

November 28, 2023

Energy Division Tariff Unit
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Email: EDTariffUnit@cpuc.ca.gov

Re: Comments of the Independent Energy Producers Association on Draft Resolution E-5303, Regarding Advice Letter 4290-E of San Diego Gas & Electric Company (U-902-E)

Dear Sir or Madam:

Pursuant to the provisions of General Order 96-B, the Independent Energy Producers Association (IEP) submits these comments on Draft Resolution E-5303, approving Advice Letter (AL) 4290-E filed by San Diego Gas & Electric Company (SDG&E) on September 29, 2023.

In AL 4290-E, SDG&E seeks the Commission's approval of two battery energy storage system (BESS) projects and the associated Engineering, Procurement, and Construction Agreements that include Long-Term Services Agreements. The projects will be constructed by a third party but converted to SDG&E ownership at or near the Commercial Operation Date. The two projects are the 10 MW Santee BESS and the 29.6 MW Fallbrook 2 BESS. SDG&E asks for authority to recover the costs of the projects and the associated agreements.

IEP protested AL 4290-E on the grounds that the relief requested in the advice letter is unjust, unreasonable, or discriminatory,¹ because SDG&E fails to demonstrate that the costs of the projects and agreements are reasonable.² IEP is sending a copy of this protest to SDG&E today.

¹ General Order 96-B, Rule 7.4.2(6).

² IEP's review was limited to the public portion of the heavily redacted advice letter and Independent Evaluator Report. These comments likewise respond only to the public portion of the redacted Draft Resolution.

IEP's comments will focus on three areas where the Draft Resolution includes errors of fact or law.

Restricting Competition Cannot Support a Finding that Costs Are Just and Reasonable: In its protest, IEP pointed out that the solicitation that led to the selection of the Fallbrook 2 and Santee BESS projects was limited to five bidders, only one of which was submitted by a third-party developer (and that project was shifted to the Mid-Term Reliability Request for Offers (RFO)).³ The Independent Evaluator recommended that SDG&E should issue an RFO to attract more bidders, but SDG&E was able to persuade the Independent Evaluator to limit participation to entities that had submitted bids in a previous solicitation.⁴ The Draft Resolution agrees with IEP that "SDG&E's outreach was limited."⁵ The Draft Resolution errs, however, because it fails to follow up on the logical consequence of that finding. Because SDG&E's outreach was so limited, the number of bidders was low and included at most only one independent developer who wanted to retain ownership of the facility; the other four bidders all proposed to transfer ownership of the project to SDG&E. With such a scarcity of competitive pressure, the Draft Resolution's statement that the total cost of the project is reasonable cannot be asserted with any confidence. More participants and more rigorous competition would place downward pressure on the offers and ultimate costs and allow the Commission to conclude with greater confidence that the costs are just and reasonable.

One of the persistent problems with utility-owned generation and storage projects is that the purchasing utility's incentive to reduce costs to the minimum is severely blunted. When the utility is choosing among bidders proposing utility-owned projects, the utility can't lose. The utility's incentive is not necessarily to select the project with the lowest cost. The utility's incentives are muddled by the temptation to pick the project that would result in the highest revenues for SDG&E as the project owner.

As written, the Draft Resolution provides no support for its finding that "[t]he cost of the utility owned energy storage contracts is reasonable." From the publicly available information, it appears that the selected projects were compared only to other utility-owned storage proposals.

³ Advice Letter 4290-E, Independent Evaluator Report, p. 6.

⁴ AL 4290-E, Independent Evaluator Report, pp. 6, 8.

⁵ Draft Resolution, p 11.

Utility-owned storage projects, however, might not be the best choice for ratepayers. A true test of reasonableness would be a comparison with the offers of independent storage providers.

The Draft Resolution should be modified to provide more publicly available information explaining why the costs of these project are reasonable in relation to other storage projects, particularly the projects built by independent storage developers whose success depends on their ability to bring in quality projects at the lowest reasonable cost. Alternatively, the Draft Resolution should delete Finding 5 on the reasonableness of the costs of the projects.

Utility-Owned Storage Requires Complicated Arrangements and Creates a Potential for Abuse: The complicated arrangements required to guard against improper favoritism directed to utility-owned projects are hardly reassuring that no favoritism is occurring. Because the Commission allowed utility-owned storage in an effort to get more megawatts in operation as soon as possible, it was necessary for SDG&E to establish two walled-off entities: the Bid Evaluation Team (BET) and a Utility Development Team, which focused on development of utility-owned projects. In a more normal solicitation, the party receiving the bids would perform the outreach, receive the bids from unrelated bidders, analyze the bids, select the winner, and pay the agreed-on price for the delivered product.

However, the potential for selection of utility-owned storage required some complicated arrangements between UDT and BET. According to the Draft Resolution, UDT will serve as an intermediary between bidders of utility-owned projects and BET, and UDT will set specifications for utility-owned projects, screen bids, translate costs to revenue requirements, and convert bids into complete offers that can be compared to bids for power purchase agreements with non-utility entities—functions that would ordinarily be performed by the entity that conducted the solicitation and will contract with the winning projects. Simply put, the UDT (SDG&E) creates the bidding process used by the BET (SDG&E) to submit proposals for resources ultimately owned by SDG&E. This arrangement seems contrary to the Commission’s “competitive markets first” policy.

These complicated arrangements are deemed necessary to prevent abuse that could favor utility-owned projects to the disadvantage of ratepayers. The fact that such extensive arrangements are needed to prevent abuse emphasizes how large the potential for abuse is. RFOs

could be completed more quickly and efficiently if utilities were not allowed to pick winners from affiliated companies.

The Draft Resolution should be modified to impose additional safeguards against the potential for discrimination in favor of utility-owned storage.

Response to Wrong Grounds for Protest and Allegation of Misstatement of Facts:

The grounds stated in IEP’s protest included a typographical error in the citation in a footnote. The body of the protest correctly stated that the grounds were that the relief requested in the advice letter was, unjust, unreasonable, or discriminatory, as recognized in Rule 7.4.2(6) of General Order 96-B. The citation in footnote 1, however, referred to Rule 7.4.2(b), which doesn’t exist (apparently a hand-written “6” was read as a “b”). The Draft Resolution correctly summarizes the grounds for IEP’s protest, but in its reply, SDG&E ignored the grounds stated in the body of the protest and instead addressed the grounds stated in Rule 7.4.2(2), that “[t]he relief requested in the advice letter would violate statute or Commission order, or is not authorized by statute or Commission order on which the utility relies.” SDG&E then devoted much of its reply to addressing an allegation that IEP did not make. The Draft Resolution took the logical path of addressing the actual basis for IEP’s protest, as stated in the body of the protest. But the Draft Resolution errs by repeating SDG&E’s refutation of an allegation that IEP did not make and, more significantly, repeating SDG&E’s charge that IEP misstated facts, which, if it were true (which it is not), would be a violation of Rule 1.1 of the Commission’s Rules of Practice and Procedure. IEP does not misstate facts.

SDG&E’s allegation is based on a highly edited quotation from IEP’s protest. SDG&E avers that IEP’s assertion “that ‘no bids from independent developers . . . were ultimately considered for selection,’ misstates facts clearly available to IEP regarding D.21-02-028 summer reliability procurement mandates and SDG&E’s solicitation process that are detailed in AL 4290-E.”⁶ SDG&E is wrong on two counts. First, D.21-02-028, issued on February 17, 2021, did not and could not have revealed any facts about a procurement that took place two years later, in the summer of 2023. Second, SDG&E leaves out the context and crucial portions of the quoted passage. Without SDG&E’s omissions, the passage reads:

⁶ SDG&E Reply, p. 2 (footnote omitted).

In a passage describing the shortlisted projects, a redacted subject submitted by a third-party developer is linked with a singular verb, strongly suggesting that only one independent project was considered. The following sentence seems to suggest that the independent project was moved to another RFO, which would mean that the BET’s solicitation, like the Utility Development Team’s RFO, considered only UOS offers. If true, SDG&E’s approach was directly contrary to the Commission’s “competitive market first” policy, *i.e.*, **no** bids from independent developers *who wished to retain ownership of the projects* were ultimately considered for selection.⁷

Thus, this passage clearly expresses IEP’s attempts to make sense of a heavily redacted portion of the public version of the advice letter. The language from the protest is conditional—“seems to suggest,” “If true”—reflecting the guesswork required for those who do not have access to the unredacted version. Guesswork required from a heavily redacted public version does not amount to a misstatement of facts, especially when the statements are couched in conditional language.

The Draft Resolution should be modified to remove the summary of SDG&E’s response to an allegation that IEP did not make. That response has no relevance to any of the issues raised in the advice letter or in IEP’s protest. In addition, the Draft Resolution should be modified so that it does not repeat SDG&E’s unjustified charge that IEP has misstated facts to the Commission.

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For the reasons stated in these comments, IEP respectfully asks the Commission to modify the Draft Resolution as proposed in these comments.

⁷ IEP’s Protest, pp. 2-3 (footnotes omitted, last set of italics added).

Very truly yours,

By: /s/ Brian T. Cragg

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Service List for R.21-10-002, R.23-10-011, R.20-11-003, and R.20-05-003