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

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4 Application of San Diego Gas & Electric
5 Company (U902E) for Authority to Partially
6 Fill the Local Capacity Requirement Need
7 Identified in D.14-03-004 and Enter into a
8 Purchase Power Tolling Agreement with
9 Carlsbad Energy Center, LLC.

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

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12 **APPLICATION FOR REHEARING OF DECISION 15-05-051**
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32 June 24, 2015

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11 **APPLICATION FOR REHEARING OF DECISION 15-05-051**

12 **I. Introduction**

13 Pursuant to the California Public Utilities Commission (CPUC or Commission) Rules of
14 Practice and Procedure, Rule 16, CALifornians for Renewable Energy, Inc. (CARE) respectfully
15 requests rehearing of Decision (D.) 15-05-051 (Decision) issued May 29, 2015.

16
17 **II. Background**

18 D.15-05-051 determines that the 500 MW Carlsbad Project must be approved
19 immediately without considering the results of SDG&E's 2014 RFO to prevent a reliability issue
20 from the closure of Encina Power Plant. LCR needs from the closure of the Encina Plant were
21 analyzed in the LTTP Track 1 Decision (D.13-02-015). As Stated in Finding of Fact Number 3 in
22 D. 13-03-029, "There is no LCR need until 2018 under any scenario or forecast in the record of
23 this proceeding, and then only if the Encina OTC units retire." The need identified in D. 13-02-
24 015 was filled with approval of the Pio Pico Plant in D.14-02-016. The scoping memo for this
25 proceeding never invited parties to reassess needs related to the closure of the Encina Power
26 Plant. There is no evidence in this proceeding that additional MW are needed to meet LCR needs
27 from the retirement of the Encina Power Plant.

28 This proceeding and the procurement authorization granted in D. 14-03-004 focused on
29 needs stemming from the retirement of the San Onofre Nuclear Power Plant not the revaluation of
30 the Track 1 decision which authorized the Pio Pico Project. The parties in the proceeding have
31 been ambushed by a decision that considers needs outside of the scope of this proceeding and the
32 authorizing decision D. 14-03-004. The scoping memo never invited analysis of additional LCR

1 needs created by the retirement of the Encina Project and never invited an analysis of a 500 MW
2 Carlsbad PPTA. In fact no one including the Commission has ever seen the 500 MW Carlsbad
3 PPTA as it is not in the record of this proceeding.

4 Because D. 15-05-051 does not require SDG&E to procure all cost effective preferred
5 resources and storage before contracting for additional natural gas fired generation the decision
6 does not comply with the procurement authority granted in D. 14-03-004, the loading order, or
7 Section 454 of the Public Utilities Code.

8 The decision is prejudicial to the parties as it approves a 500 MW PPTA that was never
9 contemplated in the scoping order of the proceeding. The decision also improperly concludes
10 that the Carlsbad PPTA is just and reasonable based on facts that are not contained in the record.

11
12 **III. Grounds for Rehearing**

13 Rule 16.1(c) also states that an application for rehearing shall set forth specifically the
14 grounds on which the applicant considers the order or decision of the Commission to be unlawful
15 or erroneous, and must make specific references to the record or law.

16
17 **1. LCR needs from the closure of the Encina Plant are outside the scope of the**
18 **proceeding**

19 The decision concludes that the Carlsbad Power Project is needed for the timely
20 retirement of the Encina Power Plant to prevent a reliability issue. The scoping memo for A. 14-
21 07-009 never identified the retirement of the Encina project as an issue in the proceeding. The
22 scoping memo issued on September 12, 2014 invites the parties to provide evidence and
23 testimony on needs stemming from the Track 4 Decision (D. 14-03-004). The Track 4 decision
24 provided authorization of 500-800 MW by 2022 stemming from the retirement of San Onofre.
25 Track 4 never contemplated additional needs related to the retirement of the Encina Plant. As D.
26 14-03-004 states, "In this decision, we authorize San Diego Gas & Electric Company

1 (SDG&E) to procure between 500 and 800 MW by 2022 to meet local capacity needs **stemming**
2 **from the retired San Onofre Nuclear Generation Stations (SONGS).**¹

3
4 **2. LCR needs for the retirement of the Encina Plant were authorized in D. 14-**
5 **02-016**

6 The Commission preciously addressed the LCR needs for SDG&E due to the retirement
7 of the Encina Project in D. 13-03-029. D. 13-03-029 authorized 298 MW of procurement for
8 SDG&E beginning in 2018. As finding of fact number 3 in D. 13-03-029 states, “*There is no*
9 *LCR need until 2018 under any scenario or forecast in the record of this proceeding, and then*
10 *only if the Encina OTC units retire.*”² The procurement authority was based on OTC studies
11 performed by CAISO in the proceeding.³ In D. 14-02-016 the Commission authorized the 305
12 MW Pio Pico project to replace the Encina Power Project upon its retirement.

13
14 **3. The decision is prejudicial to the parties as the scoping memo for the**
15 **proceeding never contemplates a 500 MW Carlsbad PPTA**

16 Nowhere to be found in this established scope of issues is the question of whether a 500
17 MW Carlsbad PPTA is just and reasonable or the best fit for the need determination adopted in D.
18 14-03-004. The entire proceeding including testimony and briefing only considered a 633 MW
19 peaking project. Parties were denied due process by the alternate Decision of President Picker

20
21 ¹ A revised Scoping Memo dated March 21, 2013 in R.12-03-014 initiated Track 4 in this proceeding to
22 consider additional resource needs relate to the long-term outage (and subsequent permanent closure in
23 June 2013) of the San Onofre Nuclear Generation Station, Units 2 and 3 (SONGS). D. 14-03-004 Page 8
24 The issues of ensuring local reliability and system stability in San Diego and the LA Basin while
25 continuing to meet the State’s GHG goals justified expedited reconsideration of capacity needs in the
26 SONGS study area. Track 4 of the 2012 LTPP was opened to grapple with these issues. D. 14-03-004
27 Page 9

28 ² D. 13-03-029 Page 23 Finding of Fact number 3

29 ³ D. 13-03-029 Page 6 & 7 “The CAISO presented its forecast of SDG&E’s LCR based on the OTC study
30 that it conducted, as part of its 2011/2012 transmission planning process, to analyze the LCR in the San
31 Diego and San Diego/Imperial Valley areas in view of the recently-adopted State Water Resources Control
32 Board rules that require affected OTC generation units to be retired, repowered, replaced, and/or retrofitted
in order to improve coastal and estuarine environmental quality. The OTC study assumes the retirement of
the Encina OTC units, and uses power flow and transient stability programs to evaluate mitigation
measures (including load, potential transmission measures, potential demand side management and other
contracted resources such as combined heat and power) needed to maintain zonal and local reliability in
the event of the outage of the Imperial Valley-Suncrest portion of the Sunrise transmission line followed
by the non-simultaneous loss of the ECO-Miguel portion of the Southwest Powerlink transmission line (an
“N-1-1” contingency).”

1 which created an entirely new 500 MW Carlsbad PPTA that was not considered in the scoping
2 memo or anywhere in A. 14-07-009. There can be no evidence that a 500 PPTA is just and
3 reasonable as it was never contemplated by the assigned commissioner's scoping memo or the
4 parties to the proceeding and in fact the 500 MW Carlsbad PPTA has never been seen by anyone
5 as it was approved even though it didn't exist.

6 Parties have not been provided the opportunity to examine additional LCR needs due to
7 the retirement of the Encina power Plant through discovery, testimony or evidentiary hearings.”
8 The parties instead rightly focused on the issues identified in the scoping memo which was
9 whether the Carlsbad Project complied with the authority granted in D. 14-03-004 which did not
10 consider LCR needs from the retirement of Encina. Parties have been denied due process as a
11 500 MW PPTA was not part of the scoping memo and the parties were not allowed to do
12 discovery, collect evidence, and provide testimony and briefing on a 500 MW project. A prime
13 example is the Decision's discussion of CARE's position on the project size. On page 6 of the
14 decision it states “Californians for Renewable Energy, Inc. (CARE) contends that the application
15 does not comply with the procurement authority granted in D.14-03-004 because the Carlsbad
16 PPTA allows capacity payments for up to 633 MW which is 33 MW more than D.14-03-004
17 authorizes SDG&E to procure from non-preferred resources.” Whether a 500 MW Carlsbad
18 PPTA would comply with the procurement authority of D. 14-03-004 was never analyzed by
19 CARE or any other party. The decision to downsize the project presents a 500 MW PPTA that no
20 one has any ability to analyze as the proceeding is closed and the PPTA has not even been
21 drafted. The Commission has failed to preserve the substantial rights of the parties and has not
22 proceeded in the manner required by law because a 500 MW Carlsbad PPTA and additional LCR
23 needs from the retirement of the Encina Project are outside the scope of the proceeding.

24
25 **4. D. 15-05-051 relies upon facts not in evidence in the record to conclude that**
26 **the PPTA is just and reasonable**

27 D. 15-05-051 states that, “CARE takes issue with assessing the price competitiveness of
28 the Carlsbad PPTA on the basis of its price comparison with the Pio Pico Energy Center PPTA
29 because the two PPTAs have significant differences in operating restrictions and performance
30 guarantees which limit the value of the Carlsbad PPTA compared to the Pio Pico PPTA. (CARE
31 opening brief at 14-17.) *SDG&E counters that the appropriate comparison of the two PPTAs is*
32 *of their levelized costs taking into account the capacity payments, fixed operations and*

1 maintenance, startup costs and escalation and that, on this basis, the PPTAs are comparably
2 priced. (SDG&E reply brief, fn. 55; Ex. 9 at 9.) Neither CARE nor SDG&E makes a persuasive
3 case.”⁴

4 D. 15-05-051 commits legal error in this regard. It is not up to CARE to make a
5 persuasive case that SDG&E’s contract with SDG&E is just and reasonable, the applicant bears
6 the burden of proof. The Decision relies on the independent evaluator’s analysis of the operating
7 parameters of the Carlsbad PPTA to determine that the PPTA is just and reasonable stating, “In
8 any event, the Independent Evaluator’s economic analysis purports to take into account contract
9 pricing as well as the operational parameters of the Carlsbad PPTA.”⁵ But the IE report states
10 that, “While CPUC policy generally requires the utility to demonstrate that any contracts entered
11 into on a bilateral basis should be competitive with the pricing for shortlisted offers from recent
12 solicitations, this process is challenged by the lack of recent data from conventional resource
13 solicitation processes. The most recent competitive economic data available is the pricing of the
14 Pio Pico contract that was selected in SDG&E’s 2009 RFO. While Merrimack Energy has used
15 benchmark generation cost data for other similar resources to conduct market studies when
16 applicable, such analysis is affected by local cost issues, labor costs, tax rates, permitting
17 requirements, consistent technology comparisons, availability of similar information, the
18 timeliness of available information, land use status (i.e. Greenfield or brownfield project) and
19 size considerations. Merrimack Energy’s assessment of the reasonableness of the cost of the
20 Carlsbad Energy Center Agreement will be based on a comparison of the cost of the Pio Pico
21 contract relative to the Carlsbad Energy Center contract as well as a comparison of the costs
22 relative to studies completed for other IS O’s on the Cost of New Entrants (“CONE Studies”) as a
23 guide for the reasonableness of costs only”.⁶

24 The operating restrictions of the Pio Pico PPTA are never even mentioned in the IE report
25 much less compared to the Carlsbad PPTA. D. 15-05-051 relies upon facts not in evidence in the
26 record to conclude that the Carlsbad PPTA is just and reasonable. Further the IE report never
27 analyzes a 500 MW PPTA for the Carlsbad Energy Center as the IE has never seen the proposed
28 500 MW PPTA. There is no evidence in the record that the 500 MW Carlsbad PPTA is just and
29 reasonable. In fact there is no Carlsbad PPTA in the record period.

30 ⁴ D. 15-01-051 Page 26,27

31 ⁵ D.15-05-051 Page 27

32 ⁶ Exhibit 1 IE Report Page 27

