

October 19, 2023

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

**Re: Independent Energy Producers Association's Protest of Advice Letter 4293-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 this protest of Advice Letter (AL) 4293-E filed by San Diego Gas & Electric Company (SDG&E) on September 29, 2023.

In AL 4293-E, SDG&E seeks the Commission's approval of a Build, Own, and Transfer (BOT) agreement for the 119 MW Westside Canal Energy Storage Expansion Project—Phase 1 (the Project) and the costs associated with the Project. IEP protests AL 4293-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 Project are reasonable in comparison to other available options.² IEP is sending a copy of this protest to SDG&E today.

The Commission has long wrestled with the role that utility-owned resources should play in a competitive market structure. During the transition to a competitive market structure, the Commission permitted a hybrid market structure that considered both utility-owned generation resources and independent generation. When the utilities tried to carve out a special role for utility-owned generation (UOG) in this hybrid market structure, the Commission set up several measures to minimize the risk that ratepayers would wind up improperly subsidizing UOG projects and to protect the emerging competitive market structure from the distortions created when utilities are both buyers and sellers of wholesale energy, including developing methodologies for comparing the bids of UOG and independent projects, oversight by an Independent Evaluator, and a strict code of conduct for utility personnel. Nevertheless, the Commission agreed that “continued reliance on UOG . . . is incompatible with the development of a competitive market model that stimulates private investment”³ The Commission also endorsed a “competitive market first” approach, under which “all long-term procurement should

¹ General Order 96-B, Rule 7.4.2(6).

² IEP's review is limited to the public portions of the heavily redacted advice letter and Independent Evaluator's Report.

³ D.07-12-052, p. 200.

occur via competitive procurements, rather than through preemptive actions by the IOU, except in truly extraordinary circumstances.⁴

The competitive solicitations that the Commission endorsed worked well and hastened the development of a competitive market structure. Competitive pressures resulted in rapidly declining prices for solar energy and other renewable resources, without the need for any utility-owned resources.

In Decision (D.) 21-12-015, the Commission, responding to outages in August 2020, unprecedented heat events in summer 2021, and a “perfect storm of reliability challenges,” took drastic steps “to help ensure Californians have adequate energy supply and flexibility in energy demand to ensure energy reliability in summer 2022 and 2023.”⁵ When the Commission considered the possibility of authorizing utility-owned storage (UOS) to help build up the supply resources needed to preserve reliability during extreme weather events, SDG&E commented that “the Commission should not prefer utility ownership of energy storage resources over third-party ownership.”⁶ Despite this declaration of nondiscrimination, SDG&E’s response to the procurements authorized in the extreme weather proceeding has focused on development of UOS. SDG&E has established a Utility Development Team to explore utility-owned options, and the Utility Development Team has conducted competitive solicitations seeking proposals for UOS exclusively.

The Westside Canal Project is the product of an unusual process. SDG&E’s Utility Development Team conducted its own solicitation seeking proposals for Engineering, Procurement, and Construction (EPC) and BOT projects that would be transferred to utility ownership at or near the Commercial Operation Date.⁷ From the conception of this RFP, the UOS proposals were safeguarded from competition from independently owned storage resources.⁸ This 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 considered.

SDG&E’s protectionism of UOS continued when the cost of the Westside Canal Project was compared to other projects. The most positive spin SDG&E can put on the Project’s costs is that it is “cost comparable to other utility-owned storage projects.”⁹ When the Independent Evaluator compared the capital costs of the Project to publicly available data, the cost was higher than other projects by a percentage that is screened from public view.¹⁰ The Independent

⁴ D.07-12-052, p. 209 (emphasis in original).

⁵ D.21-12-015, p. 5.

⁶ D.21-12-015, p. 105.

⁷ The Utility Owned Storage RFP does not appear on the list of RFPs and RFOs on SDG&E’s website. See <https://www.sdge.com/more-information/doing-business-with-us/rfps-rfos>.

⁸ Some of the UOS projects that participated in this solicitation were offered into a separate solicitation conducted by SDG&E’s Reliability Solicitation Team. As discussed in IEP’s protest of SDG&E’s AL 4290-E, it is unclear if any independent storage projects were considered in that solicitation.

⁹ AL 4293-E, p. 4.

¹⁰ The 5th page of the unpaginated Independent Evaluator’s Report.

Evaluator's Report also hints that the capital cost of the Project is higher than the \$1,800 per kW cost of a similar storage project being built by Portland General Electric Company.¹¹

SDG&E's cost-justification for the Westside Canal Project is based on a comparison with two UOS projects that were selected in a solicitation that included, at most, only one independent project. That is a shaky basis for authorizing rate recovery of an estimated \$311.5 million project. The shortcomings of that solicitation are described in IEP's protest of AL 4290-E, submitted concurrently with this protest.

By design, the Westside Canal Project was not exposed to competition with independent storage projects. The Commission has long recognized that independent project developers are able to complete projects at lower costs than utilities. Among the concerns raised when a utility does business with itself is the risk that ratepayers will end up subsidizing the utility project, a risk that is not dispelled by the Westside Canal advice letter.

One other point illustrates the risks posed by utility self-dealing. The Westside Canal Project will not come online until October 31, 2024, at the earliest, well beyond the specified COD of August 1, 2024.¹² The Project also does not have Full Capacity Deliverability Status,¹³ which means that ratepayers will not receive the benefit of Resource Adequacy capacity from the project.¹⁴ In a parallel solicitation conducted by SDG&E's Reliability Solicitation Team, one or more projects were eliminated from the 2025 track of the solicitation because they did not have deliverability or the COD was past the required delivery date.¹⁵ If there is any consistency between SDG&E's solicitations, then the Westside Canal project should have likewise been eliminated from consideration, because it too has a forecasted COD much later than the required delivery date for the 2024 track and lacks deliverability.

In short, in AL 4293-E, SDG&E asks the Commission to approve a project that:

- was priced higher than comparable projects for which there is public information;
- was not exposed to competition from independently-owned storage projects;
- was evaluated against only other utility-owned storage projects;
- cannot be online by August 1, 2024; and,
- does not have Full Capacity Deliverability Status and cannot provide Net Qualifying Capacity.

¹¹ The 5th page of the unpaginated Independent Evaluator's Report.

¹² AL 4293-E, pp. 5, 6.

¹³ AL 4293-E, p. 5.

¹⁴ The Commission has allowed procurement of resources that lack deliverability as "contingency" resources, but those resources cannot provide Net Qualifying Capacity to meet requirements to procure Resource Adequacy capacity. AL 4293-E states that the Project will seek interim deliverability status.

¹⁵ AL 4290-E, Independent Evaluator Report, p. 10.

For all the reasons set forth in this protest, the Independent Energy Producers Association respectfully urges the Commission to deny Advice Letter 4293-E.

Very truly yours,

By: /s/ Brian T. Cragg

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