statutory responsibility to ensure reliability in light of evidence demonstrating the need for new gas-fired generation by 2018, support immediate approval of the Application, consistent with the Proposed Decision's findings that the PPTA terms are reasonable.

Correcting the errors in the Proposed Decision as described above supports approval of the Application as proposed without delay. This follows from other findings and conclusions in the Proposed Decision that:

- Decision 14-03-004 authorized SDG&E to bring this application for approval of a bilateral contract to meet some of its procurement authority. (Proposed Decision at 5.)
- The PPTA is a reasonable means to meet 600 MW of LCR need, and does not exceed the 600 MW that is authorized to be met using conventional generation. (*Id.* at 6-7.)
- The transmission projects identified in the CAISO’s 2013-2014 TPP do not reduce the LCR need identified in Decision 14-03-004. (*Id.* at 10.)
- The PPTA and the technology of the Carlsbad Energy Center are a reasonable means of meeting SDG&E’s LCR needs. (*Id.* at 21.)
- The PPTA provides additional benefits due to its flexible dispatchability and location on the existing transmission system on highly disturbed land. (*Id.* at 21.)
- Bringing the Carlsbad Energy Center online by Encina’s OTC compliance date of December 31, 2017 reduces the risk of a reliability gap. (*Id.* at 22.)
- The price, terms and conditions of the PPTA are reasonable. (*Id.* at 25.)
- SDG&E’s proposed cost allocation treatment for the PPTA is approved. (*Id.* at 29.)
- The Commission’s review of power purchase contracts does not trigger the California Environmental Quality Act (“CEQA”); thus approval of the Application does not require review under CEQA. (*Id.* at 29-31.)

These findings in the Proposed Decision support approval of the Application as proposed to ensure immediate construction of the Carlsbad Energy Center to meet the LCR need as authorized in Decision 14-03-004. Carlsbad Energy recommends proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs for this outcome in Appendix A hereto.

F. An alternative approach is to approve the Application and require modification of the PPTA to apply to five units as proposed, with the sixth unit to be included automatically under the PPTA if the RFO will not produce more than 200 MW of feasibly available and cost effective preferred resources capable of meeting reliability needs.

As explained above, Decision 14-03-004 and the record in this proceeding support approval of the Application as proposed without delay. But there is a potential alternative approach if the Commission favors a compromise that would meet the primary objective of ensuring reliability, but also leave procurement “room” to assess whether the RFO could produce

more than 200 MW of preferred resources and energy storage. The Commission could approve the Application and simultaneously require modification of the PPTA to apply to five generating units of the Carlsbad Energy Center as proposed to meet 500 MW of LCR need, with the sixth unit to be included automatically under the PPTA if and when SDG&E determines that the RFO will not produce more than 200 MW of feasibly available and cost effective preferred resources and energy storage capable of meeting reliability needs.

If the Commission were to approve this approach in a decision adopted not later than May 2015, Carlsbad Energy would agree to modify the PPTA to apply to the output of five units as proposed on the same price terms and according to the schedule set forth in the current PPTA. Carlsbad Energy would agree up front to incorporate the sixth unit under the PPTA automatically following timely confirmation from SDG&E that the sixth unit should be included. Approval of the Application on these terms is supported by the record and the Proposed Decision's findings that the price and other terms and conditions in the PPTA are reasonable. The record shows that reducing the number of units under the PPTA likely would increase the price. (SDG&E/Baerman, Ex. 1, Appendix D at 37; Carlsbad Energy/Valentino, Ex. 11 at 2:18-25.) Reducing the number of units that are definitely included under the PPTA from six to five while maintaining the same price is equally as reasonable as the current PPTA, and better than reasonable given the price increase that was expected to result from a reduction in project capacity. The record fully supports this finding and no further record is necessary.

Carlsbad Energy submits these comments to state its willingness to complete the Carlsbad Energy Center under a Commission-approved modified PPTA reflecting this approach, and containing commercially reasonable modifications to be agreed upon with SDG&E, subject to several caveats. First, a Commission decision approving the Application and pre-approving the required modifications to the PPTA is needed no later than May 2015 to maintain the current project schedule, which provides for financing and start of construction this year. (Carlsbad

Energy/Valentino, Ex. 2 at 7:14-23.) As discussed above, Carlsbad Energy's testimony shows that it would not be possible to meet a 2017 commercial operation date if the Commission waits to complete the RFO process. (*Id.* at 8:22-24.)

Second, it will be critical for the Commission decision to approve the Application and to pre-approve the modified PPTA unequivocally. It must be clear that the condition in the PPTA requiring Commission approval has been satisfied so that the PPTA will become fully effective and binding on the parties. This is necessary to give contractual certainty to the parties to fulfill their performance obligations and to facilitate project financing, as lenders will require proof that the PPTA is fully effective and binding. If necessary, SDG&E could confirm through a Tier 1 advice letter filing that the PPTA was modified in accordance with the decision, but Commission approval of the PPTA must be clear without imposing conditions that could delay the PPTA's effective date.

Third, the decision to include the sixth unit under the PPTA must occur as soon as possible to preserve price and schedule terms for the sixth unit. The CAISO testimony shows that 600 MW of new flexible capacity must be operating in time to avoid reliability problems in 2018 after Encina retires. Including five units in the PPTA as proposed would meet 500 MW of this need, but would leave a potential 100 MW shortfall. This is far more prudent than the outcome under the Proposed Decision, which would create a 600 MW shortfall by delaying the commercial operation date for all units by two years or longer, but it still leaves 100 MW to be filled by 2018. To fill the shortfall in time to meet reliability needs, it will be critical to confirm the inclusion of the sixth unit under the PPTA as early as possible. Delay could extend the online date for the sixth unit, creating a reliability gap after Encina retires, and necessitate reconsideration of the price applicable to the sixth unit.

Finally, reducing the number of units assured coverage under the PPTA from six to five would have an adverse impact to project economics at the maximum level that can be accepted

without revisiting the price in the PPTA. As referenced above, the Independent Evaluator's report addressed the feasibility of installing four units initially to meet reliability needs, with the remaining two units to be added if the results of the RFO do not produce sufficient "compelling or economic" proposals for preferred resources. (SDG&E/Baerman, Ex. 1, Appendix D at 37.) The record shows that it is not possible to build only four units without reconsidering the price and likely increasing the levelized cost to ratepayers under the PPTA. (*Id.*) This is because the cost of building fewer units is not sufficiently lower than the cost of building all six units in order to offset the reduced revenues and preserve the expected return if all six units are not procured under the PPTA (which would not be assured under this alternative proposal). Thus, modifying the PPTA to ensure that five units are approved, without assurance that the sixth unit ultimately will be included under the PPTA, has an adverse economic impact to Carlsbad Energy. Carlsbad Energy is willing to accept this impact if the alternative proposal is implemented as recommended herein. But Carlsbad Energy cannot commit to include fewer than five units in the PPTA without reconsidering the price to preserve reasonable project economics.

To accomplish these objectives, Carlsbad Energy recommends proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs in Appendix B hereto.

III. CONCLUSION

The Proposed Decision should be modified to apply the correct findings and conclusions from Decision 14-03-004 and to uphold the Commission's statutory responsibility to ensure reliability. Applying the procurement authority granted in Decision 14-03-004 and recognizing evidence demonstrating the need for new gas-fired generation by 2018, the Application should be approved without delay, either as proposed in the Application or under the alternative proposal described above.

March 20, 2015

Respectfully submitted,

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costs, and prolonged environmental impacts by delaying compliance with stringent water use standards imposed in the OTC regulation.

6. Approval of the Carlsbad PPTA would avoid the reliability gap associated with the Encina retirement and meet reliability needs in 2018 preclude SDG&E from procuring preferred resources and energy storage in excess of the required minimum 200 MW.

7. Although SDG&E's RFO has produced a robust number of offers for preferred resources and energy storage which could potentially meet LCR needs in excess of the minimum 200 MW required in D.14-03-004 some, if not all, of the 600 MW of SDG&E's LCR need that may be procured from any source, we reiterate Finding of Fact 83 from Decision 14-03-004 that pursuing procurement of preferred resources consistent with the Loading Order must be balanced by ensuring that grid operations are not potentially compromised by excessive reliance on intermittent resources and resources with uncertain ability to meet LCR needs.

8. While it is not possible at this juncture to determine the viability of offers for preferred resources and energy storage, the evidence ~~does not leads~~ us to affirm our prior finding in Decision 14-03-004 that a significant amount of the authorized procurement level must be met through conventional gas-fired resources to ensure LCR needs will be met ~~presume that the RFO will fail to produce any preferred resource options to meet SDG&E's procurement requirement beyond the 200 MW minimum of preferred resources and energy storage.~~

9. The Carlsbad PPTA would provide additional benefits including reliability benefits by being able to meet SDG&E's LCR need by 2018, renewable resources integration benefits due to its flexible dispatchability, and locational benefits by virtue of being highly compatible with the existing transmission

system and on previously disturbed land.

10. The Carlsbad PPTA price, term and conditions compare reasonably to the recent Pio Pico Energy Center PPTA as well as to costs for comparable generating units in the ISO New England, capacity costs in the New York ISO, and the California Energy Commission's May 2014 draft staff report entitled "Estimated Cost of New Renewable and Fossil Generation in California."

Conclusions of Law

1. D.14-03-004 authorized SDG&E's procurement based on the lower end of the range of results of the CAISO's analysis, noting that new transmission resources identified in the 2013/2014 TPP might reduce SDG&E's LCR need.

2. The new transmission projects identified in the 2013-2014 TPP study cannot be found to reduce SDG&E's LCR need.

3. D.13-03-029 authorized SDG&E to procure new generation to meet its LCR need, which it determined based on the assumption that the Encina OTC units would retire by 2018, and D.14-02-016 authorized SD&E's to enter into a PPTA with the Pio Pico Energy Center to meet that need.

4. D.14-03-004 determined SDG&E's incremental LRC need stemming from the retirement of SONGS **and the expected retirement of OTC units**, and authorized SDG&E to procure new generation to meet ~~that need by 2022~~ **reliability needs that may become critical as early as 2018, and certainly by 2020.**

5. D.14-03-004's ~~did not determine~~ **determination** that SDG&E's LCR need **may become critical as early as** ~~would arise in~~ **2018, and certainly by 2020, confirmed that SDG&E's LCR needs arise** upon the retirement of the Encina OTC units **which has long been planned to occur by December 31, 2017.**

6. D.14-03-004 requires SDG&E to procure at least 200 MW, and allows SDG&E to procure up to 100 percent, of its LCR need from preferred resources

and energy storage, while also affirming the necessity for a significant amount of conventional gas-fired resources to ensure LCR needs will be met.

7. In accordance with D.14-03-004, pursuing procurement of preferred resources consistent ~~Consistency with the Loading Order and~~ advancing California's policy of fossil fuel reduction demand by requiring the utility to procure preferred resources and energy storage to the fullest extent possible, must be balanced by ensuring that grid operations are not potentially compromised by excessive reliance on intermittent resources and resources with uncertain ability to meet LCR needs.

8. D.14-03-004 considered that balance and required SDG&E to procure a minimum of 200 MW from preferred resources and energy storage and determined that this level complies with the Loading Order.

9. On balance, the potential consequences of waiting too long to start construction of capacity needed to meet LCR needs, and the uncertainty and additional ratepayer costs associated with potential extension of the OTC compliance deadline and the environmental consequences of prolonging operation of OTC units, outweigh the public interest in awaiting the results of SD&E's RFO for purposes of ascertaining the availability of feasibly available and cost-effective preferred resources and/or energy storage in excess of the minimum required 200 MW ~~outweighs the risk of a reliability gas/and or delay in the Encina OTC retirement (and its potential ratepayer costs).~~

10. The Carlsbad PPTA is a reasonable means of meeting SDG&E's LCR need ~~in the event that the RFO fails to produce more than the minimum required 200 MW of feasibly available and cost-effective preferred resource and energy storage.~~

11. Pursuant to D.14-03-004 and D.14-11-027, the cost of procurement for the purpose of meeting the LCR need determined in D.14-03-004 must be

allocated to all customers.

12. The CAM mechanism is a reasonable means for allocating the cost of procurement of SDG&E's LCR need to all customers.

13. Commission review of power purchase contracts does not trigger CEQA.

14. This application should be **approved** ~~denied without prejudice~~.

15. All pending motions should be deemed denied.

16. This decision should be effective immediately.

17. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Application 14-07-009 **is approved** ~~denied without prejudice~~.

2. **SDG&E's requested rate recovery and cost allocation treatment is approved.**

3. All pending motions are deemed denied.

4. This decision is effective immediately.

5. This proceeding is closed.

**APPENDIX B
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDERING PARAGRAPHS FOR ALTERNATIVE PROPOSAL**

Alternative Proposal

Approve the Application and require modification of the PPTA to apply to five generating units as proposed to meet 500 MW of LCR need, and to provide for automatic inclusion of the sixth generating unit if SDG&E's RFO does not produce more than 200 MW of feasibly available and cost effective preferred resources and energy storage capable of meeting reliability needs. This is accomplished through modification of the Proposed Decision's Findings of Fact, Conclusions of Law, and Ordering Paragraphs as shown below.

Findings of Fact

1. The Energy Division approved SDG&E's procurement plan, which included going forward concurrently with an all-source solicitation for the entirety of SDG&E's procurement authority and this application for approval of the Carlsbad PPTA.

2. The effectiveness and need for the new transmission projects identified in the 2013/2014 TPP study is based on an analysis that models the generation procurement that was authorized in D.14-03-004, including a rough equivalent of the Carlsbad project.

3. **The testimony in this proceeding demonstrates a need for 600 MW of new conventional generating capacity to be operational near Carlsbad in time to meet reliability needs in 2018 after Encina retires, and**

~~Notwithstanding the Commission's LCR need determinations in D.13-03-029 and D.14-03-004,~~ the potential for miscalculating and under-procuring future procurement needs upon the retirement of the Encina OTC units poses a risk of a reliability gap and/or delay in the Encina OTC retirement.

4. To the extent that the Encina OTC retirement were to cause a system reliability gap, **it is unknown whether** the SWRCB, pursuant to CAISO recommendation, would adopt an extension of its operation beyond its December 31, 2017, OTC compliance date.

5. An extension of the Encina retirement could result in ratepayer costs, **and prolonged environmental impacts by delaying compliance with stringent water use standards imposed in the OTC regulation.**

6. Approval of the Carlsbad PPTA would **avoid the reliability gap associated with the Encina retirement and meet reliability needs in 2018** preclude SDG&E from procuring preferred resources and energy storage in excess of the required minimum 200 MW.

7. **Although** SDG&E's RFO has produced a robust number of offers for preferred resources and energy storage which could potentially meet **LCR needs in excess of the minimum 200 MW required in D.14-03-004** some, if not all, of the 600 MW of SDG&E's LCR need that may be procured from any source, we reiterate Finding of Fact 83 from Decision 14-03-004 that pursuing procurement of preferred resources consistent with the Loading Order must be balanced by ensuring that grid operations are not potentially compromised by excessive reliance on intermittent resources and resources with uncertain ability to meet LCR needs.

8. While it is not possible at this juncture to determine the viability of offers for preferred resources and energy storage, the evidence ~~does not lead~~ us to **affirm our prior finding in Decision 14-03-004 that a significant amount of the authorized procurement level must be met through conventional gas-fired resources to ensure LCR needs will be met** ~~presume that the RFO will fail to produce any preferred resource options to meet SDG&E's procurement requirement beyond the 200 MW minimum of preferred resources and energy~~

storage.

9. The Carlsbad PPTA would provide additional benefits including reliability benefits by being able to meet SDG&E's LCR need by 2018, renewable resources integration benefits due to its flexible dispatchability, and locational benefits by virtue of being highly compatible with the existing transmission system and on previously disturbed land.

10. The Carlsbad PPTA price, term and conditions compare reasonably to the recent Pio Pico Energy Center PPTA as well as to costs for comparable generating units in the ISO New England, capacity costs in the New York ISO, and the California Energy Commission's May 2014 draft staff report entitled "Estimated Cost of New Renewable and Fossil Generation in California."

Conclusions of Law

1. D.14-03-004 authorized SDG&E's procurement based on the lower end of the range of results of the CAISO's analysis, noting that new transmission resources identified in the 2013/2014 TPP might reduce SDG&E's LCR need.

2. The new transmission projects identified in the 2013-2014 TPP study cannot be found to reduce SDG&E's LCR need.

3. D.13-03-029 authorized SDG&E to procure new generation to meet its LCR need, which it determined based on the assumption that the Encina OTC units would retire by 2018, and D.14-02-016 authorized SD&E's to enter into a PPTA with the Pio Pico Energy Center to meet that need.

4. D.14-03-004 determined SDG&E's incremental LRC need stemming from the retirement of SONGS and the expected retirement of OTC units, and authorized SDG&E to procure new generation to meet ~~that need by 2022~~ reliability needs that may become critical as early as 2018, and certainly by 2020.

5. D.14-03-004's ~~did not determine~~ **determination** that SDG&E's LCR need **may become critical as early as** ~~would arise in~~ **2018, and certainly by 2020,** **confirmed that SDG&E's LCR needs arise** upon the retirement of the Encina OTC units **which has long been planned to occur by December 31, 2017.**

6. D.14-03-004 requires SDG&E to procure at least 200 MW, and allows SDG&E to procure up to 100 percent, of its LCR need from preferred resources and energy storage, **while also affirming the necessity for a significant amount of conventional gas-fired resources to ensure LCR needs will be met.**

7. **In accordance with D.14-03-004, pursuing procurement of preferred resources consistent** ~~Consistency~~ with the Loading Order and advancing California's policy of fossil fuel reduction ~~demand~~ **by** requiring the utility to procure preferred resources and energy storage to the fullest extent possible, **must be balanced by ensuring that grid operations are not potentially compromised by excessive reliance on intermittent resources and resources with uncertain ability to meet LCR needs.**

8. **D.14-03-004 considered that balance and required SDG&E to procure a minimum of 200 MW from preferred resources and energy storage and determined that this level complies with the Loading Order.**

9. On balance, **the potential consequences of waiting too long to start construction of capacity needed to meet LCR needs, and the uncertainty and additional ratepayer costs associated with potential extension of the OTC compliance deadline and the environmental consequences of prolonging operation of OTC units, outweigh** the public interest in awaiting the results of SD&E's RFO for purposes of ascertaining the availability of feasibly available and cost-effective preferred resources and/or energy storage in excess of the minimum required 200 MW ~~outweighs the risk of a reliability gas/and or delay in the Encina OTC retirement (and its potential ratepayer costs).~~

10. The Carlsbad PPTA is a reasonable means of meeting SDG&E's LCR need ~~in the event that the RFO fails to produce more than the minimum required 200 MW of feasibly available and cost effective preferred resource and energy storage.~~

11. Pursuant to D.14-03-004 and D.14-11-027, the cost of procurement for the purpose of meeting the LCR need determined in D.14-03-004 must be allocated to all customers.

12. The CAM mechanism is a reasonable means for allocating the cost of procurement of SDG&E's LCR need to all customers.

13. Commission review of power purchase contracts does not trigger CEQA.

14. This application should be **approved subject to the requirements specified herein for modification of the Carlsbad PPTA** ~~denied without prejudice.~~

15. All pending motions should be deemed denied.

16. This decision should be effective immediately.

17. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Application 14-07-009 **is approved with the requirements specified below** ~~denied without prejudice.~~

2. **SDG&E is granted the following authority and directed to comply as follows:**

(a) **SDG&E's requested rate recovery and cost allocation treatment is approved with respect to five generating units of the Carlsbad Energy Center.**

(b) SDG&E shall cause the Carlsbad PPTA to be modified to:

(i) apply as proposed to five of the generating units described therein with the start of the delivery period to occur on a schedule that facilitates the timely retirement of Encina (subject to possible extensions allowed under customary commercial terms); and (ii) apply automatically to the sixth generating unit described therein if and when SDG&E has confirmed in accordance with this Ordering Paragraph that the sixth unit should be included .

(c) SDG&E is hereby authorized to include the sixth unit under the PPTA if SDG&E determines that it would not be feasible (which may be shown as infeasibility to meet reliability needs) or cost effective to procure more than 200 MW of preferred resources and energy storage through the 2014 RFO. SDG&E may demonstrate this through a Tier 3 advice letter filing containing an analysis of RFO offers demonstrating that the foregoing standard is satisfied. Upon approval of such advice letter filing, the rate recovery and cost allocation treatment approved herein for the first five generating units of the Carlsbad Energy Center will apply automatically to the sixth generating unit.

(d) Not later than thirty (30) days after the effective date of this decision, SDG&E shall submit a Tier 1 advice letter filing confirming that the Carlsbad PPTA has been modified in accordance with paragraph (b) of this Ordering Paragraph.

3. All pending motions are deemed denied.
4. This decision is effective immediately.
5. This proceeding is closed.