

## DOCKETED

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<b>Project Title:</b>	Carlsbad Energy Center - Compliance
<b>TN #:</b>	205163
<b>Document Title:</b>	Sarvey PMPD comments attachment 1
<b>Description:</b>	SDG&E Advice letter 2757 E
<b>Filer:</b>	Robert Sarvey
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<b>Submitter Role:</b>	Intervenor
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June 22, 2015

**ADVICE LETTER 2757-E**  
(U902-E)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**SUBJECT: REQUEST FOR APPROVAL OF THE POWER PURCHASE TOLLING AGREEMENT  
BETWEEN SAN DIEGO GAS AND ELECTRIC COMPANY AND CARLSBAD ENERGY  
CENTER, LLC**

### **PURPOSE**

In compliance with the California Public Utilities Commission's ("Commission") Decision ("D.") 15-05-051 ("Decision") issued on May 29, 2015, San Diego Gas & Electric Company ("SDG&E") hereby submits this advice letter in accordance with Ordering Paragraph ("OP") No. 1 of the Decision to submit an executed Power Purchase Tolling Agreement ("PPTA") with Carlsbad Energy Center, LLC dated June 1, 2015 reducing the capacity from 600 megawatts ("MW") to 500 MW subject to the same per-unit price and other terms and conditions submitted with SDG&E's Application 14-07-009 ("Application").

### **BACKGROUND**

On May 29, 2015 (in D.15-05-051), the Commission approved SDG&E's application for authority to enter into a PPTA with the Carlsbad Energy Center, LLC subject to the submittal of an revised PPTA "reducing the capacity from 600 megawatts (MW) to 500 MW but otherwise subject to the same per-unit price and other terms and conditions of the PPTA submitted with the application."

Pursuant to OP No.1 of the Decision, SDG&E was directed to submit the revised PPTA within 30 days of the effective date of the Decision consistent with the requirements of OP No.1. This advice letter complies with this directive.<sup>1</sup>

The executed PPTA with Carlsbad Energy Center LLC., complying with Decision D.15-05-051, modifies the original agreement by reducing the project from 600 MW to 500 MW while maintaining the *same per-unit price and other terms and conditions*. Several non-substantive, minor modifications were made to update some dates to reflect the passage of time and other necessary conforming changes due to the change in project size. Otherwise, all other terms and conditions remain identical.

Confidential Attachments A and B include the signed PPTA (Confidential Attachment A) and a red line comparing the 600 MW PPTA filed with the Application to the revised 500 MW PPTA, as modified per the Decision (Confidential Attachment B). For ease of reference, Confidential Attachment C provides a summary of changes to the PPTA.

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<sup>1</sup> The due date for filing this advice letter is June 29, 2015 (30 days after the May 29, 2015 issuance of D.15-05-051), but SDG&E is electing to file this advice letter in advance of the deadline to expedite the Commission's review.

**EFFECTIVE DATE**

In accordance with General Order 96-B, this Tier 1 Advice Letter shall be in effect as of June 22, 2015, subject to Energy Division disposition.

**PROTEST**

Anyone may protest this advice letter to the California Public Utilities Commission. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. The protest must be made in writing and received by July 13, 2015, which is 20 days from the date this advice letter was filed with the Commission.<sup>2</sup> There is no restriction on who may file a protest. The address for mailing or delivering a protest to the Commission is:

CPUC Energy Division  
Tariff Unit  
505 Van Ness Avenue  
San Francisco, CA 94102

Copies of the protest should also be sent via e-mail to the attention of the Energy Division at [EDTariffUnit@cpuc.ca.gov](mailto:EDTariffUnit@cpuc.ca.gov). A copy of the protest should also be sent via e-mail to the address shown below on the same date it is mailed or delivered to the Commission.

Attn: Megan Caulson  
Regulatory Tariff Manager  
E-mail: [MCaulson@semprautilities.com](mailto:MCaulson@semprautilities.com)

**NOTICE**

In accordance with Section III.G of General Order No. 96-B, a copy of this Advice Letter has been served on the utilities and interested parties shown on the attached list and service list A.14-07-009 by either providing them a copy electronically or via the U.S. mail, properly stamped and addressed.

Address changes should be directed to SDG&E Tariffs by e-mail to [SDG&ETariffs@semprautilities.com](mailto:SDG&ETariffs@semprautilities.com).

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CLAY FABER  
Director, Regulatory Affairs

Attachments:

**Confidential Attachment A**  
**Confidential Attachment B**  
**Confidential Attachment C**

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<sup>2</sup> Twenty days after June 22, 2015 is Sunday, July 12, 2015. Per Rule 1.15, when “the last day falls on a Saturday, Sunday, holiday or other day when the Commission offices are closed, the time limit is extended to include the first day thereafter,” which is Monday, July 13, 2015.

# CALIFORNIA PUBLIC UTILITIES COMMISSION

## ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **SAN DIEGO GAS & ELECTRIC (U 902)**

Utility type:

ELC

GAS

PLC

HEAT

WATER

Contact Person: Joff Morales

Phone #: (858) 650-4098

E-mail: jmorales@semprautilities.com

### EXPLANATION OF UTILITY TYPE

ELC = Electric

GAS = Gas

PLC = Pipeline

HEAT = Heat

WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 2757-E

Subject of AL: Request for Approval of the Power Purchase Tolling Agreement Between

San Diego Gas & Electric Company and Carlsbad Energy Center

Keywords (choose from CPUC listing): Power Purchase

AL filing type:  Monthly  Quarterly  Annual  One-Time  Other

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #:

D.15-15-051

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: None

Summarize differences between the AL and the prior withdrawn or rejected AL<sup>1</sup>: N/A

Does AL request confidential treatment? If so, provide explanation: See Confidential Declaration

Resolution Required?  Yes  No

Tier Designation:  1  2  3

Requested effective date: 06/22/15

No. of tariff sheets: 0

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: None

Service affected and changes proposed<sup>1</sup>: N/A

Pending advice letters that revise the same tariff sheets: None

**Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:**

**CPUC, Energy Division**

**Attention: Tariff Unit**

**505 Van Ness Ave.,**

**San Francisco, CA 94102**

**EDTariffUnit@cpuc.ca.gov**

**San Diego Gas & Electric**

**Attention: Megan Caulson**

**8330 Century Park CT**

**San Diego, CA 92123**

**mcaulson@semprautilities.com**

General Order No. 96-B  
ADVICE LETTER FILING MAILING LIST

cc: (w/enclosures)

Public Utilities Commission

DRA

S. Cauchois  
R. Pocta  
W. Scott

Energy Division

P. Clanon  
S. Gallagher  
D. Lafrenz  
Tariff Unit

CA. Energy Commission

F. DeLeon  
R. Tavares

Alcantar & Kahl LLP

K. Cameron

American Energy Institute

C. King

APS Energy Services

J. Schenk

BP Energy Company

J. Zaiontz

Barkovich & Yap, Inc.

B. Barkovich

Bartle Wells Associates

R. Schmidt

Braun & Blaising, P.C.

S. Blaising

California Energy Markets

S. O'Donnell  
C. Sweet

California Farm Bureau Federation

K. Mills

California Wind Energy

N. Rader

Children's Hospital & Health Center

T. Jacoby

City of Poway

R. Willcox

City of San Diego

L. Cosio Azar  
D. Weil

Commerce Energy Group

V. Gan

CP Kelco

A. Friedl

Davis Wright Tremaine, LLP

E. O'Neill  
J. Pau

Dept. of General Services

H. Nanjo  
M. Clark

Douglass & Liddell

D. Douglass  
D. Liddell  
G. Klatt

Duke Energy North America

M. Gillette

Dynegy, Inc.

J. Paul

Ellison Schneider & Harris LLP

E. Janssen

Energy Policy Initiatives Center (USD)

S. Anders

Energy Price Solutions

A. Scott

Energy Strategies, Inc.

K. Campbell  
M. Scanlan

Goodin, MacBride, Squeri, Ritchie & Day

B. Cragg  
J. Heather Patrick  
J. Squeri

Goodrich Aerostructures Group

M. Harrington

Hanna and Morton LLP

N. Pedersen

Itsa-North America

L. Belew

J.B.S. Energy

J. Nahigian

Luce, Forward, Hamilton & Scripps LLP

J. Leslie

Manatt, Phelps & Phillips LLP

D. Huard  
R. Keen

Matthew V. Brady & Associates

M. Brady

Modesto Irrigation District

C. Mayer

Morrison & Foerster LLP

P. Hanschen

MRW & Associates

D. Richardson

Pacific Gas & Electric Co.

J. Clark  
M. Huffman  
S. Lawrie  
E. Lucha

Pacific Utility Audit, Inc.

E. Kelly

San Diego Regional Energy Office

S. Freedman  
J. Porter

School Project for Utility Rate Reduction

M. Rochman

Shute, Mihaly & Weinberger LLP

O. Armi

Solar Turbines

F. Chiang

Sutherland Asbill & Brennan LLP

K. McCrea

Southern California Edison Co.

M. Alexander  
K. Cini  
K. Gansecki

H. Romero

TransCanada

R. Hunter  
D. White

TURN

M. Hawiger

UCAN

D. Kelly

U.S. Dept. of the Navy

K. Davoodi  
N. Furuta

L. DeLacruz

Utility Specialists, Southwest, Inc.

D. Koser

Western Manufactured Housing

Communities Association

S. Dey

White & Case LLP

L. Cottle

Interested Parties

A.14-07-009

San Diego Gas & Electric Advice Letter 2757-E  
June 22, 2015

**CONFIDENTIAL DECLARATION**

**E. BRADFORD MANTZ**

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

**DECLARATION E BRADFORD MANTZ REGARDING  
CONFIDENTIALITY OF CERTAIN DATA**

I, E Bradford Mantz do declare as follows:

1. I am a Energy Contracts Originator for San Diego Gas & Electric Company ("SDG&E"). I have reviewed the attached Advice Letter No. 2757-E, including Confidential Attachments A, B and C (the "Confidential Attachments"), and am personally familiar with the facts and representations in this Declaration. If called upon to testify, I could and would testify to the following based upon my personal knowledge and/or belief.

2. I hereby provide this Declaration in accordance with D.06-06-066, as modified by D.07-05-032, and D.08-04-023, to demonstrate that the confidential information ("Protected Information") provided in the Responses submitted concurrently herewith, falls within the scope of data protected pursuant to the IOU Matrix attached to D.06-06-066 (the "IOU Matrix").<sup>1</sup> In addition, the Commission has made clear that information must be protected where "it matches a Matrix category exactly ... or consists of information from which that information may be easily derived."<sup>2</sup>

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<sup>1</sup>The Matrix is derived from the statutory protections extended to non-public market sensitive and trade secret information. (See D.06-06-066, *mimeo*, note 1, Ordering Paragraph 1). The Commission is obligated to act in a manner consistent with applicable law. The analysis of protection afforded under the Matrix must always produce a result that is consistent with the relevant underlying statutes, if information is eligible for statutory protection, it must be protected under the Matrix. (See *Southern California Edison Co v Public Utilities Comm* 2000 Cal App LEXIS 995, \*38-39) Thus, by claiming applicability of the Matrix, SDG&E relies upon and simultaneously claims the protection of Public Utilities Code §§ 454.5(g) and 583, Govt Code § 6254(k) and General Order 66-C.

<sup>2</sup> See, *Administrative Law Judge's Ruling on San Diego Gas & Electric Company's April 3, 2007 Motion to File Data Under Seal*, issued May 4, 2007 in R 06-05-027, p. 2 (emphasis added).

3. I address below each of the following five features of Ordering Paragraph 2 in D.06-06-066:

- That the material constitutes a particular type of data listed in the Matrix,
- The category or categories in the Matrix to which the data corresponds,
- That it is complying with the limitations on confidentiality specified in the Matrix for that type of data,
- That the information is not already public, and
- That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.<sup>3/</sup>

4. SDG&E's Protected Information: As directed by the Commission, The instant confidentiality request satisfies the requirements of D.06-06-066<sup>11</sup> because the information contained in the Confidential Attachments provided by SDG&E is of the type of information protected by the Matrix as follows:

Confidential Attachment A:	CECP Executed PPTA Contract Terms and Conditions, Category VII.B.
Confidential Attachment B:	Redline Comparison of CECP 600 MW PPTA with the updated CECP 500 MW PPTA - Contract Terms and Conditions, Category VII.B.
Confidential Attachment C:	Summary of Changes to the PPTA - Contract Terms and Conditions, Category VII.B.

5. As an alternative basis for requesting confidential treatment, SDG&E submits that the Power Purchase Agreement enclosed in the Advice Letter is material, market sensitive, electric procurement-related information protected under §§ 454.5(g) and 583, as well as trade secret information protected under Govt. Code § 6254(k). Disclosure of this



information would place SDG&E at an unfair business disadvantage, thus triggering the protection of G.O. 66-c.uJ.

6. Public Utilities Code § 454.5(g) provides:

The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.

7. General Order 66-C protects "[r]eports, records and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage."

8. Under the Public Records Act, Govt. Code § 6254(k), records subject to the privileges established in the Evidence Code are not required to be disclosed? Evidence Code § 1060 provides a privilege for trade secrets, which Civil Code § 3426.1 defines, in pertinent part, as information that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure.

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*ii* 0.06-06-066, as amended by 0.07-05-032, *mimeo*, p 81, Ordering Paragraph 2  
*See, Administrative Law Judge's Ruling on San Diego Gas & Electric Company's Motions to File Data Under Seal*, issued April 30 in R 06-05-027, p 7, Ordering Paragraph 3 ("In all future filings, SOG&E shall include with any request for confidentiality a table that lists the five 0 06-06-066 Matrix requirements, and explains how each item of data meets the matrix")

9. Public Utilities Code § 583 establishes a right to confidential treatment of information otherwise protected by law.

10. If disclosed, the Protected Information could provide parties, with whom SDG&E is currently negotiating, insight into SDG&E's procurement strategies, which would give them an unfair negotiating advantage and could ultimately result in increased cost to ratepayers. In addition, if developers mistakenly perceive that SDG&E is not committed to assisting their projects, disclosure of the Protected Information could act as a disincentive to developers. Accordingly, pursuant to P.U. Code § 583, SDG&E seeks confidential treatment of this data, which falls within the scope of P.U. Code § 454.5(g), Evidence Code § 1060 and General Order 66-C.

11. Developers' Protected Information: The Protected Information also constitutes confidential trade secret information of the developer listed therein. SDG&E is required pursuant to the terms of the PPA to protect non-public information. Some of the Protected Information in the PPA relates directly to the viability of the project. Disclosure of this extremely sensitive information could harm the developer's ability to negotiate necessary contracts and/or could invite interference with project development by competitors.

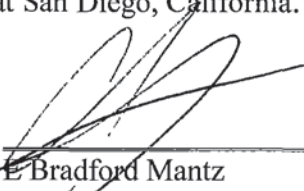
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This argument is offered in the alternative, not as a supplement to the claim that the data is protected under the IOU Matrix. California law supports the offering of arguments in the alternative. *See, Brandolino v Lindsay*, 269 Cal App 2d 319, 324 (1969) (concluding that a plaintiff may plead inconsistent, mutually exclusive remedies, such as breach of contract and specific performance, in the same complaint); *Tanforan v Tanforan*, 173 Cal 270, 274 (1916) ("Since ... inconsistent causes of action may be pleaded, it is not proper for the judge to force upon the plaintiff an election between those causes which he has a right to plead ")

12. Accordance with its obligations under its PPA and pursuant to the relevant statutory provisions described herein, SDG&E hereby requests that the Protected Information be protected from public disclosure.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 22<sup>nd</sup> day of June, 2015 at San Diego, California.



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Bradford Mantz  
Energy Contracts Originator  
Electric & Fuel Procurement  
San Diego Gas & Electric

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<sup>1</sup> See also Govt. Code § 6254 7(d).

<sup>21</sup> See, D 06-06-066, *mimeo*, pp 26-28

San Diego Gas & Electric Advice Letter 2757-E

June 22, 2015

## **CONFIDENTIAL ATTACHMENT A**

Executed Agreement

***Confidential/privileged pursuant to applicable provisions of  
D.06-06-066, G.O. 66-C and P.U. Code §§ 583 and 454.5(g)***

San Diego Gas & Electric Advice Letter 2757-E

June 22, 2015

**CONFIDENTIAL ATTACHMENT B**

Redline of original 600 MW PPTA and the new 500 MW PPTA

*Confidential/privileged pursuant to applicable provisions of  
D.06-06-066, G.O. 66-C and P.U. Code §§ 583 and 454.5(g)*

San Diego Gas & Electric Advice Letter 2757-E

June 22, 2015

**CONFIDENTIAL ATTACHMENT C**

Summary of Changes to Power Purchase Tolling Agreement (PPTA)  
Between SDG&E and Carlsbad Energy Center LLC per D.15-05-051

*Confidential/privileged pursuant to applicable provisions of  
D.06-06-066, G.O. 66-C and P.U. Code §§ 583 and 454.5(g)*