

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

Application of San Diego Gas & Electric Company
(U902E) for Approval of Energy Storage and Energy
Efficiency Contracts Arising from the Track IV Local
Capacity Requirement All Source Request for Offers.

Application 16-03- 014
(Filed March 30, 2016)

BRIEF OF THE CALIFORNIA ENERGY STORAGE ALLIANCE

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The California Energy Storage Alliance (“CESA”)¹ hereby respectfully submits this brief Pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), and the *E-Mail Ruling of Administrative Law Judge Peter V. Allen Setting Briefing Schedule*, issued on August 18, 2016.

I. INTRODUCTION.

CESA urges the Commission to require San Diego Gas and Electric Company (“SDG&E”) to reissue the request for offers (“RFO”) described in its Application for approval of

¹ 1 Energy Systems Inc., Adara Power, Advanced Microgrid Solutions, AES Energy Storage, Amber Kinetics, Aquion Energy, Bright Energy Storage Technologies, Brookfield, California Environmental Associates, Consolidated Edison Development, Inc., Cumulus Energy Storage, Customized Energy Solutions, Demand Energy, Eagle Crest Energy Company, East Penn Manufacturing Company, Ecoult, Electric Motor Werks, Inc., ElectrIQ Power, ELSYS Inc., Enphase Energy, GE Energy Storage, Geli, Gordon & Rees, Green Charge Networks, Greensmith Energy, Gridscape Solutions, Gridtential Energy, Inc., Hitachi Chemical Co., Ice Energy, Innovation Core SEI, Inc. (A Sumitomo Electric Company), Invenergy LLC, Johnson Controls, K&L Gates, LG Chem Power, Inc., Lockheed Martin Advanced Energy Storage LLC, LS Power Development, LLC, NEC Energy Solutions, Inc., NextEra Energy Resources, NGK Insulators, Ltd., NRG Energy LLC, OutBack Power Technologies, Parker Hannifin Corporation, Powertree Services Inc., Qnovo, Recurrent Energy, RES Americas Inc., Saft America Inc., Samsung SDI, Sharp Electronics Corporation, Skylar Capital Management, SolarCity, Sovereign Energy, Stem, SunPower Corporation, Sunrun, Swell Energy, Trina Energy Storage, Tri-Technic, UniEnergy Technologies, Wellhead Electric, Younicos. The views expressed in these Comments are those of CESA, and do not necessarily reflect the views of all of the individual CESA member companies. (<http://storagealliance.org>).

one energy storage contract and one energy efficiency contract (“Application”).² CESA asks the Commission to order SDG&E to reissue its RFO for two reasons. First, SDG&E improperly evaluated and rejected energy storage bids based on speculative future pricing instead of current projected cost-effectiveness. Second, SDG&E seeks approval of a 20 MW energy storage contract that may be arbitrarily terminated at will by SDG&E.³ For these reasons, CESA objects to the procurement *process*, rather than the results of the RFO.

Because the procurement process was flawed, it is reasonable to reissue a substantially identical RFO to meet local capacity requirements, revised to remove the ill-conceived features of the process identified herein, and also allow bidders that were improperly excluded to revise and resubmit their offers accordingly. Reissuing the RFO would allow SDG&E a reasonable opportunity to cure the substantial conflicts with Commission decisions and policies discussed herein, while mitigating the negative financial impact on bidders by allowing them to refresh and re-submit their original proposals that would otherwise represent completely wasted time, effort, and financial resources.

The second best alternative course the Commission could consider as a remedy for stakeholders would be to order SDG&E to withdraw and re-file the Application with specific guidance to conform to the Commission’s decisions and policies. Although suboptimal, ordering re-filing of the Application would emphasize importance of integrity of the procurement process and signal to stakeholders, including the energy storage industry, that following California’s

² CESA has taken no position to date in this proceeding, and takes no position here, as to the question of whether or not the Commission should or should not approve SDG&E’s proposed energy storage contract with Hecate Energy Bancroft LLC (“Hecate Contract”) or any energy efficiency contracts.

³ As discussed at Section V, below, SDG&E reserved the right to terminate the contract for two independent reasons: (a) if the contract should fail to be attractive for SDG&E’ customers, and (b) if SDG&E fails to attain tariff treatment sought in an unrelated regulatory proceeding.

utility procurement rules governing Commission-approved implementation of California's ambitious energy policies is a worthwhile investment.

II. BACKGROUND AND PROCEDURAL CONTEXT.

This brief is based on the record in this proceeding and makes a number of references to other closed and active proceedings at the Commission that explain CESA's reasons for focusing exclusively on the energy storage procurement-related aspects of the Application. Since AB 2514 was enacted in 2009,⁴ the Commission has directed California's electric utilities to procure energy storage resources in a series of decisions issued in two parallel procedural paths. In R.10-12-007,⁵ the Commission established a broad policy foundation and set in motion a series of biennial utility procurement processes devoted entirely to acquisition and deployment of energy storage resources. Beginning in 2013, the Commission also introduced energy storage as a resource to be procured by utilities, along with other energy resources to meet their Local Capacity Requirements through the Long Term Procurement Planning Process ("LTPP").⁶

The Application represents an important step in the final stages of the LTPP process that may have broad policy implications for the success of the Commission's implementation of AB 2514 and other major energy policy initiatives that bear on the key role of energy storage in California's energy policy. At a minimum, the Commission's specific direction to SDG&E in acting on the Application will have immediate impact on policy developed in the ongoing

⁴ (Stats. 2010, ch. 469).

⁵ *Order Instituting Rulemaking Pursuant to Assembly Bill 2514 to Consider the Adoption of Procurement Targets for Viable and Cost-Effective Energy Storage Systems*, filed December 16, 2010.

⁶ *Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans*, filed March 22, 2012.

biennial energy storage procurement process and the recently initiated Integrated Resource Planning (“IRP) Process that is effectively the successor to the LTPP.⁷

III. SDG&E IMPROPERLY REJECTED ENERGY STORAGE BIDS BASED ON SPECULATIVE FUTURE PRICING INSTEAD OF CURRENT PROJECTED COST-EFFECTIVENESS.

The prepared testimony of SDG&E witnesses, Patrick Charles and Emily Shults, and the Report by the Independent Evaluator that accompanies the Application (“IE Report”)⁸ plainly state that SDG&E chose to procure energy storage in an amount below the minimum 25 MW procurement target due to expectations of decreasing future energy storage capital costs and the relatively short development and construction periods for energy storage projects. Ms. Shults adds in her testimony that the quickly evolving state of battery technologies causes bids to be out of date by the time the project commences construction.⁹ The Application states that SDG&E is taking a “deliberate and measured approach” to allow customers to benefit from reduced pricing and ratepayer costs “by optimizing its procurement where possible.”¹⁰ The IE Report elaborates further on the “opportunity costs” of procuring energy storage today rather than in the future when capital costs have fallen further:¹¹

During contract negotiations, SDG&E management began to question the value of an Energy Storage contract that had been shortlisted. SDG&E’s concern was that the RFO was driven by a capacity need for 2022; the resource did not have to be operational earlier. Energy storage can currently be permitted and constructed quickly, and the market expects battery pricing to drop significantly in coming years. If so SDG&E would be locked into a high-priced out-of-market contract and will not share in the cost reductions

⁷ *Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements*, filed February 11, 2016.

⁸ *San Diego Gas & Electric: Independent Evaluator Report – 2014 LCR RFO*, March 24, 2016.

⁹ *Prepared Direct Testimony of Emily C. Shults on Behalf of San Diego Gas & Electric Company*, March 30, 2016, p. 5.

¹⁰ *Ibid*, pp. 5-6.

¹¹ *San Diego Gas & Electric: Independent Evaluator Report – 2014 LCR RFO*, March 24, 2016, p. 23.

enjoyed by the developer. SDG&E management saw itself facing the opportunity cost of not delaying the contracting for this capacity, and was particularly sensitive to this due to its recent experiences with solar PV contracts negotiated several years ago but for which the plants have only recently been built. SDG&E management eventually decided to terminate the contract negotiation.

No such unfettered discretion to indefinitely delay energy storage procurement can be read into D.14-03-004. SDG&E must evaluate and procure energy storage resources based on their cost-effectiveness *when bids are submitted*, to meet the 25 MW minimum energy storage procurement requirement. Future costs of other potential and unknown projects should not be any part of the bid evaluation and contract negotiation processes. Obviously, ratepayers should in principle always benefit from delaying procurement of any energy resource because cost declines will always occur with increased learning and manufacturing efficiencies. D.14-03-004 did not afford SDG&E the luxury of open-ended delay, to the detriment of stakeholders, including energy storage bidders.

Any bids in which the benefits of the offered energy storage resource exceeded its projected costs should be deemed to comply with the Commission's cost-effectiveness requirement. The simple fact that certain energy storage projects were short-listed by SDG&E conclusively demonstrated SDG&E's determination that they were in fact cost-effective based on their Net Market Value ("NMV").¹² The IE Report states that there were three other bids with higher NMVs than the Hecate Contract bid that could also have been selected as cost-effective projects. The IE Report further states that the bid that resulted in the Hecate Contract was

¹² The Office of Ratepayer Advocates ("ORA") came to a comparable conclusion as to cost-effectiveness of short-listed bids for contracts selected for Commission approval in Pacific Gas & Electric's ("PG&E") 2014 Energy Storage RFO. *Prepared Testimony on Pacific Gas and Electric Company's Application from its 2014-2015 Energy Storage Solicitation and Related Cost Recovery*, submitted on April 25, 2016, p. 2.

selected because it “created less risk exposure” despite being a lower-value bid and with no discussion of the asserted lesser risk.¹³

IV. WITHOUT COMMISSION APPROVAL, SDG&E IMPOSED CONDITIONS ON BIDDERS THAT RENDERED ENERGY & STORAGE CONTRACTS UNENFORCEABLE.

A. The Hecate Contract Is Not Enforceable Because it Can Be Arbitrarily Terminated by SDG&E at Will.

The Hecate Contract for purchase of energy storage may or may not be binding on Hecate Bancroft LLC, but it fails to bind SDG&E to perform and thus is voidable as an illusory agreement under general principles of contract law.¹⁴ The Hecate Contract submitted for the Commission’s approval is in fact an option, rather than an enforceable contract. The Hecate Contract includes an “option provision of limited duration” that allows SDG&E to terminate the agreement “if it fails to continue to be attractive for SDG&E customers.” SDG&E proposes to file a Tier 1 Advice Letter if SDG&E chooses to exercise this option within the “option window.”¹⁵ SDG&E has thus in effect submitted no energy storage agreement at all to satisfy any percentage of its 25 MW procurement obligation under D.13-10-040.

SDG&E does not specify what constitutes an “unattractive” project for its customers, and, with no defined criteria for determining the attractiveness of the Hecate Contract. SDG&E retains arbitrary discretion to terminate the Hecate Contract at will within a “window” that is only definable after it has closed. A contract that can be terminated with minimal Commission review, such as through SDG&E’s proposed Tier 1 Advice Letter submission, does not represent

¹³ *San Diego Gas & Electric: Independent Evaluator Report – 2014 LCR RFO*, submitted on March 24, 2016, p. 25.

¹⁴ An illusory promise consists of “words in promissory form that promise nothing.” 2 Joseph M. Perillo & Helen Hadiyannakisj Bender, *Corbin on Contracts* § 5.28, at 142 (Revised ed. 1995).

¹⁵ *Ibid*, p. 7. Nowhere in the Application or the Hecate Contract is there any explanation of when the purported “window” might either open or close.

actual “procurement” but rather is an option agreement that SDG&E may or may not choose to perform. Nothing in D.14-03-004 provided SDG&E any such discretion. SDG&E’s Response on this point would turn SDG&E’ burden of proof to support approval of the Application on its head: “the Commission did not order “. . . that SDG&E should *not* include option provisions in its contracts [Emphasis added].” (p. 6).

B. SDG&E May Not Condition Acceptance of Bids Based On Regulatory Outcomes In Unrelated Commission Proceedings.

SDG&E’s RFO provided that certain bids would only be deemed conforming contingent upon the Commission approval of SDG&E’s proposed time-of-use (“TOU”) periods in a separate unrelated Commission (A.15-04-012).¹⁶ In its Response, SDG&E provides the following unpersuasive rationale for its position:

“In the case of the specific contingency related to the Commission’s approval of new time-of-use (“TOU”) periods, SDG&E refers to its resource criteria within its 2014 All Source RFO documents that states that offers being subsidized by another Commission regulated program or rate schedule shall not be considered. In short, given the existing, out-of-date TOU periods that SDG&E has requested be updated, behind-the-meter storage resources (acting in support of demand response) would be responding to inaccurate price signals and thereby creating an unacceptable cross subsidy.” (Reply, p. 7).

A Proposed Decision that speaks directly to this topic and should be equally applicable here is on the Agenda for the Commission’s meeting on September 15, 2016:¹⁷

“While SDG&E’s independent evaluator (IE) agreed that failure to set accurate TOU periods would result in “payments non-commensurate with the

¹⁶ “SDG&E will consider any Demand Response offers that are based on energy storage technology that may be shortlisted to be contingent upon the adoption by the CPUC of SDG&E’s proposed new Time of Use (“TOU”) periods as set forth in SDG&E’s application number A.15-04-012 filed on February 9, 2016. If the CPUC does not adopt SDG&E’s proposed changes to the TOU periods included in this application, then any energy storage based Demand Response offers that may be shortlisted from this solicitation may be considered non-conforming in accordance with the eligibility requirement included above in section 3.B.4.” (Subsidization).”

¹⁷ *Proposed Decision Approving Storage Framework for the 2016 Biennial Procurement Period*, A.16-03-001, et al., mailed July 29, 2016.

benefits provided,” the IE did not agree the receipt of such benefits could be considered a “subsidy” in violation of the RFO’s conformance criteria. Rather, establishing this condition violates the intent of D.13-10-040, promotion of “viable and cost effective energy storage applications,” through the imposition of uncertainty upon customer storage project bidders. Addition of a unilateral non-conformity provision does not serve to reduce project uncertainty, or enable SDG&E to effectively quantify the value of these projects and violates the intent of D.13-10-040. SDG&E may not include its proposed TOU contingency provision in its selection process [Footnotes deleted].” (Agenda Decision, p. 15).

V. CONCLUSION.

CESA urges the Commission to order SDG&E to modify and reissue the RFO described in its Application as discussed herein to meet the requirement of D.14-03-004.

Respectfully submitted,



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