

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

AGENDA ID 15187
RESOLUTION E-4806
October 27, 2016

R E S O L U T I O N

Resolution E-4806. San Diego Gas & Electric Company requests approval of the contract for Resource Adequacy capacity with NRG Power Marketing, LLC.

PROPOSED OUTCOME:

- This resolution approves the NRG Encina RA contract without modification.

SAFETY CONSIDERATIONS:

- The RA Capacity in question is associated with Encina Power Station, an existing and operational generating facility; as such there are no incremental safety implications associated with this contract beyond the status quo.

ESTIMATED COST:

- Contract costs are confidential at this time.

By Advice Letter 2902-E, Filed on June 9, 2016.

SUMMARY

San Diego Gas & Electric Company ("SDG&E"), a California Investor-Owned Utility ("IOU"), requests that the California Public Utilities Commission ("Commission" or "CPUC") approve the proposed resource adequacy ("RA") capacity agreement with NRG Power Marketing, LLC ("NRG") for the full 2017 calendar year ("NRG Contract").

The need for the NRG Contract arose from CAISO's 2017 Local Capacity Technical Analysis Final Report and Study Results, which led SDG&E to bilateral negotiations with NRG. The NRG Contract will provide SDG&E with Local, System, and Flexible RA benefits from Encina Power Station ("Encina"), an

existing natural gas-fired combined-cycle thermal/steam generating unit. The 964.5 MW Encina unit is the largest non-IOU owned generation asset in the San Diego local area. Encina is subject to the State Water Resources Control Board (“SWRCB”) once-through cooling (“OTC”) policy and has a SWRBC OTC compliance deadline of December 31, 2017.

The NRG Contract is for 858.5 megawatts (“MW”) of Local and System RA capacity and 280 MW of flexible capacity, for a term beginning on January 1, 2017, and continuing through December 31, 2017. The NRG Contract does not include any energy tolling capacity.

For the reasons discussed below, the Commission approves AL 2902-E without modification.

BACKGROUND

On April 29, 2016, CAISO issued its “2017 Local Capacity Technical Analysis Final Report and Study Results.”¹ (“2017 LCT Study”). These annual technical analyses accomplish four purposes:

- 1) Determining of Local Capacity Requirements (“LCRs”), which are the minimum quantities of local generation capacity necessary to ensure reliable grid operations in transmission-constrained load pockets with limited power-import capability (these pockets are called Local Capacity Areas or LCAs),
- 2) Serving as a basis for the local procurement obligations issued by the Commission to Load Serving Entities (“LSEs”) under its resource adequacy program,
- 3) Assisting in cost allocation regarding any CAISO capacity procurement needed to achieve grid reliability, and,
- 4) Providing additional information on LCA sub-area need and effectiveness factors in order to allow LSEs to engage in more informed capacity procurement in their LCA.

¹ See the 2017 Local Capacity Technical Analysis Final Report & Study Results of April 29, 2016, p. 2. This report is available on the CAISO website at: <https://www.caiso.com/Documents/Final2017LocalCapacityTechnicalReportApril292016.pdf>

There are ten (10) major Local Capacity Areas (“LCAs”) within the CAISO Balancing Authority Area, each of which can have further refined LCA sub-areas. For SDG&E, there are two major LCAs: the San Diego local sub area, and the Greater San Diego-Imperial Valley area that encompasses the San Diego Local sub-area and also the Imperial Valley. The Local Capacity Requirement (“LCR”) for the San Diego local sub-area and the Greater San Diego-Imperial Valley area as determined in the annual technical study are used by the CPUC to assign local RA obligations to LSEs in the San Diego region.

In 2017, the CAISO revised the San Diego LCR need upward primarily due to concerns with the availability of the Aliso Canyon gas storage facility, which affected the ability of LA Basin gas-fired generation to be called upon on short notice. According to the 2017 LCT Study, “In an effort to help mitigate the Aliso Canyon gas storage constraints, the ISO balanced the gas generation resource needs in the LA Basin and the San Diego sub-area to lessen the impact that the absence of Aliso Canyon has on the reliability of the electric transmission system in the LA Basin and San Diego area.”

In light of this additional LCR need, SDG&E negotiated bilaterally with NRG seeking Local, System, and flexible RA, and the negotiations concluded with the NRG Contract. The bilateral negotiations were monitored by an independent evaluator (IE), Merrimack Energy Group, with the IE’s observations and recommendations recorded in the IE Report included in AL 2902-E.

The NRG Contract is for 858.5 MW of System and Local RA from Encina, from January 1, 2017 through December 31, 2017. This capacity is less than the full Net Qualifying Capacity (“NQC”) of Encina, which is 964.5 MW. The unit has an Effective Flexible Capacity (“EFC”) of 778.5 MW, of which, 280 MW of flexible capacity will be provided to SDG&E. The NRG Contract does not include any energy tolling capacity.

NOTICE

Notice of AL 2902-E was made by publication in the Commission’s Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed to the service list for Rulemaking (“R.”) 14-10-010 in accordance with Section 4 of General Order 96-B.

PROTESTS

Advice Letter AL 2902-E was protested by Cogentrix, who argues that SDG&E should have utilized a competitive solicitation, such as a Request for Offers (“RFO”) to fill its RA needs. Cogentrix believes SDG&E’s reliance on CAISO’s Capacity Procurement Mechanism (“CPM”) as a motivation for the bilateral agreement is misplaced because CAISO would have to administer an RFO process under the CPM. Cogentrix further asserts that SDG&E’s references to CAISO’s 2017 LCR study were flawed and that the application failed to use the proper procedure when contracting with an OTC plant such as Encina. Cogentrix owns CalPeak, which in turn owns two 48 MW peaker plants within the SD subarea (CalPeak Border and CalPeak Enterprise). Cogentrix says it would have bid these two plants into a SDG&E RFO for RA capacity at favorable rates, if one had been held.

DISCUSSION

Decision (“D.”) 12-04-046 directed that any OTC power purchase agreement that terminates one year or less prior to the applicable SWRCB compliance deadline must be submitted to the Commission for approval via a Tier 3 advice letter. Encina has a SWRCB OTC compliance deadline of December 31, 2017, which is the same day as the termination of the NRG Contract. Therefore, SDG&E sought approval of the NRG Contract through a Tier 3 advice letter, AL 2902-E.

We evaluated AL 2902-E based on criteria established in previous Commission decisions and in California Public Utilities Code, Section 454.5, which provide guidance to the IOUs and the Commission for the procurement of electricity and electricity-related products. Specifically, SDG&E must demonstrate that the transaction:

1. is in compliance with the Energy Action Plan (“EAP”) Loading Order;
2. is in compliance with once-through cooling Procurement Rules;
3. was discussed with the Procurement Review Group (“PRG”);
4. is in compliance with SDG&E’s Public Utilities Code Section 454.5 Bundled Procurement Plan;
5. meets residual energy and capacity needs; and
6. is at a reasonable price.

The NRG Contract Is in Compliance with the EAP Loading Order

The EAP Loading Order, published on May 8, 2003, and endorsed in D.04-12-048, contains explicit direction regarding California’s preferences for meeting identified resource needs, and directs the Investor Owned Utilities (“IOUs”) to prioritize their resource selections accordingly. The EAP prioritizes resources in a “loading order” of policy preference and directs IOUs to procure resources in the following order of priority: Energy Efficiency (“EE”) and Demand Response (“DR”), renewable fuel resources, clean fossil-fired Distributed Generation (“DG”), and clean central-station generation.² Encina is an existing natural gas-fired combined-cycle electric generating facility. The NRG Contract will not provide energy for SDG&E’s bundled customers’ needs, but instead provides capacity for SDG&E to meet its CPUC-mandated System and Local RA capacity obligations, which currently cannot be entirely met with preferred resources. Therefore, the NRG Contract is not inconsistent with the EAP Loading Order.

The NRG Contract Complies with OTC Procurement Rules

D.12-04-046 directed that any OTC power purchase agreement that terminates one year or less prior to the applicable SWRCB compliance deadline must be submitted to the Commission for approval via a Tier 3 advice letter. The NRG Contract ends on December 31, 2017, the day of the OTC deadline and is therefore subject to this guideline. The Commission in D.12-04-046 categorized contracts with OTC plants based on the length of the contract and whether the agreement terminates one year or less prior to the applicable SWRCB compliance deadline. In their protest letter, Cogentrix argues that SDG&E’s Advice Letter should have made the same showing as PG&E made in AL 4496-E, pp. 3-5, which responded to the four criteria listed in D.12-04-046, on p. 26:

- 1) How the contract helps facilitate compliance with the SWRCB’s OTC policy or, at a minimum, does not delay compliance.
- 2) Include the expected operation of the OTC facility under normal load (1 in 2) and high load (1 in 10) conditions, including number of starts and run time after each start.

² D.04-12-048, page 98.

- 3) Include the Local Capacity requirement (“LCR”) net position with and without the OTC facility over the contract duration and two years beyond the contract duration.
- 4) How any other available generation resources compare under these criteria.

According to Decision D.12-04-046, these criteria are required showings for contracts of “more than two years but less than five years” in length. (D.12-04-046, p. 25).³ The NRG Contract is less than two years in length, and is therefore reviewed with a different standard:

- 1) the IOU may not commit to purchases beyond the SWRCB deadline,
- 2) the procurement process must take into consideration the plant’s use of OTC, and
- 3) the agreement must be submitted via a Tier 3 advice letter.

First, the IOU has not committed to purchases beyond the SWRCB’s OTC deadline. Encina is subject to the SWRCB’s OTC policy and the SWRCB OTC compliance deadline for all Encina units is December 31, 2017.⁴ The NRG Contract ends on December 31, 2017, on the day of the OTC deadline. According to SDG&E, NRG has stated that this Contract will not delay compliance by the December 31, 2017 deadline. While the NRG Contract ends on the same date as the SWRCB OTC compliance deadline, we nevertheless find SDG&E compliant with this requirement because the NRG Contract will not delay compliance, and will provide funding to facilitate timely compliance.

Second, as discussed in the IE Report by Merrimack Energy Group, the procurement process was well aware of the OTC deadline for Encina and the upcoming online dates for the non-OTC Pio Pico and Carlsbad plants which

³ AL 4496-E, filed by PG&E with respect to RA capacity at Moss Landing, also concerned contracts that were not “more than two years but less than five years” in length, but the showing made by PG&E was not required.

⁴ The Commission takes notice that California’s First Appellate District Court granted a writ of review on September 14, 2016, of the Commission’s Carlsbad decision. However, any potential delay in the approval of Carlsbad or the closing of Encina does not affect the criteria for determining whether to approve the NRG Contract for 2017.

have been approved by the Commission. The OTC status of Encina is mentioned in SDG&E's Tier 3 Advice Letter.

Finally, since the Advice Letter was filed as a Tier 3 Advice Letter, SDG&E is in compliance with the higher scrutiny afforded to OTC procurement, and the arguments of Cogentrix regarding OTC plant review standards do not apply.

SDG&E's Procurement Review Group ("PRG") Was Notified of the NRG Contract

The Commission established PRGs in D.02-08-071 to oversee the procurement activities of IOUs and mandated that each IOU maintain and routinely consult with its PRG. The purpose of the PRG is to review and assess the details of the IOUs' overall procurement strategy and specific proposed procurement contracts and processes prior to submitting filings to the Commission.⁵

Cogentrix argues that SDG&E did not meet with the PRG regarding the NRG contract before filing the Advice Letter on June 9, 2016. However, SDG&E briefed the PRG on the progress of the bilateral negotiation on April 15, 2016, and May 20, 2016, outlining the broad contours of the agreement. Then on June 17, 2016, SDG&E presented the terms of the deal to the PRG. Any member of the PRG who objected to the terms could have filed a protest to the agreement when the Advice Letter was filed. On the whole, we find the PRG was adequately informed on this matter.

The NRG Contract Complies with SDG&E's Public Utilities Code Section 454.5 Bundled Procurement Plan

A Commission-approved AB 57 Bundled Procurement Plan establishes the limits and criteria that guide utility procurement activities. All transactions and actions that fall within the boundaries of a Commission-approved AB 57 procurement plan are compliant and are assured cost recovery.

In D.15-10-031, the Commission adopted SDG&E's 2014 Bundled Procurement Plan compliance filing covering the years 2015 through 2025 with modifications. This Decision required SDG&E to file a conformed version of the 2014 Bundled Procurement Plan ("2014 BPP") through a Tier 2 advice letter, AL 2850-E-A,

⁵ D.02-08-071, pages 7 and 8.

which was approved on March 30, 2016. Where additional RA capacity must be acquired, the BPP permits the use of “bilateral negotiations to add resources based on least-cost, best fit principles.”⁶

In accordance with D.04-07-028, depending upon the length and timing of need, SDG&E may seek RA products of up to 5 years in length either through bilateral negotiations; through an SDG&E RFO process; or through participation in a counterparty RFO or electronic auction process. [fn] SDG&E may procure excess capacity from resources to enhance local area reliability in order to reduce the chance of the backstop by the ISO as part of the ISO’s capacity procurement mechanism Tariff authorization.⁷

The footnote states that “In D.04-07-028, the Commission relaxed the restrictions on negotiated bilateral contracts to allow for the use of bilateral negotiated contracts for capacity and energy from power plants where the purpose is to enhance local area reliability...”

Cogentrix argues that SDG&E should have used a competitive RFO process instead. SDG&E responds that the timeline for the procurement was too short for a full RFO process,⁸ noting that if SDG&E did “not contract with the Encina units, there remains a high probability that CAISO will exercise its backstop procurement authority to procure the Encina units, at a significantly increased cost to San Diego ratepayers.” (AL 2902-E, p.5) Cogentrix counters that CAISO would use a RFO process for backstopping the necessary capacity; SDG&E notes that the implementation of the market based CPM has been delayed by CAISO.⁹

Here, SDG&E is arguably procuring “excess capacity from resources to enhance local area reliability in order to reduce the chance of the backstop by the ISO as part of the ISO’s capacity procurement mechanism Tariff authorization,” so

⁶ SDG&E 2014 BPP, p. 97.

⁷ SDG&E 2014 BPP, p. 30.

⁸ SDG&E Reply to Protest, p. 1.

⁹ SDG&E Reply to Protest, p. 2.

bilateral negotiations were permitted under SDG&E's 2014 BPP. Given that the capacity need identified in the 2017 LCT Study was great enough that at least part of Encina had to be under contract, and since Encina is an OTC plant near its OTC closure deadline and a Tier 3 Advice Letter was required, the Commission believes that there was not enough time to conduct a proper RFO for this procurement by SDG&E.

We conclude that the amount of proposed capacity and the procurement method of bilateral negotiations complies with SDG&E's Bundled Procurement Plan.

The NRG Contract Meets Residual Capacity Needs for SDG&E's Bundled Customers

SDG&E demonstrates its residual need in Confidential Attachment A of Advice Letter 2902-E. We evaluated this information and determined that the NRG Contract meets residual system capacity needs for SDG&E's bundled customers.

The NRG Contract Is Reasonably Priced

In confidential filings to the Commission, SDG&E used comparative and qualitative criteria to demonstrate the reasonableness of the bilaterally-negotiated NRG Contract, and set forth multiple scenarios to analyze all of its options to meet the additional local area need resulting from the 2017 LCT Study.

We evaluated SDG&E's assumptions, evaluation criteria, and evaluation process, and found them reasonable. The evaluation results show that the NRG Contract is reasonably priced and provides cost certainty to SDG&E customers for 2017. These findings are confirmed by the Independent Evaluator Report.

The NRG Contract Does Not Violate Safety Concerns

The NRG Contract would run an existing power plant, Encina, which currently operates under operational and maintenance obligations in accordance with General Order 167, industry standards, and California Independent System Operator ("CAISO") mandated standards, as well as requirements to comply with accepted electrical practices, applicable laws and permits, and other governmental authorities.

SDG&E has also reported to the Commission on NRG Encina's history of Occupational Safety and Health Administration ("OSHA") employee recordable and contractor recordable incidents, safety planning, and associated programs.

Decommissioning and demolition of Encina is an important safety consideration. NRG has a record demonstrating the safe and successful decommissioning of power plants.

In light of the preceding discussion, we are convinced that SDG&E's entrance into the NRG Contract complies with all relevant requirements. We also expect that SDG&E will refrain from exercising market power in the resale of excess system capacity.

The disclosure of the NRG Contract is subject to the Public/Confidential treatment specified in D.06-06-066 and other relevant precedents. The NRG Contract begins on January 1, 2017; the confidential terms of this contract will become public after three years, unless D.06-06-066 is modified to amend the current confidentiality treatment.

COMMENTS

Public Utilities Code section 311(g)(1) provides that resolutions must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS

1. Decision.12-04-046 directed that any once-through-cooling ("OTC") power purchase agreement that terminates one year or less prior to the applicable State Water Resources Control Board ("SWRCB") compliance deadline must be submitted to the Commission for approval via a Tier 3 advice letter.
2. On April 29, 2016, San Diego Gas & Electric Company ("SDG&E") submitted Advice Letter 2902-E seeking Commission approval for a capacity agreement ("NRG Contract") between SDG&E and NRG Power Marketing, LLC for capacity from Encina, a combined-cycle electric generating facility that utilizes once-through cooling.

3. The NRG Contract is for 858.5 MW of Local and System RA capacity and 280 MW of Flexible RA.
4. The NRG Contract will provide SDG&E with resource adequacy benefits for a term beginning on January 1, 2017, and ending on December 31, 2017.
5. Encina is subject to the State Water Resources Control Board Once-Through-Cooling policy and has a compliance deadline of December 31, 2017.
6. The NRG Contract ends on December 31, 2017, on the day of the State Water Resources Control Board Once-Through-Cooling deadline for Encina.
7. The NRG Contract meets residual capacity needs for SDG&E's bundled customers.
8. Consistent with Decision 02-08-071, SDG&E's Procurement Review Group was briefed on the bilateral negotiations on April 15, 2016, and notified of the NRG Contract on May 20, 2016.
9. The bilateral nature of the NRG Contract complies with SDG&E's approved Assembly Bill 57 bundled procurement authority for 2016.

THEREFORE IT IS ORDERED THAT:

1. The request of San Diego Gas and Electric Company (“SDG&E”) that the Commission approve the resource adequacy (“RA”) agreement between SDG&E and NRG Power Marketing, LLC, as requested in Advice Letter 2902-E, is granted.
2. We expect that SDG&E shall refrain from exercising market power in the resale of excess capacity.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on October 27, 2016; the following Commissioners voting favorably thereon:

TIMOTHY L. SULLIVAN
Executive Director