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TO PARTIES OF RECORD IN APPLICATION 14-07-009

This is the proposed decision of Administrative Law Judge Yacknin. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's April 9, 2015 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ KAREN V. CLOPTON

Karen V. Clopton, Chief  
Administrative Law Judge

KVC:ek4  
Attachment

Decision PROPOSED DECISION OF ALJ YACKNIN (Mailed on 3/6/2015)

**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 on July 21, 2014)

**DECISION DENYING WITHOUT PREJUDICE SAN DIEGO GAS & ELECTRIC COMPANY'S APPLICATION FOR AUTHORITY TO ENTER INTO PURCHASE POWER TOLLING AGREEMENT WITH CARLSBAD ENERGY CENTER, LLC**

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**DECISION DENYING WITHOUT PREJUDICE SAN DIEGO GAS & ELECTRIC COMPANY'S APPLICATION FOR AUTHORITY TO ENTER INTO PURCHASE POWER TOLLING AGREEMENT WITH CARLSBAD ENERGY CENTER, LLC****Summary**

This decision denies San Diego Gas & Electric Company's application for authority to enter into a purchase power tolling agreement with Carlsbad Energy Center, LLC, without prejudice to a renewed application for its approval in the event that San Diego Gas & Electric Company's request for offers fails to produce more than the minimum required 200 megawatts of preferred resources and/or energy storage, or for approval of an amended purchase power tolling agreement with Carlsbad Energy Center, LLC, for a smaller project in the event that the request for offers produces more than the minimum 200 megawatts of preferred resources and/or energy storage but less than the entirety of San Diego Gas & Electric Company's procurement authority.

**1. Procedural Background**

Decision (D.) 14-03-004, the Commission's "Track 4" decision in the 2012 long-term procurement planning (LTPP) proceeding (Rulemaking (R.) 12-03-014), authorized San Diego Gas & Electric Company (SDG&E) to procure between 500 and 800 megawatts (MW) of new resources by 2022 to meet the local capacity reliability (LCR) need caused by the retirement of the San Onofre Nuclear Generating Station (SONGS).<sup>1</sup> The Track 4 decision required SDG&E to procure at least 200 MW, and up to 100 percent, of this amount from preferred resources (energy efficiency, demand response and

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<sup>1</sup> The Track 4 decision also determined and authorized Southern California Edison Company (SCE) to procure its LCR need caused by retirement of SONGS.

renewable resources) or energy storage. The Track 4 decision required SDG&E to issue an all-source request for offers (RFO) for some or all of the identified local capacity need, and also allowed it to solicit offers through bilateral negotiations, subject to Energy Division approval of its procurement plan.<sup>2</sup> SDG&E issued its all-source RFO on September 5, 2014, and received offers on January 5, 2015; it expects to identify a preliminary shortlist of viable offers by mid-May 2015. (See Ex. 17 and Ex. 20.)

By this application, SDG&E seeks authority to enter into a power purchase tolling agreement (Carlsbad PPTA) with the Carlsbad Energy Center, LLC, (Carlsbad Energy Center) to fill 600 MW of its local capacity need as identified in D.14-03-004. The Carlsbad PPTA would provide approximately 600 MW of nominal capacity from a natural gas-fired, simple cycle peaking generating facility (Carlsbad project) located adjacent to the existing Encina Power Station in Carlsbad, California. The Carlsbad project would consist of six generating units utilizing General Electric LMS 100 technology with each unit capable of multiple starts and stops per day. The Carlsbad project has an expected online date of November 1, 2017, and is expected to provide power for 20 years.

The issues to be determined, as identified in the scoping memo for the proceeding, are:

1. Does the application comply with SDG&E's procurement authority as granted by D.14-03-004?
2. Should the local capacity requirement identified in D.14-03-004 be adjusted to account for transmission

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<sup>2</sup> The Track 4 decision, D.14-03-004, followed on the heels of D.13-02-015 (the "Track 1" decision in R.12-03-014) and D.13-03-029 (in SDG&E's Application 11-05-023) which determined and authorized SCE's and SDG&E's respective LCR needs assuming the continued operation of SONGS.

- projects identified in the California Independent System Operator's (CAISO) 2013-2014 Transmission Planning Process (TPP)? If so, how?
3. Is the Carlsbad PPTA a reasonable means to meet the 600 MW of identified LCR need that D.14-03-004 determined may be met by conventional resources? This issue includes consideration of the following:
    - Should the Carlsbad PPTA be required to submit to SDG&E's RFO process, whether for the entirety of SDG&E's LCR need or only for the 600 MW identified as permissibly to be met by non-preferred resources?
    - Is the Carlsbad PPTA the best fit for the identified need? This, in turn, encompasses consideration of whether there are better and available alternatives to meet this need.
    - Does the Carlsbad PPTA provide additional benefits above and beyond the identified need?
    - Will the Carlsbad PPTA enhance the safe and reliable operation of SDG&E's electrical services?
    - Are the price, terms and conditions of the Carlsbad PPTA reasonable?
    - Are any other commitments made by SDG&E that are contingent on approval of the Carlsbad PPTA reasonable?
  4. Is Cost Allocation Methodology (CAM) treatment appropriate ratemaking treatment for the costs of the Carlsbad PPTA? This issue encompasses consideration of whether SDG&E properly complied with its obligation pursuant to D.07-12-052 to establish and consult with a CAM group.
  5. Is the Commission required to conduct an environmental review of the Carlsbad project pursuant to the California Environmental Quality Act?

Evidentiary hearings were held on November 12 and 13, 2014. Parties filed opening briefs on December 10, 2014, and reply briefs on December 22, 2014. SDG&E served late-filed Exhibit 20<sup>3</sup> on January 13, 2014. Parties filed comments on Exhibit 20 on January 20, 2014, and reply comments on January 26, 2014, upon which the matter was submitted.

## **2. Compliance with Procurement Authority**

As an initial matter, we consider whether D.14-03-004 authorizes SDG&E to bring this application for approval of a bilateral contract to meet some of its procurement authority. We conclude that it does. By its plain terms, D.14-03-004 authorized SDG&E to conduct an all-source solicitation *and* to pursue contracts on a bilateral basis, subject to the Commission's Energy Division approval of SDG&E's procurement process, and to procure up to 600 MW of the authorized LCR need from any resource type including conventional resources. (D.14-03-004 at 1, 4 and *passim*.) The Energy Division approved SDG&E's procurement plan, which included going forward concurrently with an all-source solicitation for the entirety of SDG&E's procurement authority and this application for approval of the Carlsbad PPTA. D.14-08-008, which denied a petition to modify D.14-03-004, affirmed that, as there was no assurance that the Commission would approve this application and as D.14-03-004 requires that only 200 MW of SDG&E's authorized procurement

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<sup>3</sup> Exhibit 20 is a list of the offers, by resource type, megawatt size and on-line date that were bid into SDG&E's September 5, 2014, all-source request for offers to meet its procurement requirements.

be met with preferred resources, SDG&E's procurement plan was consistent with D.14-03-004.<sup>4</sup>

Sierra Club and the California Environmental Justice Alliance (jointly, Sierra Club/CEJA) contend that, by aiming to fulfill the entirety of its LCR need that is not set aside for preferred resources, this application violates D.14-03-004's requirement that SDG&E issue a meaningful all-source request for offers for "some or all" of its resource requirement, the State's Loading Order policy that prioritizes preferred resources (energy efficiency, demand response and renewable resources) over fossil-fuel resources, and D.14-03-004's requirement that the request for offers be technology-neutral. This contention implicates the issue of whether the PPTA should be approved as reasonable, which we discuss below. However, it does not inform the issue of whether SDG&E is authorized to bring this application. As D.14-08-008 affirms, D.14-03-004 authorizes SDG&E to bring this application.

Californians for Renewable Energy, Inc. (CARE) contends that the application does not comply with the procurement authority granted in D.14-03-004 because the Carlsbad PPTA allows capacity payments for up to 633 MW which is 33 MW more than D.14-03-004 authorizes SDG&E to procure from non-preferred resources. This contention implicates the issue of whether the terms of the PPTA are reasonable, which we discuss below. However, it does not inform the issue of whether SDG&E is authorized to bring this application.

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<sup>4</sup> By the same token, Energy Division's approval of SDG&E's procurement plan does not prejudice the reasonableness of a bilateral contract in lieu of procurement through an RFO. We address that issue further below.

Decision 14-03-004 authorizes SDG&E to procure up to 600 MW of non-preferred local capacity resources and, with a nameplate capacity of 600 MW, the Carlsbad project reasonably represents 600 MW of local capacity resources. The fact that it is capable of producing more than that when operating at maximum capacity under optimal conditions does not make it a larger facility or reasonably bar this application.

### **3. Adjustment for Transmission Projects**

Decision 14-03-004 authorizes SDG&E to procure between 500 and 800 MW by 2022 to meet local capacity needs stemming from the retirement of SONGS, and requires SDG&E to procure at least 200 MW from preferred resources. D.14-03-004 largely bases its determination of the utilities' LCR needs on the results of the CAISO's model of long-term capacity needs in the absence of SONGS. The CAISO's analysis did not assume new transmission resources that might be identified in the CAISO's 2013-2014 TPP which, at the time, was anticipated to be completed by March 2014. However, recognizing (among other things) the possibility of such transmission upgrades, D.14-03-004 authorized procurement based on the lower end of the range of results of the CAISO's analysis, noting as follows:

If some level of new transmission resources is identified in the 2013/2014 TPP which would reduce LCR needs in the SONGS service area by 2022 [...], the total amount of overall procurement needed in the SONGS service area would be reduced. However, we have already considered the possibility of the Mesa Loop-In going forward in analyzing procurement authorizations. Nevertheless, it is possible that the [2013]/2014 TPP results would mean that fewer of the resources identified in this subsection [regarding the 2013/2014 TPP results] ultimately would be needed. However, this does not mean there would be a need to change or update this decision. Instead, some combination of the

following would occur: a) procurement at or near the minimum levels authorized in this decision; b) less procurement or no procurement authorized in future LTPP proceedings; and c) less of a need to delay retirements of [once-through cooling (OTC)] plants.

The range of procurement authorized for both utilities in this decision is intended to provide flexibility to meet a variety of circumstances. The 2013/2104 TPP is unlikely to result in major changes to the analysis in this decision. (D.14-03-004 at 116-117.)

Recognizing the possibility that the 2013-2014 TPP might nevertheless give cause to adjust the LCR need, the assigned Commissioner's scoping memo identified it as an issue to be determined in this proceeding. (*See* Section 2, above.)

The CAISO's 2013-2014 TPP bulk transmission reliability study has been completed. The study modeled SDG&E's and SCE's authorized procurement amounts<sup>5</sup> -- in part with a hypothetical 558 MW combined cycle generation project in the Carlsbad area by 2018 (Ex. 4 at 3) -- in order to identify transmission and resource deficiencies. The CAISO staff identified four new transmission projects to partially mitigate the identified deficiencies, which have been approved by the CAISO Board of Governors. The modeling shows that, assuming conservative estimates for the transmission projects' overall

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<sup>5</sup> This includes the amounts authorized for SDG&E in D.13-03-029 (in SDG&E's Application 11-05-023), for SCE in the Track 1 decision, D.13-02-015, and for both SDG&E and SCE in the Track 4 decision, D.14-03-004.

effectiveness, there is a residual need of up to 900 MW in the SONGS study area by 2022. (Ex. 4 at 4-5.)<sup>6</sup>

It is now clear that the LCR need determined in D.14-03-004 should not be reduced based on the new transmission projects identified in the 2013-2014 TPP. This is because the effectiveness and need for the identified transmission projects is based on an analysis that models the generation procurement that was authorized in D.14-03-004, including a rough equivalent of the Carlsbad project. (CAISO reply brief at 3-4.) The CAISO's explanation is irrefutable, if somewhat circular: The new transmission projects identified in the 2013-2014 TPP study cannot be found to reduce the LCR need determined in D.14-03-004 because the 2013-2014 TPP study *assumes* the procurement of that LCR need.<sup>7</sup>

CARE suggests that the 2013-2014 TPP study is unreliable because it allegedly contains different planning assumptions than the modeling assumptions in Track 4 of the 2012 LTPP proceeding. As evidence of its inconsistency, CARE cites to findings of fact and dicta in D.14-03-004 that three of the four identified transmission upgrades - the Mesa In-Loop project, the Imperial Valley flow controller project, and the additional dynamic reactive

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<sup>6</sup> The CAISO's preliminary reliability analyses in the 2014-2015 transmission planning cycle, which will assess residual need in light of more current load forecast information and "the specifics of conventional and preferred resources and storage," indicate that there may not be any residual need. (Ex. 4 at 6.)

<sup>7</sup> While the Office of Ratepayer Advocates (ORA) and Sierra Club/CEJA suggest that Imperial Valley flow controller project, which is scheduled to be in service May 2017, should mitigate concerns that there might be a need to delay the retirement of OTC plants (which we discuss in greater detail below), they do not advocate adjustment of SDG&E's LCR need determination. (ORA opening brief at 9; Sierra Club/CEJA opening brief at 9-10.) We address this argument in the context of the reasonableness of the PPTA outside of an RFO, below.

support at San Luis Rey – would reduce LCR needs.<sup>8</sup> CARE asserts that this alleged inconsistency demonstrates that the transmission projects will therefore eliminate any need for the Carlsbad PPTA. (CARE opening brief at 6-9.) To the contrary, as cited above, D.14-03-004 determined a range of LCR needs recognizing the possibility of these transmission projects, and concluded that the appropriate response to these transmission projects’ approval is not to revise the LCR need determinations, but rather to procure at the lower end of the range, adopt a lower LCR need determination than otherwise in future LTTP proceedings, and/or avoid the potential need to delay the retirement of OTC units. In any event, as explained above, the new transmission projects address transmission and resource deficiencies that were identified assuming procurement of the LCR need determined in D.14-03-004. They do not reduce it.

#### **4. PPTA Reasonableness**

##### **4.1. Summary**

It is axiomatic that “[an] RFO to meet resource needs should be the default option and contracting bilaterally should be the fall[-]back position if unique options exist or if it is not feasible time wise or based on some other reason to issue an [RFO],” and “implementation of a robust competitive solicitation process is the best means to assess the availability of generation options and

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<sup>8</sup> “The Mesa Loop-In project would reduce the amount of gas-fired generation that would need to be sited in the LA Basin by approximately 1,200 MW, or 734 MW if there is no load shedding or additional gas-fired generation in the SDG&E territory.” (D.14-03-004, Finding of Fact 36.) “SDG&E’s proposed 500 kV Direct Current transmission project from Imperial Valley to SONGS would reduce the San Diego generation requirement by 850 MW and would reduce the generation requirement for the LA Basin by 551.” (*Id.*, Finding of Fact 40.) “Therefore, we find that any estimate of whether or how much additional reactive support would change LCR needs to be speculative, and will not make any adjustment to the ISO’s study for this purpose.” (*Id.* at 33-34.)

competitive market prices.” (Ex. 1, App. D (“Report of the Independent Evaluator”) at 32, 39.)

Whether or not it is reasonable to deviate from the default RFO process largely depends upon the definition of the need that SDG&E’s authorized procurement is intended to meet. If the need to be met is defined as “a 600 MW conventional gas-fired facility in the Carlsbad area on-line by 2018,” then we would find it reasonable to approve the Carlsbad PPTA as a reasonable means of meeting that defined need. However, 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.” We therefore find 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.

## **4.2 Best Fit**

### **4.2.1 Timing**

The main argument for contracting bilaterally rather than awaiting the results of an RFO is that “delaying action on this Application to await the results of SDG&E’s all-source RFO likely will jeopardize the timely retirement of the Encina [Power Station] and/or create a significant reliability gap.” (SDG&E opening brief at 12.) The Encina Power Station (Encina) uses OTC technology and is subject to the State Water Resources Control Board (SWRCB) Statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (OTC Policy), which requires Encina to demonstrate compliance with stringent water use standards by December 31, 2017. Encina’s

compliance path is to retire all OTC units on or before the deadline. SDG&E and the CAISO maintain that the Encina retirement will create a potential reliability issue in the event that it is not immediately replaced with generation facilities at or near its location.

The Carlsbad PPTA has an on-line date of November 1, 2017, which would avoid any such reliability gap. In contrast, SDG&E anticipates that it will identify a preliminary shortlist of offers in response to its RFO mid-May 2015 and file an application for approval of its results in the first quarter of 2016, making it unlikely any such results will match the Carlsbad PPTA's on-line date. (Ex. 20.)

SDG&E states, "Ultimately, the determination regarding the appropriate timeline for new resource procurement will require balancing of the State's policies regarding retirement of OTC facilities, competitive procurement and system reliability." (SDG&E opening brief at 14.) However, SDG&E's statement of the balancing equation omits the State's policy regarding the Loading Order:

Consistent with [Pub. Util. Code § 454.5(b)(9)(C)], the Commission has held that all utility procurement must be consistent with the Commission's established Loading Order, or prioritization. The Loading Order, first set forth in the Commission's 2003 Energy Action Plan, was presented in the Energy Action Plan II adopted by this Commission and the California Energy Commission (CEC) in October 2005. The Loading Order, which has been reiterated in multiple forums (including D.12-01-033 in the predecessor to this docket, and D.13-02-015 in this docket), requires the utilities to procure resources in a specific order:

"The 'Loading Order' established that the state, in meeting its energy needs, would invest first in energy efficiency and demand-side resources, followed by renewable resources, and only then in clean conventional electricity supply." (Energy Action Plan 2008 Update at 1.)

In the 2008 Energy Action Plan Update at 20, the Commission further interpreted this directive to mean that the [investor-owned utilities (IOUs)] are obligated to follow the Loading Order on an ongoing basis. Once procurement targets are achieved for preferred resources, the IOUs are not relieved of their duty to follow the Loading Order. In D.07-12-052 at 12, the Commission stated that once demand response and energy efficiency targets are reached, “the utility is to procure renewable generation to the fullest extent possible.” The obligation to procure resources according to the Loading Order is ongoing. [D.12-01-033 at 19.] In D.12-01-033 at 21, the Commission recognized that procuring additional preferred resources is more difficult than “just signing up for more conventional fossil fuel generation,” but consistency with the Loading Order and advancing California’s policy of fossil fuel reduction demand strict compliance with the loading order.

This clarified Loading Order is a departure from the Commission’s previous position of procuring energy efficiency and demand response, then renewable energy, and then allowing “additional clean, fossil-fuel, central-station generation,” because “preferred resources require both sufficient investment and adequate time to ‘get to scale.’” Instead of procuring a fixed amount of preferred resources and then procuring fossil-fuel resources, the IOUs rate required to continue to procure the preferred resources “to the extent that they are feasibly available and cost effective.” While procuring a fixed amount of preferred resources provides flexibility and a clearer idea of how to approach the procurement process, the Loading Order approach is more consistent with Commission policy.

(D.14-03-004 at 13-15, footnotes omitted.)

To be clear, D.14-03-004 authorized SDG&E to procure from 500 MW up to 800 MW by 2022, of which at least 200 MW must be -- *and up to 100 percent may be* -- preferred resources. (D.14-03-004 at 2.) If approved, the Carlsbad PPTA for 600 MW of conventional generation resources will categorically preclude any

procurement of preferred resources beyond the mandatory minimum. It will relieve SDG&E of the duty “to procure renewable generation to the fullest extent possible” once it achieves the 200 MW minimum target for preferred resources, as mandated by the Commission. Thus, a better statement of the fundamental issue before us is whether the benefit of a competitive procurement process and its potential for procuring additional preferred resources beyond the minimum required by D.14-03-004 outweighs the risk of delaying Encina’s timely retirement and/or creating a reliability gap upon its retirement. We conclude that it does.

In determining SDG&E’s LCR need for the planning horizon 2011 to 2020, the Commission carefully considered and accounted for the anticipated retirement of the Encina OTC units. Starting with the results of the CAISO’s OTC model of its recommended base case scenario,<sup>9</sup> D.13-03-029 subtracted forecasted amounts of uncommitted energy efficiency, demand response, and combined heat and power resources, and determined an LCR need of 343 MW to account for the 2018 OTC retirements. In so doing, D.13-03-029 acknowledged that the OTC’s modeling assumptions reflected the CAISO’s statutory responsibility to consider, for transmission planning purposes, only those resources that are certain to materialize, but emphasized that the Commission’s statutory responsibility requires us to ensure just and reasonable rates.

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<sup>9</sup> This is the same OTC model used to determine SCE’s LCR need in the Track 1 decision. (D.13-02-015 at 14-15.) The OTC study evaluated the LCR for 2021 under the four Renewables Portfolio Standard (RPS) resource additions scenarios that were developed in the 2010 LTPP: the cost-constrained scenario, with 909 MW of RPS additions in the SDG&E service territory by 2020 (which the CAISO recommended as its base case); the trajectory scenario, with 508 MW; the environmentally-constrained scenario, with 317 MW; and the time-constrained scenario, with 74 MW. (See D.13-03-029, fn. 4.)

(D.13-03-029 at 9.) Shortly thereafter, the Commission authorized SDG&E to enter into a PPTA with the Pio Pico Energy Center to meet this authorized need and, in so doing, rejected efforts to revisit its previous need determination.

(D.14-02-016 at 5 and Conclusion of Law 1, “Absent an unforeseen emergency situation that requires a patent response, the public interest in regularly conducting and acting on a sound analysis of long-term need for procurement outweighs the unavoidable risk that the future will not exactly adhere to our forecasts.”)

When the Commission subsequently reviewed SDG&E’s (and SCE’s) incremental local capacity needs for the planning horizon 2012 to 2022 stemming from the retirement of SONGS, it directed SDG&E to procure its authorized additional resources by 2022 without direct reference to such need arising in 2018. (*See* D.14-03-004.) SDG&E, the CAISO, and Carlsbad Energy Center point to the statement in D.14-03-004 that “[p]rocurement needs may become critical as early as 2018...” as evidence that the Commission recognized an urgent need to procure new resources that overcomes the default RFO option. (D.14-03-004 at 113 and Finding of Fact 91.) But the decision also states that “[b]oth SCE and SDG&E have sufficient supplies to meet projected demands in the SONGS service area through *at least* 2018, even with the unexpected early retirement of SONGS.” (D.14-03-004, Finding of Fact 5, *emphasis added*.) These statements are reconciled by recognizing them as referencing the then-pending need for SDG&E to procure its previously determined LCR need by 2018 to account for

Encina's retirement.<sup>10</sup> They do not demonstrate a Commission determination that SDG&E's incremental LCR need is driven by Encina's retirement in 2018.

The CAISO argues that its Track 4 testimony (Exhibit 31) and its 2013-2014 TPP study (Ex. 32) demonstrate a 2018 need for generation in the Carlsbad area. (CAISO reply brief at 2-3.) The Commission previously considered the CAISO's Track 4 testimony in reaching its Track 4 decision and made no such determination. The purpose for considering the 2013-2014 TPP study in this proceeding is to determine if the new transmission projects that it identifies show cause to reduce SDG&E's LCR need, as discussed previously; it is not to reevaluate the LCR need determination in D.14-03-004.

Nevertheless, we recognize the limitations of forecasting long-term procurement needs and the reliability risk that is posed by miscalculating and under-procuring future needs. To this, Sierra Club/CEJA, ORA, Protect Our Communities (POC) and Shell Energy North America (US), L.P. (Shell) counter that, to the extent the Encina OTC retirement were to cause a system reliability gap, the SWRCB, pursuant to CAISO recommendation, can extend the operation of Encina beyond its December 31, 2017, OTC compliance date while SDG&E completes its all-source RFO. Specifically, Section 2(b)(2)(b) of the OTC regulations allows for compliance date extensions of more than 90 days, as follows:

If CAISO determines that continued operation of an existing power plant is necessary to maintain the reliability of the electric system, CAISO shall provide written notification to

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<sup>10</sup> D.13-03-029 directed SDG&E to procure its LCR need by 2018. The administrative law judge's proposed decision in R.12-03-014, which the Commission adopted as D.14-02-016 on March 13, 2014, was mailed and published on February 11, 2014.

the State Water Board, the Regional Water Board with jurisdiction over the existing power plant, and the [Statewide Advisory Committee on Cooling Water Intake Structures]. If the Executive Directors of the CEC and CPUC do not object in writing within 10 days to CAISO's determination, the notification provided pursuant to this paragraph will suspend the final compliance date for 90 days. During the 90-day time suspension or within 90 days of receiving a written notification from CAISO, the State Water Board shall conduct a hearing in accordance with paragraph (d) to determine whether to suspend the final compliance date for more than the original 90 days pending, if necessary, full evaluation of amendments to final compliance dates contained in the policy.

The CAISO and Carlsbad Energy Center counter there is no assurance that the CAISO would recommend or the SWRCB would adopt an extension of the Encina compliance deadline. (CAISO opening brief at 10; Carlsbad Energy Center opening brief at 18-19.) The CAISO further objects that an extension could potentially be costly to ratepayers, especially if necessary for a long period of time. (CAISO reply brief at 6-7.)<sup>11</sup>

We weigh the risk of a reliability gap and/or delay in the Encina OTC retirement (and its potential ratepayer costs) against the certainty that approval of the Carlsbad PPTA will categorically preclude the procurement of renewable generation "to the fullest extent possible." On balance, we find that the public interest in awaiting the results of SDG&E's RFO for the purpose of ascertaining the availability of more than the minimum 200 MW of preferred resources and/or energy storage to meet SDG&E's LCR need outweighs that risk.

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<sup>11</sup> Carlsbad Energy Center claims that Encina has reached the end of its useful life, and states that the capital improvement planning and maintenance plans for Encina are predicated on retirement by December 31, 2017. (Carlsbad Energy Center opening brief, at 18; Ex. 3 at 8-9.)

#### 4.2.2. Resource Type

SDG&E argues that preferred resources are not the best resource type for fulfilling its any-source procurement authority, first, because SDG&E's LCR need determination assumed that it would also add 408 MW of preferred resources beyond what currently exists in its portfolio and, second, because (as it testified in the Track 4 proceeding), SDG&E requires a significant amount of its authorized procurement to be able to integrate renewable resources, for which fully dispatchable conventional resources are near-ideal. (SDG&E opening brief at 16-17.) SDG&E maintains that other gas-fueled generation resources would likely take seven or more years to complete, making it unreasonable to await the results of the RFO in favor of the Carlsbad PPTA. (SDG&E opening brief at 17-19.)

The Commission did not endorse SDG&E's case for the need for fully dispatchable resources in the Track 4 proceeding. Instead, recognizing that SDG&E has been approved to fill the 298 MW authorized by D.13-03-029 from the gas-fired Pio Pico Energy Center, D.14-03-004 directed SDG&E to procure up to 100 percent of its incremental LCR need from preferred resources. (D.13-04-003 at 96.) In contrast, D.14-03-004 required SCE to procure at least 40 percent of its LCR need from conventional gas-fired resources. (Id. at 94.) 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 or its implicit determination that SDG&E does not require any minimum amount of its LCR need to have flexible dispatchability.<sup>12</sup>

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<sup>12</sup> Furthermore, it is not clear that conventional resources are uniquely capable of being dispatched to integrate renewable resources. In particular, POC offers evidence that energy

*Footnote continued on next page*

Furthermore, SDG&E's RFO has produced a robust number of offers for preferred resources and energy storage which could potentially meet some, if not all, of the 300 MW to 600 MW of SDG&E's LCR need that may be procured from any source. (Ex. 20.) We acknowledge SDG&E's important caveats regarding the viability of these offers: SDG&E has not yet completed conformance checks or analyzed project viability; the offers include multiple offers for different configurations of the same project; and some offers include more than one technology may be duplicate offers. (*Id.*) Nevertheless, the evidence does not lead us to presume that the RFO will fail to produce feasibly available and cost-effective preferred resource options to meet SDG&E's procurement requirement beyond the 200 MW minimum of preferred resources and energy storage.

For various reasons, CARE contends that the Carlsbad PPTA is not a reasonable means to meet the 600 MW of LCR need that may be met by conventional resources. First, CARE contends the Carlsbad PPTA would be rejected from the RFO as nonconforming because it exceeds the maximum allowable capacity at 630 MW and because it does not conform to certain conditions for participation in the RFO, e.g., that a repowered facility submit evidence that it has received all interconnection agreements and permits, and that conventional bids must offer a specified minimum guaranteed availability factor. (CARE opening brief at 9.) We reject CARE's contention with regard to project capacity for the reasons discussed previously. We reject CARE's

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storage provides greater flexibility due to its charging ability and shorter time requirement to ramp to full capacity, and none of the air permitting constraints on operation to which the Carlsbad project is subject. (Ex. 14 at 10-13.)

contention with regard to the Carlsbad PPTA's conformance with the requirements of SDG&E's all-source RFO, first, because this is not a bid into the RFO and therefore its adherence to them is of marginal relevance, and, second, because the referenced RFO requirements are not in evidence,<sup>13</sup> and their meaning is not capable of immediate and accurate determination by resort to the referenced source document.<sup>14</sup>

Next, CARE, as well as Shell and World Business Academy, contend that the Carlsbad project peaker units are not the optimal resource type to meet SDG&E's LCR need. Shell contends that other resources, including pumped hydro storage, provide regulation, provide better renewable resource integration because they offer VAR support and ancillary services in addition to the ramping capability offered by the Carlsbad project. (Shell opening brief at 2.) CARE contends that the 540 MW combined-cycle Carlsbad project that was previously permitted by the California Energy Commission is a better alternative to the 600 MW single-cycle Carlsbad project because it has fast start and fast ramping along with substantially lower greenhouse gas emissions and lower operating costs than the single cycle project. (CARE opening brief at 12-13.) World Business Academy contends that a similar facility comprised of fuel cells, particularly fuel cells running on hydrogen, are a better choice from an environmental perspective than the Carlsbad project's gas turbines. (World Business Academy opening brief at 8.) However, as between non-preferred resources, the test of

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<sup>13</sup> CARE merely offers a footnote with a page cite and a link purportedly to the source document. (CARE opening brief, fn. 24 and 25.)

<sup>14</sup> SDG&E contests CARE's characterization of requirements. (SDG&E reply brief, fn. 44.).

reasonableness is not whether the resource is the least polluting, or the best able to integrate renewable resources, or the least expensive. Furthermore, it need not be the optimum act, but must be within the spectrum of reasonable acts.

(*Re Southern California Edison Company* [D.90-09-088] 37 CPUC2d 488, 499-500.)

The attributes of the Carlsbad facility resource technology, along with the additional benefits of the Carlsbad PPTA as discussed below, allow us to conclude that the Carlsbad PPTA and its technology are a reasonable means of meeting SDG&E's LCR need in the absence of feasibly available and cost-effective preferred resource and energy storage alternatives.

**a. Additional Benefits**

SDG&E claims that the Carlsbad PPTA provides additional benefits including reliability benefits by virtue of being able to meet SDG&E's LCR need by 2018, renewable resources integration benefit due to its flexible dispatchability, and locational benefits by virtue of being highly compatible with the existing transmission system and on previously disturbed land. (SDG&E opening brief at 2-3.)<sup>15</sup> While we acknowledge these attributes as being beneficial, they do not overcome our commitment to first determining if additional preferred resources and energy storage can be made available to meet SDG&E's all-source LCR need. However, in the absence of such additional preferred resources and energy storage – and determining, as we discuss below, that its price, terms and conditions are therefore otherwise reasonable – these

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<sup>15</sup> SDG&E also claims that the Carlsbad PPTA provides the added locational benefit of being located in the San Diego LCR area. (*Id.*) This attribute is required, by definition, of all of SDG&E's LCR need procurement and we do not recognize it as a benefit relative to alternatives.

additional benefits support approval of the Carlsbad PPTA outside of the RFO process.

SDG&E claims that the Carlsbad PPTA will provide the additional benefit of enabling Encina to timely retire and replace its older, less-efficient generation facilities with more efficient and less polluting technology. (*Id.*) While bringing an additional 600 MW on line by Encina's OTC compliance date of December 31, 2017, certainly reduces the risk of a reliability gap at that time, the Commission addressed and accounted for the potential reliability gap caused by Encina's retirement when it determined SDG&E's LCR need and authorized it to procure an additional 298 MW in D.13-03-029, and approved a PPTA to meet that need with the Pio Pico Energy Center in D.14-02-016. Nevertheless, we recognize the incremental risk reduction to be a benefit of the Carlsbad PPTA's early on-line date.

CARE and Sierra Club/CEJA take issue with SDG&E's claim that the Carlsbad PPTA provides an additional benefit by replacing the Encina units with less polluting technology, noting that the purpose of SDG&E's procurement authorized by D.14-03-004 is to replace SONGS' criteria pollutant-free baseload generation (and, CARE adds, that SONGS had no minimum operating requirement, while the Carlsbad project is subject to operating constraints pursuant to its air permit). CARE and Sierra Club/CEJA therefore contend that, contrary to providing an environmental benefit, the Carlsbad PPTA would significantly increase California's carbon emissions. (CARE opening brief at 12; Sierra Club/CEJA opening brief at 13-14.) We reject both arguments. The issue is whether the Carlsbad PPTA provides an environmental benefit relative to alternatives for meeting SDG&E's LCR need. Until we evaluate the results of SDG&E's RFO, we cannot make that determination.

CARE contends that the Carlsbad project is not capable of achieving its contractual on-line date because it is expected to have a 23-month construction period so it will not be available on November 1, 2017, if construction is not commenced in November of 2015. (CARE opening brief at 11.) CARE's argument and the evidence that it cites in its support do not demonstrate the Carlsbad project's inability to meet its November 1, 2017, on-line date, while Carlsbad Energy Center offers persuasive testimony and evidence to the contrary. (*See, e.g., Ex. 2 at 6-8; Carlsbad Energy Center/Piantka, RT 236:11-18.*)<sup>16</sup>

SDG&E claims that the Carlsbad PPTA provided the added benefit of being competitively priced. We address this issue separately below with respect to the issue of the competitiveness of price, terms and conditions.

SDG&E claims that the Carlsbad PPTA provides the added benefit of the City of Carlsbad's support for the project. SDG&E does not explain how - and it is not apparent that - this factor informs the issue of whether the Carlsbad PPTA is reasonable.

SDG&E claims that the Carlsbad PPTA provides the added benefit of enabling the relocation and construction of a new service center. However, as SDG&E states in its testimony, these activities are not encompassed in the Carlsbad PPTA. Rather, they are part of a settlement between SDG&E, the City of Carlsbad, and Cabrillo Power I, LLC,<sup>17</sup> pursuant to which the City of Carlsbad

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<sup>16</sup> Carlsbad Energy Center, in its opening brief, also references a December 9, 2014, letter from the California Energy Commission to Carlsbad Energy Center that purportedly supports its claimed ability to meet the November 1, 2017, on-line date. (Carlsbad Energy Center opening brief, fn. 63.) This document is not in the record and we do not give it any weight.

<sup>17</sup> Cabrillo Power I LLC is an indirect wholly-owned subsidiary of NRG and an affiliate of Carlsbad Energy Center. (Ex. 3 at.1.)

will help SDG&E find a site for a new service center, SDG&E will transfer properties including the site of the existing center to the City, NRG will pay the costs of the new service center as well as demolish the Encina facility and remediate the site, and Carlsbad Energy Facility commits not to run the Carlsbad project between midnight and 6:00 a.m. except in case of a system emergency or as otherwise required by the CAISO tariff. (Ex. 1 at 12-14.) SDG&E anticipates that the utility property transfers contemplated in this settlement will be subject to a subsequent Commission proceeding pursuant to Pub. Util. Code § 851 and, accordingly, asserts that it is premature to consider the contemplated utility property transfers in this application. (SDG&E opening brief at 24-25.) As the claimed benefit of a new service center is contingent on the contemplated utility property transfers, it is likewise premature to consider it in this application.

**b. Competitiveness of price, term and conditions**

While an RFO is the best means to assess the availability of generation options and competitive market prices, it is by definition necessary to resort to other comparisons and evaluations to assess the reasonableness of a bilateral contract. In this case, we have the report of the Independent Evaluator who assessed the Carlsbad PPTA contract provisions, pricing, consistency with regulatory policy and other market and competitive considerations in conformance with the Commission's direction for such reports. (*See* D.04-12-048, D.06-05-039, D.06-07-029, D.07-12-052, D.08-11-008, D.09-06-050, and D.10-07-042.)

The Independent Evaluator expresses concern regarding the inability to assess the availability of generation options (including reducing the size of the Carlsbad project) and competitive market prices outside of an RFO. However,

accepting the need to procure new generation by 2018, and considering the pricing for the recent Pio Pico Energy Center PPTA as well as costs for comparable generating units in the ISO New England, capacity costs in the New York ISO, and the California Energy Commission's May 2014 draft staff report entitled "Estimated Cost of New Renewable and Fossil Generation in California" (Ex. 1, App. D at 30-32), the Independent Evaluator concludes that the Carlsbad PPTA generally balances risk and adequately protects the interests of customers (Ex. 1, App. D at 39-40).<sup>18</sup>

As discussed previously, we balance the risk of a reliability gap and/or delay in the Encina OTC retirement against the public interest in adhering to the Loading Order differently than the Independent Evaluator. We therefore find that the price, term and conditions of the Carlsbad PPTA are reasonable only to the extent that the RFO fails to produce more than the minimum required 200 MW of economic and feasible preferred resources and/or energy storage. Otherwise, it will be incumbent on SDG&E to demonstrate that it is not feasible or economic to procure less than the entire 600 MW of all-source capacity from the Carlsbad project in order to accommodate such preferred resources and/or energy storage in excess of the minimum required 200 MW.

Shell argues that the Carlsbad PPTA price must be compared against the prices for local resource adequacy capacity cited in the Energy Division's "2012 Resource Adequacy Report" (issued April 2014.) (Shell opening brief

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<sup>18</sup> The Independent Evaluator conducted an economic price analysis by comparing the pricing of the Carlsbad PPTA to the pricing for the PPTA for the Pio Pico Energy Center (which uses the same technology as the Carlsbad project), as well as costs for comparable generating units in the ISO New England, capacity costs in the New York ISO, and the California Energy Commission's May 2014 draft staff report entitled "Estimated Cost of New Renewable and Fossil Generation in California." (Ex. 1, App. D at 30-32.)

at 14.)<sup>19</sup> SDG&E counters that this is not a fair comparison because the report addresses only selected existing facilities that do not have long-term power purchase agreements, not new facilities; and because the Carlsbad PPTA price includes payment for capacity, energy, ancillary services and resource adequacy benefits, not just resource adequacy benefits. (SDG&E reply brief at 19, citing to SDG&E/Baerman, RT 56:24-57:3 and 59:4-10.) Shell offers no reply to SDG&E's contention, and we are persuaded by SDG&E that it would not be a meaningful comparison.

CARE takes issue with assessing the price competitiveness of the Carlsbad PPTA on the basis of its price comparison with the Pico Pico Energy Center PPTA because the two PPTAs have significant differences in operating restrictions and performance guarantees which limit the value of the Carlsbad PPTA compared to the Pio Pico PPTA. (CARE opening brief at 14-17.) SDG&E counters that the appropriate comparison of the two PPTAs is of their levelized costs taking into account the capacity payments, fixed operations and maintenance, startup costs and escalation and that, on this basis, the PPTAs are comparably priced. (SDG&E reply brief, fn. 55; Ex. 9 at 9.) Neither CARE nor SDG&E makes a persuasive case. In any event, the Independent Evaluator's economic analysis purports to take into account contract pricing as well as the operational parameters of the Carlsbad PPTA. (Ex. 1, App. D at 27.)

CARE contends that the Carlsbad PPTA is not a reasonable means to meet the 600 MW of LCR need that may be met by conventional resources because it

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<sup>19</sup> We take official notice of this report, as the cited information is not reasonably subject to dispute and is capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code § 452(h).)

would be rejected from the RFO as nonconforming because it exceeds the maximum allowable capacity at 630 MW and because it does not conform to other conditions for participation in the RFO, e.g., that a repowered facility submit evidence that it has received all interconnection agreements and permits, and that conventional bids must offer a specified minimum guaranteed availability factor. (CARE opening brief at 9.) We reject CARE's contention with regard to project capacity for the reasons discussed previously. We decline to evaluate CARE's contention with regard to its conformance with the requirements of SDG&E's all-source RFO because the referenced RFO requirements are not in evidence,<sup>20</sup> and their meaning is not capable of immediate and accurate determination by resort to the referenced source document.<sup>21</sup>

## **5. Cost Allocation Mechanism Treatment**

Pursuant to Pub. Util. Code § 3654.1(c)(2)(A) and (B), if the Commission determines that new generation is required to meet local or system area reliability needs for the benefit of all customers in a utility's service area, the utility must allocate the net capacity costs for the new capacity to all benefitting customers including direct access, community choice aggregation, and bundled load customers. The Commission adopted the Cost Allocation Mechanism (CAM) in D.06-07-029, and refined it in D.11-05-005, as a mechanism for allocating such net capacity costs to all benefitting customers.

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<sup>20</sup> CARE merely offers a footnote with a page cite and a link purportedly to the source document. (CARE opening brief, fn. 24 and 25.)

<sup>21</sup> SDG&E contests CARE's characterization of requirements. (SDG&E reply brief, fn. 44.)

D.14-03-004 and D.14-11-027 definitively addressed the question of whether the net capacity costs associated with procurement authorized pursuant to D.14-03-004 should be allocated to all consumers. In D.14-03-004, the Commission found that “the procurement authorized in this decision is for the purpose of ensuring local reliability in the SONGS service are for the benefit of all utility distribution customers in that area,” and further concluded that “procurement authorized in this decision meets the criteria of § 365.1(cc)(2) (A)-(B) for the purposes of cost allocation.” (D.14-03-004, Finding of Fact 92 and Conclusion of Law 50.) In D.14-11-027, which rejected a petition to modify D.14-03-004 to provide that the final determination about whether to allocate costs to all customers would be made in specific applications for procurement approval, the Commission affirmed that the clear intention of D.14-03-004 is that the costs of all resources procured pursuant to the procurement authority granted by that decision be allocated to all customers. As D.14-11-027 explained, however, D.14-03-004 recognized that the CAM was developed for generation resources and might not be an appropriate cost allocator for some preferred resources. While the cost of such resources must nevertheless be allocated to all customers, D.14-11-027 clarified that “the actual mechanism utilized to accomplish this could be CAM or another mechanism. The question of appropriate mechanism remains to be determined in applications pursuant to D.14-03-004.” (D.14-11-027 at 9-10.)

SDG&E proposes the CAM as the mechanism for allocating the net capacity costs associated with the Carlsbad PPTA to all consumers. No party recommends an alternative mechanism, and we find no reason to adopt one.<sup>22</sup>

## 6. CEQA Applicability

The Center for Biological Diversity (CBD) and Sierra Club/CEJA contend that a contract for power purchase by the regulated entities is a “project” pursuant to CEQA, and that the Commission cannot make a discretionary decision on whether to approve the contract unless and until environmental review has been completed. To the contrary, CEQA Guidelines, long-standing case law, and Commission precedent all make clear that Commission review of power purchase contracts does not trigger CEQA.

A contract for power purchase by a regulated entity is not a “project” pursuant to CEQA. CEQA defines a “project” as “[a]ctivities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.” (Public Resources Code § 21065.) Commission approval of a power purchase contract does not confer a lease, permit, license, certificate, or any other entitlement on the seller. Rather, it is an assurance that the utility will recover through its rates the costs that it incurs under the contract. It is well-settled that “[s]uch a ratemaking order is not a

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<sup>22</sup> Shell contends that, as SDG&E’s LCR need stems from the need to replace SONGS, and as SONGS provided energy and capacity to SDG&E’s bundled customers, the costs of the Carlsbad PPTA should be charged exclusively to SDG&E’s bundled customers. (Shell opening brief at 15-16.) As discussed here, D.14-03-004 squarely addressed and rejected that position, and we will not revisit the issue.

CARE contends that the CAM should not be applied to the 33 MW of the Carlsbad project’s operating capacity in excess of its 600 MW nameplate capacity. (CARE opening brief at 20.) As discussed previously, we reject CARE’s position that the Carlsbad PPTA exceeds SDG&E’s allowable procurement amount.

"project" under CEQA. All Commission orders concluding that CEQA does not apply to a ratemaking proceeding have been upheld. (*E.g., Samuel C. Palmer, III v. Public Utilities Commission* SF# 23980, writ denied 5/10/79.)" (D.86-10-044 at 16-17, 1986 Cal. PUC LEXIS 642, 16-17 (Cal. PUC 1986).)<sup>23</sup>

Likewise, the Commission is not a "responsible agency" under CEQA when it approves power purchase contracts. A "responsible agency" is defined as a public agency other than the lead agency which has discretionary approval power over the project. (Public Resources Code § 21069.) While the Commission has considerable discretion over whether to approve a power purchase contract, it does not have power to approve or deny the underlying generation project. The project underlying the power purchase contract could proceed regardless of the Commission's decision. (*Id.* at 16-18.)<sup>24</sup>

This is not the first time that CBD and one of CEJA's allied organizations, the Center for a Better Environment (CBE),<sup>25</sup> have contended that Commission review and approval of power purchase contracts is subject to CEQA. CBE made

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<sup>23</sup> In its reply brief, CBD challenges this precedent as being stale because, "[f]or example, in 1986, prior to deregulation, power purchase agreements did not play the same role they do in today's market as investor owned utilities owned much of their own generating facilities." (CBD reply brief at 3.) CBD does not explain how that fact changes the Commission's role and responsibilities under CEQA, and none is apparent to us. CBD goes on to say, "Over the past three decades, there has also been significant changes made to the jurisdiction of the Commission and the CEC and a large body of applicable CEQA precedent has been developed." (*Ibid.*) CBD does not identify any specific changes to the Commission's and CEC's jurisdiction or to CEQA precedent since 1986, and none that would be relevant to this issue are apparent to us.

<sup>24</sup> CBD also contends that the application is incomplete for lacking a Preliminary Environmental Assessment (PEA) as required by Rule 2.4 of the Commission's Rules of Practice and Procedure. To the contrary, Rule 2.4 requires a PEA in applications for approval of "projects" as defined under CEQA. As a power purchase contract is not a "project," this application does not trigger Rule 2.4.

these same arguments in Pacific Gas and Electric Company's Application 09-09-021 for approval of the results of its request for offers, and the Commission rejected them. (D.10-07-045 at 21.) CBD made these same arguments with regard to SDG&E's Advice Letter 1963-E requesting approval of a renewable resource procurement contract, and the Commission rejected them. (Resolution E-4171.) We find no cause to deviate from our precedent.

## **7. Conclusion**

We reaffirm our commitment to the Loading Order, and reiterate that it is incumbent on SDG&E's to meet its procurement authority to the extent feasible with preferred resources and energy storage. We deny the application without prejudice to SDG&E renewing an application for approval of the Carlsbad PPTA in the event that the RFO fails to produce more than the minimum required 200 MW of preferred resources and/or energy storage, or for approval of an amended PPTA for a smaller project in the event that the RFO produces more than the minimum 200 MW of preferred resources and/or energy storage but less than the entirety of SDG&E's procurement authority.

## **8. Comments on Proposed Decision**

The ALJ's proposed decision was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

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<sup>25</sup> See CEJA Notice of Intent to Claim Intervenor Compensation, filed October 3, 2014.

## **9. Assignment of Proceeding**

Michel P. Florio is the assigned Commissioner and Hallie Yacknin is the assigned Administrative Law Judge (ALJ) and presiding officer in this proceeding.

### **Findings of Fact**

1. The Energy Division approved SDG&E's procurement plan, which included going forward concurrently with an all-source solicitation for the entirety of SDG&E's procurement authority and this application for approval of the Carlsbad PPTA.

2. The effectiveness and need for the new transmission projects identified in the 2013/2014 TPP study is based on an analysis that models the generation procurement that was authorized in D.14-03-004, including a rough equivalent of the Carlsbad project.

3. Notwithstanding the Commission's LCR need determinations in D.13-03-029 and D.14-03-004, the potential for miscalculating and under-procuring future procurement needs upon the retirement of the Encina OTC units poses a risk of a reliability gap and/or delay in the Encina OTC retirement.

4. To the extent that the Encina OTC retirement were to cause a system reliability gap, the SWRCB, pursuant to CAISO recommendation, could adopt an extension of its operation beyond its December 31, 2017, OTC compliance date.

5. An extension of the Encina retirement could result in ratepayer costs.

6. Approval of the Carlsbad PPTA would preclude SDG&E from procuring preferred resources and energy storage in excess of the required minimum 200 MW.

7. SDG&E's RFO has produced a robust number of offers for preferred resources and energy storage which could potentially meet some, if not all, of the 600 MW of SDG&E's LCR need that may be procured from any source.

8. While it is not possible at this juncture to determine the viability of offers for preferred resources and energy storage, the evidence does not lead us to presume that the RFO will fail to produce any preferred resource options to meet SDG&E's procurement requirement beyond the 200 MW minimum of preferred resources and energy storage.

9. The Carlsbad PPTA would provide additional benefits including reliability benefits by being able to meet SDG&E's LCR need by 2018, renewable resources integration benefits due to its flexible dispatchability, and locational benefits by virtue of being highly compatible with the existing transmission system and on previously disturbed land.

10. The Carlsbad PPTA price, term and conditions compare reasonably to the recent Pio Pico Energy Center PPTA as well as to costs for comparable generating units in the ISO New England, capacity costs in the New York ISO, and the California Energy Commission's May 2014 draft staff report entitled "Estimated Cost of New Renewable and Fossil Generation in California."

### **Conclusions of Law**

1. D.14-03-004 authorized SDG&E's procurement based on the lower end of the range of results of the CAISO's analysis, noting that new transmission resources identified in the 2013/2014 TPP might reduce SDG&E's LCR need.

2. The new transmission projects identified in the 2013-2014 TPP study cannot be found to reduce SDG&E's LCR need.

3. D.13-03-029 authorized SDG&E to procure new generation to meet its LCR need, which it determined based on the assumption that the Encina OTC units

would retire by 2018, and D.14-02-016 authorized SD&E's to enter into a PPTA with the Pio Pico Energy Center to meet that need.

4. D.14-03-004 determined SDG&E's incremental LCR need stemming from the retirement of SONGS, and authorized SDG&E to procure new generation to meet that need by 2022.

5. D.14-03-004 did not determine that SDG&E's LCR need would arise in 2018 upon the retirement of the Encina OTC units.

6. D.14-03-004 requires SDG&E to procure at least 200 MW, and allows SDG&E to procure up to 100 percent, of its LCR need from preferred resources and energy storage.

7. Consistency with the Loading Order and advancing California's policy of fossil fuel reduction demand requiring the utility to procure preferred resources and energy storage to the fullest extent possible.

8. On balance, the public interest in awaiting the results of SD&E's RFO for purposes of ascertaining the availability of feasibly available and cost-effective preferred resources and/or energy storage in excess of the minimum required 200 MW outweighs the risk of a reliability gap/and or delay in the Encina OTC retirement (and its potential ratepayer costs).

9. The Carlsbad PPTA is a reasonable means of meeting SDG&E's LCR need in the event that the RFO fails to produce more than the minimum required 200 MW of feasibly available and cost-effective preferred resource and energy storage.

10. Pursuant to D.14-03-004 and D.14-11-027, the cost of procurement for the purpose of meeting the LCR need determined in D.14-03-004 must be allocated to all customers.

11. The CAM mechanism is a reasonable means for allocating the cost of procurement of SDG&E's LCR need to all customers.
12. Commission review of power purchase contracts does not trigger CEQA.
13. This application should be denied without prejudice.
14. All pending motions should be deemed denied.
15. This decision should be effective immediately.
16. This proceeding should be closed.

**ORDER**

**IT IS ORDERED** that:

1. Application 14-07-009 is denied without prejudice.
2. All pending motions are deemed denied.
3. This decision is effective immediately.
4. This proceeding is closed.

Dated \_\_\_\_\_, at San Francisco, California.