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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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)

APPLICATION OF THE SIERRA CLUB FOR REHEARING OF DECISION 15-05-051

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I. INTRODUCTION

On May 29, 2015, the Commission issued its "Decision Conditionally Approving San Diego Gas & Electric Company's Application for Authority to Enter into a Purchase Power Tolling Agreement with Carlsbad Energy Center, LLC," Decision (D.) 15-05-051 ("D.15-05-051" or "Carlsbad Decision"). Sierra Club submits this Application for Rehearing of the Carlsbad Decision pursuant to Rule 16.1 of the Commission's Rules of Practice and Procedure. This Application for Rehearing is timely filed within 30 days of the Carlsbad Decision's issuance.

In D.15-05-051, the Commission voted 5-1 to conditionally approve SDG&E's Application to bilaterally contract with the Carlsbad Energy Center ("Carlsbad") to meet capacity need D.14-03-004 identified to replace the retired San Onofre Nuclear Generating Station ("San Onofre"). Although the bilateral contract with Carlsbad would preclude all-source competitive bidding and obviate significant opportunities for procurement of preferred resources and energy storage as envisioned by the underlying procurement authorization, D.15-05-051 rationalized the rushed approval of Carlsbad on the grounds that capacity was needed by 2018 to avoid a delay in the scheduled 2017 retirement of the Encina once-through-cooling ("OTC") facility. The Commission failed to proceed in the manner required by law in basing approval of Carlsbad on the retirement of Encina.

Rehearing is warranted because in invoking the retirement of Encina as the "key factor" supporting Carlsbad approval, D.15-05-051 prejudicially deviated from the need authorization and procurement requirements of D.14-03-004 as well as the Scoping Memo for SDG&E's Application for Carlsbad approval. As noted in the dissent to D.15-05-051, replacement need

following Encina's retirement was addressed in a previous Commission decision, resulting in SDG&E's procurement of the Pio Pico gas plant. D.14-03-004 determined the need following the retirement of San Onofre, not Encina; authorized procurement by 2022, not 2018; and nowhere identified Encina's retirement as triggering the need for substantial new capacity by 2018.

In approving a multi-billion dollar ratepayer investment in the Carlsbad gas plant prior to a competitive assessment of clean energy alternatives, the Commission fell far short of its statutory duty to ensure "reasonable rates and to protect the environment."[1] As originally proposed, Carlsbad would result in 845,000 tons of CO_2 per year.[2] The Commission's approval of Carlsbad binds the state to a significant new long-term fossil fuel commitment at a time when the state has reaffirmed that "climate change poses an ever-growing threat to the well-being, public health, natural resources, economy, and the environment of California" and set an aggressive target of reducing greenhouse gas pollution to 40 percent below 1990 levels by 2030.[3] As the Proposed Decision ("PD") by Administrative Law Judge ("ALJ") Yacknin properly recognizes, "it is incumbent on SDG&E to meet its procurement authority to the extent feasible with preferred resources and energy storage."[4] D.15-05-051 improperly excuses SDG&E's single-minded pursuit of fossil fuels over clean energy and, in doing so, stymies growth of a burgeoning clean energy industry, saddles SDG&E's ratepayers with a backroom deal, and undermines state clean energy and climate objectives.

II. BACKGROUND

A. Decision 14-03-004 and SDG&E's Need Determination Following the Retirement of San Onofre.

In Track 4 of the 2012 Long-Term Procurement Plan proceeding (R.12-03-014), the Commission identified and set the parameters for procurement needs for SDG&E and SCE due

[1] D.14-03-004, Decision Authorizing Long-Term Procurement for Local Capacity Requirements Due to Permanent Retirement of the San Onofre Nuclear Generating Station (Mar. 14, 2014), p. 13, *available at* http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M089/K008/89008104.PDF.
[2] California Energy Commission, Carlsbad Energy Center Project Amendment (07-AFC-06C) Preliminary Staff Assessment ("PSA") Air Quality Appendix, GHG Table 3 (Dec. 15, 2014), *available at* http://docketpublic.energy.ca.gov/PublicDocuments/07-AFC-06C/TN203457_20141217T091559_Preliminary_Staff_Assessment_December_2014.pdf.
[3] Exec. Order B-30-15.
[4] A.14-07-009, PD of ALJ Yacknin (Mar. 6, 2015) p. 31.

to the permanent retirement of San Onofre, a significant source of carbon-free generation in Southern California. The resulting decision, D.14-03-004, came on the heels of Commission decisions determining local area need due to planned retirements of OTC gas plants in Southern California. In the case of SDG&E, the Commission authorized a contract for the 300 MW Pio Pico gas plant to replace Encina, an OTC facility scheduled to retire at the end of 2017.[5]

To analyze and model future need from the retirement of San Onofre, the Track 4 Scoping Memo set forth a series of assumptions for both 2018 and 2022 that included the scheduled retirement of Encina at the end of 2017 pursuant to its OTC compliance deadline.[6] Applying these assumptions, SDG&E's testimony identified 500 to 550 MW of need for 2022, to be met through a competitive request for offers ("RFO") "open to all supply side technologies."[7] Pursuant to the Scoping Memo, SDG&E's testimony assumed both Encina's retirement at the end of 2017 and the retirement of San Onofre, yet identified no specific procurement need in 2018 resulting from Encina's closure.[8] CAISO originally asserted in its opening Track 4 Testimony that it was premature to authorize any need, but in rebuttal supported SDG&E's request for 500 to 550 MW of all-source procurement by 2022.[9]

Consistent with the timing of need identified in SDG&E and CAISO Track 4 testimony, D.14-03-004 authorized SDG&E "to procure between 500 and 800 MW by 2022 to meet local capacity needs stemming from the [retirement of San Onofre]."[10] SDG&E's procurement was divided into 300 to 600 MW that could be met by "any resource" and 200 MW that must be met with either preferred resources or energy storage.[11] Because D.14-03-004 did not require a minimum procurement of fossil fuels, "up to 100%" of SDG&E's procurement could come from preferred resources.[12] D.14-03-004 nowhere states the retirement of Encina will result in 2018

[5] D.13-03-029 (determining 298 MW of local capacity need in San Diego local capacity area in 2018 upon retirement of Encina); D.14-02-016 (approving amended PPTA for Pio Pico Energy Center to meet need authorized in D.13-03-029). SCE OTC retirements needs were addressed in LTPP Track 1 and authorized in D.13-02-015.
[6] R.12-03-014, Revised Scoping Memo of the Assigned Commissioner and Administrative Law Judge (May 21, 2013) pp. 12.
[7] Exh. 17, p. 12 (SDG&E Prepared Track 4 Direct Testimony of R. Anderson).
[8] Exh. 17, p. 9, Table 2.
[9] Exh. 31, p. 29:28-30:13 (CAISO Prepared Track 4 Testimony of R. Sparks); D.14-03-004, p. 81 ("ISO now recommends approval of the recommendations of SCE and SDG&E.")
[10] D.14-03-004 p. 2.
[11] D.14-03-004 p. 4.
[12] D.14-03-004 p. 2.

capacity needs. Instead, D.14-03-004 noted that SDG&E has "sufficient supplies to meet projected demands in the SONGS service area through at least 2018," a full year after Encina's 2017 retirement date.[13]

D.14-03-004 reflected a careful balance between the Commission's responsibility to "ensure safety and reliability in the electrical system" and its "statutory duty to ensure that customers receive reasonable services at just and reasonable rates, and to protect the environment."[14] To that end, D.14-03-004 allowed SDG&E to bilaterally procure fossil fuels but also required "an all-source Request for Offers ("RFO") for some or all capacity" and "strict compliance" with the Loading Order through competition and prioritization of preferred resources procurement over fossil fuels.[15] In reaffirming the Loading Order, D.14-03-004 provides that "[o]nce procurement targets are achieved for preferred resources, the IOUs are not relieved of their duty to follow the Loading Order…..Instead of procuring a fixed amount of preferred resources and then procuring fossil-fuel resources, the IOUs are required to continue to procure the preferred resources 'to the extent that they are feasibly available and cost effective.'"[16] Accordingly, in seeking to meet authorized need, D.14-03-004 required SDG&E to ensure its subsequent procurement application met criteria that included:

> Consistency with the Loading Order, including a demonstration that it has identified each preferred resource and assessed the availability, economics, viability and effectiveness of that supply in meeting LCR need;

and

> A demonstration of technological neutrality, so that no resource was arbitrarily or unfairly prevented from bidding in SCE's or SDG&E's solicitation process. To the extent that the availability, viability and effectiveness of resources higher in the Loading Order are comparable to fossil-fueled resources, SCE and SDG&E shall show that it has contracted with these preferred resources first.[17]

B. SDG&E's Application to Meet San Onofre Replacement Need, the Proposed Decision Denying the Application, the Alternate Decision, and D.15-05-051.

On July 21, 2014, SDG&E filed Application (A.) 14-07-009 to bilaterally procure the 600

[13] D.14-03-004 p. 124 (Finding of Fact 5).
[14] D.14-03-004 pp. 12-13.
[15] D.14-03-004 pp. 15, 144 (Ordering Paragraph 6).
[16] D.14-03-014 at pp. 14-15 (quoting D.12-01-033 at 21).
[17] D.14-03-004 at p. 145 (Ordering Paragraph 8).

MW Carlsbad gas plant to fill the entirety of the 300 to 600 MW any resource need identified in D.14-03-004. The Application provided no pricing for a smaller or phased-in project to allow an evaluation of potential alternatives and competition for some of the any resource authorization.[18] SDG&E filed its Application prior to initiating its all-source RFO and sought Application approval prior to completion of its RFO process.[19] SDG&E admitted that if the Commission approved the Carlsbad Application, "there [would] be no opportunity for preferred resources, energy storage or other conventional generation to compete for any of SDG&E's any resource authorization."[20] SDG&E attempted to justify the urgent need for bilateral procurement of Carlsbad on the grounds that capacity was needed by 2018 to "facilitate the retirement of Encina."[21]

In objections to the Carlsbad Application, Sierra Club noted that replacement capacity for Encina was the subject of a previous Commission proceeding that resulted in procurement of the Pio Pico gas plant.[22] D.14-03-004 authorized procurement to meet capacity needs from the retirement of San Onofre "by 2022," not 2018, and did not identify the retirement of Encina as triggering the need for any additional resources, much less the entirety of D.14-03-004's any resource authorization. As Sierra Club argued, SDG&E's newfound assertion that "600 megawatts of fossil fuel capacity is needed by 2018 because of the retirement of Encina"[23] not only grossly mischaracterized the need finding in D.14-03-004, but also directly contravened its own testimony in the San Onofre proceeding, which said nothing of need following Encina's retirement and sought authorization to replace San Onofre with 500 to 550 megawatts of capacity by 2022 through an all-source RFO.[24]

On March 6, 2015, ALJ Yacknin issued a Proposed Decision denying SDG&E's

[18] Exh. 1 p. 37 (Appendix D); Exh. 1C.
[19] Exh. 17 (SDG&E All Source RFO description and schedule noting RFO was issued on September 5, 2014 with application for contract approval expected in Q1 2016).
[20] Tr. 17:12-18 (D. Baerman, SDG&E).
[21] Exh 1 p. 8 (SDG&E Opening Testimony of D. Baerman).
[22] A.14-07-009, Joint Protest of Sierra Club and California Environmental Justice Alliance (Aug. 21, 2014). Although protests by Sierra Club and other parties alerted the Commission to significant errors in SDG&E's Application, the Assigned Commissioner suggested at the Prehearing Conference that attempting to protest the Application would be a waste of time. Prehearing Conference Transcript (Sept. 3, 2014), p. 64 (Assigned Commissioner stating "if I were an intervenor trying to decide how to allocate scarce resources, I would not allocate them to this proceeding.").
[23] Tr. 21:24-28 (D. Baerman, SDG&E).
[24] Exh. 18 pp. 1, 12 (SDG&E Prepared Track 4 Direct Testimony of R. Anderson).

Application. The PD determined that "D.14-03-004 defines the need to be met as 500 MW to 800 MW of new resources, up to 100 percent of which may be from preferred resources or energy storage, in SDG&E's LCR area on-line by 2022," not by 2018 as asserted by SDG&E. Accordingly, the PD found "it unreasonable to approve the Carlsbad PPTA at this juncture pending a determination that the results of SDG&E's RFO demonstrate the lack of feasibly available and cost-effective preferred resources or energy storage to meet some or all of SDG&E's LCR need beyond the 200 MW minimum that must be met by preferred resources or energy storage."[25] In denying the Application, the PD reaffirmed the Commission's "commitment to the Loading Order" and "that it is incumbent on SDG&E to meet its procurement authority to the extent feasible with preferred resources and energy storage."[26]

Following a private meeting between NRG and Commissioner Picker's office, Commissioner Picker issued an Alternate Proposed Decision ("APD") approving a slightly reduced 500 MW Carlsbad facility.[27] The APD justified its approval of Carlsbad on grounds that "need could arise as early as 2018 upon the retirement of the Encina OTC units."[28] By approving bilateral procurement for the vast majority of the any resource authorization, the APD continued to foreclose competition and significant procurement opportunities for preferred resources and energy storage. The Commission approved the APD in a 5-1 vote. In her dissent, Commissioner Sandoval stated that "[t]o use OTC retirement as a basis for approving the Carlsbad application is not permitted by the Track 4 authorization, Carlsbad's scope, the record in this proceeding, or the Commission's rules and procedure."[29]

III. STANDARD OF REVIEW

Rule 16.1(c) requires an application to "set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous," with specific references to the record or law. Under Public Utilities Code Section 1757, a court reviews a Commission decision to determine whether any of the following occurred:

(1) The commission acted without, or in excess of, its powers or jurisdiction.

[25] PD p. 11.
[26] PD p. 31.
[27] A.14-07-009, Notice of Ex Parte Communication of Carlsbad Energy Center LLC (Apr. 8, 2015); A.14-07-009, Alternate Proposed Decision ("APD") (Apr. 6 2015).
[28] APD p. 35 (Conclusion of Law 5).
[29] D.15-05-051, Dissent p. 3.

(2) The commission has not proceeded in the manner required by law.

(3) The decision of the commission is not supported by the findings.

(4) The findings of the decision of the commission are not supported by substantial evidence in light of the whole record.

(5) The order or decision of the commission was procured by fraud or was an abuse of discretion.[30]

An agency fails to "proceed in the manner required by law" if it "prejudicially abuse[s] its discretion."[31] In other words, if an agency has "fail[ed] to comply with required procedures, appl[ied] an incorrect legal standard, or commit[ed] some other error of law," then that decision is erroneous.[32]

The California courts have defined "substantial evidence" to mean evidence of "ponderable legal significance," [33] that is "reasonable in nature, credible, and of solid value such that a reasonable mind might accept it as adequate to support a conclusion."[34] It is not synonymous with "any evidence." [35] Thus, an agency decision will not be upheld if it relies on evidence which is "devoid of evidentiary support" or "contrary to facts [which] are universally accepted as true."[36] Nor will an agency finding which relies solely on uncorroborated hearsay meet the substantial evidence test.[37] The "in light of the whole record" language, "means that the court reviewing the agency's decision cannot just isolate the evidence supporting the findings and call it a day, thereby disregarding other relevant evidence in the record."[38] Instead, it is the court's responsibility to consider all of the relevant evidence which necessarily "involves some weighing of the evidence to fairly estimate its worth."[39]

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[30] Pub. Util. Code, § 1757(a).
[31] *Pedro v. City of Los Angeles* (2014) 229 Cal.App.4th 87, 99.
[32] *Id.*
[33] *People v. Johnson* (1980) 26 Cal.3d 557, 576 (internal citations omitted).
[34] *S. Coast Framing, Inc. v. W.C.A.B.* (2015) 61 Cal.4th 291, at *8.
[35] *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651-52.
[36] *Larson v. State Pers. Bd.* (1994) 28 Cal.App.4th 265, 273.
[37] *Walker v. City of San Gabriel* (1942) 20 Cal.2d 879, 881 (citing *Consol. Edison Co. of New York v. N.L.R.B.* (1938) 305 U.S. 197, 230).
[38] *Util. Reform Network v. Pub. Utilities Comm'n* (2014) 223 Cal.App.4th 945, 959.
[39] *County of San Diego v. Assessment Appeals Bd. No. 2* (1983) 148 Cal.App.3d 548, 555 (Assessment Board erred in determining the correct method of valuation to be the market value approach and then subsequently ignoring all competent evidence presented on market value, making its own determination of value based upon speculation and conjecture).

IV. THE COMMISSION DID NOT PROCEED IN THE MANNER REQUIRED BY LAW

The Application for approval of the Carlsbad PPTA was submitted to meet the procurement need authorized in D.14-03-004. Accordingly, to proceed in the manner required by law, the decision approving the Carlsbad Application must comport with the procurement authorization and requirements of D.14-03-004. Thus, key questions in the Scoping Memo for A.14-07-009 were "Does the application comply with SDG&E's procurement authority as granted by D.14-03-004?" and "Is the Carlsbad PPTA a reasonable means to meet the 600 megawatt (MW) of identified LCR that D.14-03-004 determined may be met by conventional resources?"[40] The Commission failed to proceed in the manner required by law because D.15-05-051 relies on newly manufactured rationalizations for procurement that prejudicially deviate from the requirements of D.14-03-004 and by extension, the Scoping Memo for A.14-07-009.

A. D.15-05-051's Reliance on the Retirement of Encina to Justify Approval of Carlsbad is Not Permitted Under the D.14-03-004 Need Authorization.

In determining that the balance of ratepayer, Loading Order, and reliability concerns merit dismissal of the Carlsbad application without prejudice until SDG&E completes its RFO, the PD properly refused "to reevaluate the LCR need determination in D.14-03-004."[41] But the Carlsbad Decision undertakes just this improper reevaluation, injecting new rationales and conclusions of law that are inconsistent with the underlying need authorization to justify non-competitive procurement of a multi-billion dollar gas plant at the expense of competition and opportunities for clean energy.

D.14-03-004's omission of the purported reliability impacts from the planned retirement of Encina is not an oversight. As recognized in the Carlsbad Decision's dissent, replacement capacity for Encina was addressed in a separate Commission proceeding that resulted in procurement of the Pio Pico Energy Center.[42] Encina's retirement was accounted for and

[40] A.14-07-009, Scoping Memo p. 2, Sept. 12, 2014.
[41] *See, e.g.*, PD p. 16.
[42] Carlsbad Decision, Dissent pp. 1-2; D.13-03-029 (determining 298 MW of local capacity need in San Diego local capacity area in 2018 upon retirement of Encina); D.14-02-016 (approving amended PPTA for Pio Pico Energy Center to meet need authorized in D.13-03-029).

assumed in determining need in D.14-03-004.[43] With this assumption in place, D.14-03-004 did not identify a numerical need until 2022. Accordingly, Conclusion of Law #5 of the Carlsbad Decision wrongly states that "D.14-03-004 acknowledged that SDG&E's LCR need could arise as early as 2018 upon the retirement of the Encina OTC units."[44] D.14-03-004 does not identify a numerical need for 2018 or identify the retirement of Encina as triggering need. While it does state that an unidentified need "may" emerge in 2018, this statement is properly understood to mean that, unlike the retirement of Encina, there are some variables that cannot be assumed or forecast with complete certainty. Thus, depending on future events such as unforeseen load growth, some need may emerge. Because Encina's retirement was always assumed and accounted for, had D.14-03-004 considered Encina a "key factor" in meeting reliability needs following the retirement of San Onofre as asserted in D.15-05-051,[45] D.14-03-004 would have stated need *will* emerge in 2018, would have identified Encina as triggering that need, and would have provided specific numerical procurement requirements by 2018, not 2022. But it does not. Instead, D.14-03-004's Findings of Fact determined SDG&E has "sufficient supplies to meet projected demands in the SONGS service area *through* at least 2018," at least a full year after Encina's scheduled 2017 retirement date.[46] As the ALJ's PD correctly reasons, D.14-03-004 does *not* support the proposition that "SDG&E's incremental LCR need is driven by Encina's retirement."[47]

Indeed, future events that could not be known with certainty at the time D.14-03-004 was decided point to *reduced* need by 2018. For example, shortly after D.14-03-004 was issued, CAISO approved its 2013-2014 Transmission Plan ("2013-2014 TPP"). As part of the 2013-2014 TPP, CAISO approved the Imperial Valley Flow Controller, a transmission improvement that was not considered in D.14-03-004, with an in-service date of May 2017 and estimated to reduce local resource need by 400 to 840 MW.[48] As noted by CAISO, this project was chosen for approval because it provides "material reductions in local capacity requirements without the

[43] R. 12-03-014, Revised Scoping Memo of the Assigned Commissioner and Administrative Law Judge (May 21, 2103) p 12.
[44] D. 15-05-051 p. 35 (Conclusion of Law #5).
[45] D.15-05-051 p. 16.
[46] D.14-03-004 p. 124 (Finding of Fact 5) (emphasis added).
[47] PD p. 16.
[48] *See* D.14-03-004, pp. 115-116 (the "authorization approved today does not assume any specific transmission upgrades or new projects which might be determined in the 2013/2014 TPP."); Exh. 32, p. 108 (CAISO 2013-14 TPP).

addition of new rights of way" and therefore has a high likelihood of timely implementation due to minimized "risk about permitting and timing of permitting."[49] Yet D.15-05-51 completely ignores the significant benefit of this costly transmission improvement in reducing near-term LCR need that may emerge. The Carlsbad Decision's reliance on the retirement of Encina as the "key factor" in approving Carlsbad at the expense of competition and clean energy is not supported by D.14-03-004 and constitutes a failure to proceed in the manner required by law.

B. The Carlsbad Decision's Determination that Carlsbad is Needed to Replace Encina is Beyond the Scope of the Scoping Memo.

Where the Commission relies or acts "beyond the scope of …the scoping memo," the Commission violates its rules of procedure and fails "to proceed in the manner required by law."[50] As recognized in the Carlsbad Decision's dissent, "[s]ince the Commission authorized the gap created by Encina's retirement in 2018 to be filled by Pio Pico, the Carlsbad Decision rests on a need already met and an issue not in the scope of the Carlsbad application."[51] The Scoping Memo in A.14-07-009 asks whether the application complies "with SDG&E's procurement authority as granted by D.14-03-004."[52] The Scoping Memo does not raise the question of whether the need finding in D.14-03-004 should be revised or if Carlsbad is now needed by 2018 to avoid a reliability gap or delay in Encina's retirement. Because the Carlsbad Decision's determination that Carlsbad is needed to meet Encina's scheduled retirement date is not in the need finding in D.14-03-004 and the Scoping Memo is limited to whether the Application complies with D.14-03-004, the Carlsbad's Decision's determination that Encina is now a key factor in replacement for San Onofre is also beyond the scope of the Scoping Memo.

C. The Carlsbad Decision Violates the Loading Order and Related Requirements of D.14-03-004 by Precluding Competition and Prioritization of Preferred Resources and Energy Storage Over Fossil Fuels.

Because the Carlsbad Decision prioritizes the procurement of fossil fuels before clean energy, the Decision directly contravenes the Loading Order, California's policy of fossil fuel reduction, and the requirements of D.14-03-004. D.14-03-004 unequivocally requires "strict

[49] Exh. 4, pp. 4:28-5:2 (CAISO Prepared Direct Testimony of R. Sparks).
[50] *Southern California Edison v. Pub. Utilities Comm'n* (2006) 140 Cal.App.4th 1085, 1094, 1106.
[51] D.15-05-051, Dissent p. 2.
[52] A.14-07-009 Scoping Memo, p. 2 (Sept. 12, 2014).

compliance" with the Loading Order, which requires utilities to "invest first in energy efficiency and demand-side resources, followed by renewable resources, and only then in clean conventional electricity supply."[53] The "loading order applies to all utility procurement, even if pre-set targets for certain preferred resources have been achieved." [54] The Carlsbad Decision violates this requirement by approving a 500 MW fossil fuel facility prior to evaluating clean energy alternatives.

D.14-03-004 not only reaffirms the applicability of the Loading Order to any resource procurement, but also embeds Loading Order compliance requirements in utility procurement applications. For example, Ordering Paragraph 8 requires that SDG&E's procurement application meet criteria that include "[a] demonstration of technological neutrality, so that no resource was arbitrarily or unfairly prevented from bidding in [SDG&E's] solicitation process."[55] SDG&E's Application does not meet this requirement. Far from a "demonstration of technological neutrality," SDG&E handpicked one technology to meet its any resource authorization through a bilateral agreement that prevents bidding by and comparison to all other resources.

The Carlsbad Decision does not remedy the Application's defects by reducing the size of the Carlsbad facility from 600 to 500 MW to allow an additional 100 MW of preferred resource procurement. D.14-03-004 required SDG&E to procure "up to 100% [] of new local capacity [resources] from preferred resources."[56] In approving the Carlsbad Application prior to an evaluation of clean energy alternatives, the Carlsbad Decision continues to preclude preferred resources and energy storage from competing against fossil fuels and improperly exculpates SDG&E from its obligation to demonstrate it "has contracted with these preferred resources first."[57]

The Carlsbad Decision's suggestion that Loading Order compliance can be disregarded because there is no basis to presume that the RFO would not result in options "beyond the 200 MW minimum of preferred resources and energy storage" turns the Loading Order on its head.[58]

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[53] D.12-01-033 p. 17 (citing the Energy Action Plan 2008 Update at p. 1).
[54] D.12-01-033 p. 20.
[55] D.14-03-004 p. 146 (Ordering Paragraph 8).
[56] D.14-03-004 p. 2.
[57] D.14-03-004 (Ordering Paragraph 8).
[58] D.15-05-051 pp. 19-20.

Finding of Fact 12 acknowledges that "SDG&E's RFO has produced a robust number of offers for preferred resources and energy storage which could potentially meet more than the 200 MW of SDG&E's LCR need that may be procured from any source."[59] In fact, SDG&E's RFO resulted in 14,494 MW of bids, far in excess of SDG&E's 800 MW maximum procurement authorization, and SCE's recent RFO resulted in 260 MW of proposed energy storage procurement.[60] While some of these bids may be duplicative or non-viable, there is no basis to presume, as the Carlsbad Decision does, that the RFO will not result in options "beyond the 200 MW minimum of preferred resources and energy storage."[61] "Strict compliance" with the Loading Order requires first actually evaluating clean energy bids before leaping to conclusions about the extent of their feasibility. No such evaluation has occurred here. In prejudging the outcome of competitive bids from preferred resources and energy storage, the Commission contravened the requirements of D.14-03-004 and the Loading Order and thereby failed to proceed in the manner required by law.

D. The Carlsbad Decision's Reliance on Finding of Fact 83 from D.14-03-004 to Support Carlsbad Approval is in Error.

The Carlsbad Decision's reliance and inclusion of Finding of Fact 83 from D.14-03-004 is in error and does not support filling the vast majority of SDG&E's any resource authorization with fossil fuels prior to considering preferred resources and energy storage. Finding of Fact 83 states that grid operations are "potentially compromised by excessive reliance on intermittent resources and resources with uncertain ability to meet LCR needs."[62] However, this finding was in the context of a discussion in D.14-03-004 declining to revisit the significant fossil fuel procurement that had recently been authorized for both SDG&E and SCE to address OTC retirements (at least 1,000 MW for SCE and 300 MW for SDG&E).[63] As provided in D.14-03-004:

> For SCE (and SDG&E as delineated below), we will not require any specific incremental procurement from gas-fired resources. This means that all

[59] D.15-05-051 pp. 33-34 (Finding of Fact 12).
[60] Tr. 17:19-18:8; SDG&E, Late-Filed Exhibit 20; *see also* Sierra Club Comments on SDG&E Late-Filed Exhibit (Revised Public Version), Feb. 13, 2015; Tr. 19:11-15.
[61] D.15-05-051, p 34 (Finding of Fact 13).
[62] APD pp. 14, 33 (Finding of Fact 11).
[63] In D.13-02-015, the Commission authorized SCE to procure a minimum of 1,000 MW of fossil fuels. In D.14-02-016, the Commission approved SDG&E's PPTA with the 300 MW Pio Pico facility.

> incremental procurement as a result of this decision may be from preferred resources. At the same time, we will not modify the requirements from D.13-02-015 that some procurement must be from gas-fired resources in order to ensure reliability.[64]

Accordingly, the Carlsbad Decision errs in relying on Finding of Fact 83 to because it does not pertain to the Track 4 need authorization and is inconsistent with D.14-03-004's repeated findings that preferred resources could meet up to 100 percent of the San Onofre need authorization and the very definition of an "any resource" authorization.[65] As ALJ Yacknin properly observed in the PD, "We will not revisit D.14-03-004's express determination that SDG&E should procure up to 100 percent of its LCR need from preferred resources."[66]

V. THE DECISION'S FINDINGS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

A. The Decision's Finding that the Terms and Conditions of the Carlsbad PPTA Are Reasonable is Not Supported by Substantial Evidence.

Finding of Fact 16 in D.15-05-051 states that a "500 MW PPTA with the same per-unit price and other terms and conditions as the agreement submitted with the application is reasonable."[67] In contrast, the PD found that the Carlsbad PPTA was reasonable only "in the absence of feasibly available and cost-effective preferred resource and energy storage alternatives."[68] The PD's determination is consistent with the axiomatic principle that "implementation of a robust competitive process is the best means to assess the availability of generation options and competitive market prices."[69] Ignoring this critical prerequisite, D.15-05-051 simply finds the PPTA is reasonable. The Carlsbad Decision's conclusion that the Carlsbad PPTA is reasonable absent any competitive evaluation lacks credible support and is inconsistent with the Commission's duty to ensure reasonable rates.

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[64] D.14-03-004 p. 93; p. 90 (same).
[65] *See, e.g,* D.14-03-004 p. 93 ("all incremental procurement as a result of this decision may be from preferred resources.").
[66] PD p. 18.
[67] D.15-05-051 p. 34 (Finding of Fact 16).
[68] PD p. 21. The PD echoes the findings of the Independent Evaluator, who "raised some concerns about the Carlsbad decision since the decision has not been guided by any market test or evaluation results prior to negotiating the Carlsbad contract." Exh. 1-A (Independent Evaluator Report p. 37).
[69] PD p.10 (citing Ex. 1, App. D ("Report of Independent Evaluator") at 39).

In eliminating the market test requirement, the Decision's determination that the Carlsbad PPTA is reasonable relies on the fact that it "compare[s] reasonably to the recent Pio Pico Energy Center PPTA."[70] D.15-05-051's reliance on Pio Pico fails for two reasons. First, the terms of the Pio Pico PPTA originated from a fossil-fuel-centric 2009 RFO limited to conventional generation and demand response.[71] Accordingly, no legitimate conclusions can be drawn from the Pio Pico PPTA with regard to its current competitiveness, especially given that preferred resources and energy storage have become increasingly viable and cost-effective since the Pio Pico RFO was issued five years ago.

Second, even assuming that a comparison with the Pio Pico PPTA was alone sufficient to determine the reasonableness of a subsequent gas plant, Carlsbad does not compare favorably to Pio Pico. Pio Pico is a 300 MW project. Were Carlsbad genuinely comparable to Pio Pico, a 300 MW Carlsbad project would have the same levelized cost as Pio Pico. Yet NRG has stated "it is not possible to build only four units [400 MW] without reconsidering the price and likely increasing the levelized cost to ratepayers under the PPTA."[72] If NRG cannot build a 300 MW project at its current levelized price, then Carlsbad is not comparable with Pio Pico and the PPTA is not reasonable. As a 500 MW project with levelized cost similar to that of the 300 MW Pio Pico PPTA, NRG is profiting from economies of scale at ratepayer expense. Indeed, Pio Pico testified in this proceeding that it could offer additional capacity at lesser cost than provided in its original PPTA.[73] The only way for the D.15-05-051 to legitimately assert that "the price of energy per MWh from the Carlsbad Energy Center… is on par with competitive purchase power alternatives" would be to reduce Carlsbad to a 300 MW project at its current levelized cost.[74] Yet the Decision approved a 500 MW project. Absent a market test or a reduction in facility size to match Pio Pico, the Carlsbad Decision's conclusion that the terms of a 500 MW Carlsbad PPTA are reasonable is not supported by substantial evidence.

[70] D.15-05-051 p. 34 (Finding of Fact 14).
[71] Tr. 19:23-25; 114:3-6 (D. Baerman, SDG&E).
[72] Carlsbad Opening Comments on PD at 15.
[73] Exh. 7 p. 4:2-4 (Pio Pico Prepared Opening Testimony of K. Derman).
[74] D.15-05-051 p. 11.

B. Substantial Evidence Does Not Support the Finding that the Carlsbad PPTA Would Provide "Renewable Resource Integration Benefits Due to Its Flexible Dispatchability."

D.15-05-051 makes the unsupported assertion in Finding of Fact 14 that the Carlsbad PPTA would provide "renewable resources integration benefits due to its flexible dispatchability."[75] As set forth in uncontroverted testimony in this proceeding, because substantial flexibility already exists on the system and the Commission has not identified the need for additional flexible resources, the Carlsbad facility's flexible attributes do not provide added system benefit.[76] Thus, the PD recognizes that D.14-03-004 "does not require any minimum amount of its LCR need to have flexible dispatchability."[77] Accordingly, D.15-05-051 lacks sufficient legal and evidentiary basis to conclude that Carlsbad would provide renewable integration benefits.

In fact, by filling the bulk of SDG&E's any resource need prior to a full evaluation of alternative resources like energy storage, Carlsbad likely impedes future California's renewable integration and decarbonization efforts. To the extent renewable integration needs increase if and when the RPS moves beyond 33 percent, energy storage is a superior resource. Citing to record evidence, the PD states that "it is not clear that conventional resources are uniquely capable of being dispatched to integrate renewable resources. In particular, [Protect Our Communities] offers evidence that storage provides greater flexibility due to its charging ability and short time requirement to ramp to full capacity, and none of the air permitting constraints on operation to which the Carlsbad project is subject."[78] The Carlsbad Decision's claim that Carlsbad would provide renewable integration benefits is not only unsupported, but Carlsbad approval functions to displace potential procurement of resources like energy storage that provide superior, carbon-free grid services critical to achievement of state climate goals.

VI. REQUEST FOR ORAL ARGUMENT

Pursuant to Commission Rule 16.3, Sierra Club hereby requests oral argument for the Application for Rehearing. The Carlsbad Decision's material deviation from D.14-03-004

[75] D.15-05-051 p. 34 (Finding of Fact 14).
[76] *See* Exh. 14, pp. 11-12 (Protect Our Communities Prepared Rebuttal Testimony of B. Powers).
[77] *Compare* D.15-05-051 *with* PD p. 18.
[78] PD pp.18-19 n. 12 (citing Ex 14 at 10-13).

presents legal issues of exceptional public importance. Maximizing clean energy opportunities to replace San Onofre has long been an issue of public concern. Over 16,000 members of the public signed a letter submitted in A.14-07-009 requesting that Commissioners "ensure that there is an accurate accounting of need and open procurement process that allows clean energy options to meet the energy needs of SDG&E customers."[79] In addition, D.15-05-051 raises legal questions over the extent to which the Commission may inject new rationales not supported by the record to justify approval of utility procurement applications. Oral argument is therefore warranted.

VII. CONCLUSION

For the foregoing reasons, Sierra Club requests that its Application for Rehearing be granted.

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Respectfully submitted,

/s/

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[79] A.14-07-009, Ex Parte, Vote Solar (Aug. 20, 2014) (containing letter and signatures sent to Commissioners).