BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company (U904G) to Establish a Distributed Energy Resources Services Tariff.	Application 14-08-007 (Filed August 8, 2014)

COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON THE PROPOSED DECISION

INDEPENDENT ENERGY PRODUCERS ASSOCIATION
Steven Kelly, Policy Director
1215 K Street, Suite 900
Sacramento, CA 95814
Telephone: (916) 448-9499
Facsimile: (916) 448-0182
Email: steven@iepa.com

GOODIN, MACBRIDE, SQUERI & DAY, LLP
Brian T. Cragg
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
Email: bcragg@goodinmacbride.com

Attorneys for the Independent Energy Producers Association

Dated: August 3, 2015

RECOMMENDED CHANGES TO THE PROPOSED DECISION

The Independent Energy Producers Association opposes the application of Southern California Gas Company, and any changes to the Proposed Decision, which recommends approval of the application, that IEP might recommend would be extensive. Consequently, IEP respectfully urges the Commission to reject the Proposed Decision and to deny SoCalGas' application.

TABLE OF AUTHORITIES

Page

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company (U904G) to Establish a Distributed Energy Resources Services Tariff.	Application 14-08-007 (Filed August 8, 2014)

COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON THE PROPOSED DECISION

The Independent Energy Producers Association (IEP) respectfully submits its comments on the Proposed Decision (PD) of Administrative Law Judge Collette Kersten on the request of Southern California Gas Company (SoCalGas) for approval of its proposed Distributed Energy Resources Services (DERS) tariff.

SoCalGas proposes to design, install, own, operate "advanced energy systems," defined as including combined heat and power (CHP) electrical systems, fuel cells, waste heat to power (WHP) systems, and mechanical drive technology applications. SoCalGas argues that the Commission should authorize a regulated utility whose primary purpose is the provision of natural gas services to provide technologies that are designed to generate electricity in an efficient combination with thermal products or byproducts. SoCalGas contends that its intervention is needed to overcome barriers to the increased development of such systems, particularly CHP, including high upfront equipment costs, lack of customer expertise in managing and operating CHP systems, ongoing operation and maintenance expenses, and technology risk.

The PD would grant SoCalGas' request and authorize a regulated gas utility to enter the existing competitive marketplace for advanced energy systems, including CHP, thereby undermining competitive forces and displacing energy service companies that serve this market. The PD bases its determination on its response to a number of key questions, including: (a) should a gas utility own, operate, and maintain electric generation facilities on or adjacent to a customer's premises? (b) is the DERS tariff proposal consistent with safety and environmental concerns? (c) how will the DERS tariff impact competitive markets and customer choice? and (d) is the DERS tariff compatible with the Commission's policies against unfair competition?[1]

The PD approves SoCalGas' request with some modifications, and in the process proposes a new policy that would permit installation of utility-owned facilities on or outside customers' premises even if the facilities and associated services are not a logical extension of the utility's regulated services.[2] IEP opposes this new and unwarranted proposed policy direction. The facts and arguments do not justify undermining the Commission's longstanding policy, beginning with the implementation of the Public Utility Regulatory Policies Act (PURPA) in the early 1980s and continuing with the Qualifying Facility (QF)/CHP Settlement Agreement (2010), of preferring competitive mechanisms for the development and procurement of advanced energy systems like CHP. Moreover, authorizing a regulated gas utility to enter a competitive segment of the electricity market at the expense of the existing competitive market and programs established by the Commission, as SoCalGas requests, is unnecessary and would raise serious questions regarding the Commission's commitment to relying on competitive market forces to secure customer benefits and meet the state's goals.

[1] See PD, pp. 8-11.
[2] PD, p. 31.

For the reasons discussed in these comments, IEP respectfully urges the Commission to reject the PD and deny SoCalGas' application.

I. THE PROPOSED DECISION ERRONEOUSLY CONCLUDES THAT THE BENEFITS OF CHP MAY BE ACHIEVED ONLY THROUGH THE INTERVENTION OF A REGULATED GAS UTILITY IN COMPETITIVE MARKET ACTIVITIES

The PD concludes that providing SoCalGas customers an opportunity to employ Distributed Energy Resources designed, owned, and operated by SoCalGas will make more widely available a service that reduces greenhouse gas and air pollutant emissions and provides operational efficiencies, consistent with current California environmental goals.[3] As a practical matter, the benefits that the PD attributes to the advanced energy systems such as CHP will accrue irrespective of whether SoCalGas is authorized to build, own, and operate them. The key question is whether the advanced energy systems are cost-effective and can be developed at the lowest possible cost.

The PD alleges that the DERS tariff is in the public interest because it meets untapped demand in underserved markets.[4] However, to the extent that this market is actually underserved , the Commission has a number of existing tools at its disposal to tap into these markets, not the least of which is the targeting of the electric utilities' competitive processes that the Commission has developed to ensure that the thermal hosts' demand for cost-effective and efficient CHP and the state's CHP goals are met. Intervention by a regulated gas utility in these business activities is unwarranted and unnecessary.

The PD alleges that the DERS tariff guards against unfair competition and protects ratepayer interests.[5] However, the PD misses the point. Intervention of regulated

[3] PD, p. 2.
[4] PD, p. 2.
[5] PD, p. 2.

entities into markets otherwise served through competitive processes is in itself unfair competition. If SoCalGas is more efficient than the existing providers of CHP services, it could compete successfully in competitive CHP solicitations through an affiliate. If SoCalGas is not more efficient than existing providers, then using its position as customers' "trusted energy advisor" to displace more efficient competitors is unfair competition that will result in higher costs than would be the outcome of a fair competitive process.

II. THE PROPOSED DECISION CONFLICTS WITH THE COMMISSION'S RECENT DECISION ON CHP

The PD appropriately states that a primary issue is whether SoCalGas' application is consistent with the law and Commission precedent.[6] The PD concludes that SoCalGas' program "could support federal and state policies regarding the environmentally beneficial use of natural gas in end-use applications of CHP . . . ." In reaching this conclusion, the PD repeats SoCalGas' list of Commission policies that supposedly support SoCalGas' requests without explicitly agreeing with SoCalGas' contention.

However, the PD, like SoCalGas, overlooks the Commission's recent policy that directly relates to SoCalGas' primary rationale for developing advanced energy systems such as CHP. The PD concludes that "it is reasonable to allow SoCalGas to design, own, operate, and install electric facilities on or adjacent to customer premises . . . in order to facilitate the adoption and use of combined heat and power technologies."[7] However, in Decision (D.) 15-06-028, the Commission reduced CHP procurement goals and excused Pacific Gas and Electric Company from procuring additional CHP to meet the goals established in the QF/CHP Settlement approved in D.10-12-035. In D.15-06-028, the Commission noted that:

[6] PD, p. 12.
[7] PD, p. 105 (Conclusion of Law No. 8).

> there are significant concerns about the cost-effectiveness of future CHP procurement. We also agree that other preferred resource technologies are reasonably likely to provide greater emissions reduction potential in future years. Further, recent changes in the electric grid such as the potential for reliability problems resulting from over-generation point in the direction of a lower mandate for CHP in the future, as CHP resources have a significant potential to contribute to the over-generation concern.[8]

In D.15-06-028, the Commission reduced CHP procurement in existing programs, including programs available to third-party providers and independent power producers. Moreover, the Commission's rationale for limiting competitive market opportunities for CHP development includes the potential contribution of CHP resources to overgeneration (which the California Independent System Operator sees as a significant challenge to grid reliability) and the recognition that other preferred resources might provide greater reductions of greenhouse gases (GHG) and emissions of air pollutants in future years.

In spite of the precedent established by D.15-06-028, the PD proposes to authorize a regulated gas utility, SoCalGas, to pursue the opposite policy, and to encourage the development of up to 4,690 MW of new CHP. Thus, at the same time the Commission directed an electric utility to ***halt*** its competitive CHP procurement program (available to independent power producers), the PD proposes to authorize a gas utility to enter the CHP market to ***increase*** use of CHP.

There is no indication or requirement that any CHP units that might result from SoCalGas' program will be more efficient, emit less GHG, or be less polluting than the CHP the Commission avoided in rendering D.15-06-028. There is no evidence that the advanced energy systems to be designed, owned, and operated by SoCalGas are any better in quality, efficiency,

[8] D.15-06-028, pp. 15-16; see also Findings of Fact Nos. 12 & 14, p. 52.

or cost than other preferred resources that the Commission is also promoting (and that likely would be displaced by the resources promoted under the DERS tariff).

SoCalGas argues that its application is consistent with the Energy Action Plans adopted in 2003/2004, the California Energy Commission's 2011 Integrated Energy Policy Report, the California Air Resources Board's AB 32 Scoping Plan adopted in 2008, and various CHP policies adopted by the Commission in 2008-2012.[9] However, the PD fails to recognize that these policies establish resource priorities and goals, but are silent on how to implement these priorities and achieve these goals. The PD errs by not giving full consideration to more recent Commission policies and implementation actions, including D.10-12-035 (approving the QF/CHP Settlement Agreement), D.15-06-028, and the continuation of the PURPA program for CHP resources of less than 20 MW,[10] that more clearly address the competitive tools to achieve these resource goals. In these more recent decisions, the Commission has been clear about its preference for using competitive processes to achieve policy goals.[11]

---

[9] PD, p. 13.

[10] The PD at several points erroneously refers to "the end of PURPA." (PD, pp. 36, 40.) However, PURPA is still part of the United States Code (16 USC §§ 796, 824a-3), and the Federal Energy Regulatory Commission (FERC) continues to maintain its regulations implementing PURPA as part of the Code of Federal Regulations (18 CFR 792). Moreover, PURPA has more relevance to SoCalGas' proposal than the PD acknowledges. The PD allows the electricity generated by the facilities installed under the DERS tariff to be exported to the grid as long as the quantity exported does not exceed 25% of on-site consumption. (PD, p. 65.) PURPA provides an exemption from federal regulation that would otherwise apply to grid exports for QFs. (18 CFR § 292.601(c).) Because the exemption PURPA offers from federal regulation attaches to the *facility*, if SoCalGas owns a CHP unit that exports to the grid, SoCalGas will have to certify the facility as a Qualifying Facility if it does not want to become subject to FERC regulation as an electric utility. SoCalGas' simplistic assertion that "SoCalGas does not intend on becoming an electric utility" is not consistent with PURPA and the other provisions of the Federal Power Act. SoCalGas' attempt to insulate itself from the electric market by saying it has no interest beyond the point of delivery ignores the fact that the electricity is generated by the facility that SoCalGas proposes to own and operate. The PD errs by accepting SoCalGas' simplistic explanations.

[11] *E.g.,* "The Commission has repeatedly stated a policy preference for competitive wholesale energy markets and competitive solicitations to procure new resources in those markets. . . . [The QF/CHP Settlement] is consistent with, and gives effect to, the Commission's preference for competitive procurement, and in this respect it is consistent with the law." D.10-12-035, pp. 39, 40-41 (citations omitted).

III. CUSTOMERS WITH 20 MW OF ELECTRIC DEMAND ARE NOT SMALL CUSTOMERS

The targets of SoCalGas' program are commercial and industrial customers with electric demands of up to 20 MW. SoCalGas argues that these customers constitute an underserved market and that they have less access long-term capital, resources, and financing, and the PD accepts those arguments without requiring supporting evidence. The PD speculates that these customers "have less knowledge about interconnection requirements and air quality emission regulations."[12] The PD accepts that because these customers are "small," they are not sophisticated about energy matters, and thus they require the paternalistic help of SoCalGas.[13]

Referring to these customers as "small" requires some understanding of the basis for this comparison. A facility with a 20 MW electric load is not a mom and pop corner store whose energy sophistication extends only to changing light bulls. As a rough rule of thumb, 1 MW is about the load required by 750 residential households. Thus, some of the "small" customers SoCalGas will target in this program have an electric demand that is roughly equivalent to the load of 15,000 residences. Moreover, a facility with an electric load of 20 MW pays a considerable sum for electricity. Under Southern California Edison's standard tariff schedule for large customers, Schedule TOU-8, just the facilities-related demand charge for customers at the lowest voltage level (loosely correlated to load) would amount to $311,400 per month for a customer with a 20 MW load, or over $3.7 million per year.[14]

The PD errs when it presumes these businesses are not able to address energy costs on their own and are not interested in availing themselves of competitive processes to lower their overall energy costs. What these businesses might lack is a connection to the

[12] PD, p. 42.
[13] *E.g.,* PD, p. 51.
[14] Available at https://www.sce.com/NR/sc3/tm2/pdf/ce54-12.pdf . The facilities-related demand charge for customers served at voltages below 2 kV is $15.57/kW/mo.

competitive processes that can identify the lowest cost/highest value product. SoCalGas could help make that connection by providing a service that draws these businesses' attention to advanced energy opportunities offered by the competitive supplier market. Utility involvement beyond providing information to customers is unnecessary and damaging to the existing market.

IV. SOCALGAS' PARTICIPATION COULD HARM A COMPETITIVE MARKET

The PD errs in at least two ways in concluding that because SoCalGas is not proposing to build a facility to sell electricity to the electric utilities as part of the CHP program, the DERS tariff will not impact the electric utilities' competitive solicitations for CHP energy and capacity required for the CHP program.[15] First, the state of California has limited opportunities to develop efficient, low-cost CHP for commercial and industrial facilities with sufficient thermal load. To the extent that SoCalGas builds, owns, and operates any such facilities, the supply of resources available to compete in the electric utilities' competitive solicitations is reduced.[16] Second, SoCalGas is proposing to build CHP facilities that will be interconnected to the electric grid, some of which will export energy to the grid. The energy and capacity associated with the facilities owned and operated by SoCalGas clearly will have an impact on the electric grid and electric markets.

Because energy service companies and other entities already offer the services that SoCalGas proposes to provide as part of the DERS tariff, the PD recognizes that SoCalGas' proposal could distort existing competitive markets and harm competition. The PD recognizes that the standard mitigation measures are insufficient to enhance competitive markets in this instance. Having said that, the PD proceeds to adopt mitigation measures that merely require SoCalGas to (1) use "competitively neutral scripts" in responding to inquiries about the DERS

[15] PD, pp. 16-17.
[16] In compliance with D.15-06-028, on July 24, 2015, San Diego Gas & Electric Company, SoCalGas' affiliate, launched a competitive solicitation to procure up to 50 MW of CHP.

Tariff, and (2) provide additional information in its semi-annual reports.[17] As a practical matter, these two additional requirements will do little to rein in potential anticompetitive behavior. The PD fails to provide answers to several critical questions:

- Will SoCalGas use its exclusive access to customer information to identify and target customers who might be interested in the DERS tariff?
- Does anything prevent SoCalGas from initiating contact with customers to promote the DERS tariff, and not limit its actions to merely responding to customer inquiries?
- Even if the script for responding to customer inquiries could be made "competitively neutral," how will the PD ensure that SoCalGas representatives follow the script and do not add responses that promote SoCalGas or disparage competitors other than SoCalGas?

The PD does not adequately explain why it rejects the obvious alternative of protecting competition by requiring SoCalGas to pursue the goals of the DERS tariff through a non-utility affiliate, rather than through a "tariff" that lacks Commission-approved rates for a service that is not provided to all eligible customers but is available only at the utility's discretion.

SoCalGas could greatly distort the market by virtue of its position as the monopoly gas utility, with direct contact with customers and knowledge of gas consumption patterns that could reveal likely participants. If the Commission chooses to ignore the concerns the Commission expressed in D.15-06-028, a better way to stimulate this market and promote additional CHP is to use SoCalGas' access to customer information to inform target customers of

[17] PD, pp. 47-48.

the availability of third parties to perform services related to advanced energy systems. Providing better information to target customers does not require utility ownership of these facilities.

V. USE OF RATEPAYER FUNDS TO DEVELOP SHAREHOLDER PROGRAMS

The PD is rightfully concerned about SoCalGas' failure to reveal until reply briefs that development of the DERS tariff, which was presented as a program for which shareholders would bear all costs and retain all revenues, was in fact developed using ratepayer funds. SoCalGas only compounded the problem by defending this treatment as being the same treatment it used to develop the Compressed Gas Services Tariff and Biogas Conditioning and Upgrading Services Tariff, a fact that had also not previously been revealed.[18]

The PD's reaction to SoCalGas' lack of candor about the development of these "shareholder" programs was, if anything, too mild, and the Commission would be justified in imposing harsher sanctions than the PD's scolding. This revelation, however, underscores the difficulty of ensuring that no ratepayer funds are directly or indirectly used to support a program sponsored by a regulated utility that is supposed to rely solely on shareholder funds (and on any revenues received for services provided under the tariff). If the program were required to be sponsored and funded through an affiliated entity, the diversion of ratepayers' funds to improper uses would be much easier to detect.

VI. THE PROPOSED SCRIPT IS NOT COMPETITIVELY NEUTRAL

The PD's primary mechanism for ensuring that SoCalGas does not exploit its status as the monopoly gas supplier to the detriment of competition is a requirement for SoCalGas to use a "competitively neutral" script to respond to inquiries about the DERS tariff.

[18] PD, p. 75.

The script the PD asks the Commission to adopt, however, is far from neutral toward competitors. In particular:

- Competing energy service companies are referred to as "non-utility service providers." Because this script is presumably offered in response to a customer's inquiry, characterizing competitive providers as "non-utility" is no more neutral than requiring SoCalGas' service to be referred to as "uncompetitive." A neutral term, like "energy service companies" or "other energy service providers" should be required.
- The response to the inquiry about what technologies would qualify under the tariff should also clarify that competitive energy service companies may provide additional technologies not offered under the DERS tariff.

VII. THE PROPOSED DECISION MAKES SIGNIFICANT POLICY CALLS WITH LITTLE FACTUAL BASIS AND VETTING BY STAKEHOLDERS

The PD states that "based on a review of past/recent Commission decisions in recent years, we are not convinced that there should be a blanket prohibition of utility owned facilities on or outside customer's premises even [if] it doesn't appear to be a 'logical extension' of utility service."[19] This statement goes well beyond the issues presented by SoCalGas' application, and the full implications of this statement have not even begun to be explored by the few stakeholders who participated in this proceeding. If this statement is intended to articulate a new Commission policy, it deserves a more complete consideration by the Commission and vetting by stakeholders before it is adopted.

On the other hand, this statement exposes one of the fundamental problems with SoCalGas' proposal: as a regulated utility moves into areas outside of its core functions, it

[19] PD, p. 31.

becomes increasingly difficult to maintain a clear distinction between activities that are properly funded by shareholders and activities that are appropriately ratepayers' responsibility. The relatively modest program SoCalGas proposes here already illustrates the difficulty of ensuring that ratepayers' funds are not used to develop or promote activities that benefit shareholders. That difficulty becomes magnified as a utility invests in facilities that fall outside of its core function of providing utility service to customers.

VIII. CONCLUSION

For the reasons set forth in these comments, the Independent Energy Producers Association respectfully urges the Commission to reject the PD and to deny SoCalGas' application. SoCalGas' proposal to have a gas utility intervene in a competitive energy services market is simply a bad idea that is not well-designed to address any identified problem and that carries a considerable unmitigated potential for abuse. SoCalGas should instead be encouraged to use its position as its customers' "trusted energy advisor" to provide information and outreach to customers who might be interested in obtaining DER services from competitive providers. If SoCalGas wants to participate in the CHP market as an owner-operator, it should participate through an affiliate, consistent with the Commission's policies.

Respectfully submitted August 3, 2015 at San Francisco, California.

GOODIN, MACBRIDE,
SQUERI, & DAY, LLP
Brian T. Cragg
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
Email: bcragg@goodinmacbride.com

By */s/ Brian T. Cragg*
Brian T. Cragg

Attorneys for the Independent Energy Producers Association

2970/024/X174261.v2