

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

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A2302018

Application of Pacific Gas and Electric Company for Compliance Review of Utility Owned Generation Operations, Portfolio Allocation Balancing Account Entries, Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, Utility Owned Generation Fuel Procurement, and Other Activities for the Record Period January 1 through December 31, 2022

Application 23-02-018

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**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S
MOTION FOR OFFICIAL NOTICE**

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January 18, 2024

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Compliance Review of Utility Owned Generation Operations, Portfolio Allocation Balancing Account Entries, Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, Utility Owned Generation Fuel Procurement, and Other Activities for the Record Period January 1 through December 31, 2022

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California Community Choice Association (CalCCA)¹ moves for and requests official notice of the following four documents (collectively, “Exhibits”) pursuant to Rules 11.1 and 13.10 of the California Public Utilities Commission’s Rules of Practice and Procedure:

1. Assigned Commissioner’s Scoping Memo and Ruling filed October 31, 2023 in Application (A.) 23-06-002² (“**SDG&E Scoping Ruling**”, attached as **Exhibit A** to this Motion);
2. Motion to Compel Discovery of San Diego Community Power and Clean Energy Alliance, filed on November 22, 2023 in A.23-06-002, (“**Joint CCA Motion to Compel**”, attached as **Exhibit B** to this Motion);

¹ California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Ava Community Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, Energy for Palmdale’s Independent Choice, Lancaster Energy, Marin Clean Energy, Orange County Power Authority, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Santa Barbara Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

² A.23-06-002, Application of San Diego Gas & Electric Company (U 902-E) for Approval of: (i) Contract Administration, Least-Cost Dispatch and Power Procurement Activities in 2022, (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account, Portfolio Allocation Balancing Account, Power Charge Indifference Adjustment Undercollection Balancing Account, Transition Cost Balancing Account, and Local Generating Balancing Account in 2022, and (iii) Costs Recorded in Related Regulatory Accounts in 2022.

3. San Diego Gas & Electric Company’s (U 902-E) Response to San Diego Community Power and Clean Energy Alliance’s Motion to Compel Discovery, filed on December 1, 2023 in A.23-06-002 (“**SDG&E Response to Motion to Compel**”, attached as **Exhibit C** to this Motion);
4. E-mail Ruling Granting San Diego Community Power and Clean Energy Alliance Motion to Compel San Diego Gas & Electric Company to Fully Respond to San Diego Community Power and Clean Energy Alliance Data Requests by 5 P.M. on December 8, 2023, issued on December 4, 2023 in A.23-06-002 (“**SDG&E Ruling**”, attached as **Exhibit D** to this Motion).

The fundamental question the SDG&E Ruling resolves—Whether information regarding the investor-owned utility’s (IOU) sales of excess resource adequacy (RA) is relevant to an ERRA Compliance proceeding?—mirrors a question at issue in the instant proceeding. The Joint CCA Motion to Compel, filed in San Diego Gas & Electric Company’s (SDG&E) 2022 ERRA Compliance proceeding, sought a ruling compelling SDG&E to produce information fully responsive to certain data requests related to SDG&E’s RA sales during the record period. The Ruling agrees with the community choice aggregator (CCA) movants. It finds SDG&E’s responses to the data requests in question are “relevant to the scope of [SDG&E’s 2022 ERRA Compliance] proceeding.”³ On that basis, the Ruling grants the Joint CCA Motion to Compel.

A substantially similar evidentiary question is disputed in this proceeding, the scope of which parallels the scope of the SDG&E 2022 ERRA Compliance proceeding. On September 22, 2023, CalCCA filed the prepared testimony of witness Brian Shuey addressing Pacific Gas and Electric Company’s (PG&E) RA sales in 2022.⁴ Mr. Shuey’s testimony includes, as attachments,

³ See Exhibit D to this Motion at 2-3.

⁴ A.23-02-018, Prepared Direct Testimony of Brian Shuey on behalf of the California Community Choice Association in Pacific Gas and Electric Company’s 2022 ERRA Compliance Proceeding (Sept. 22, 2023).

several of PG&E's responses to CalCCA data requests, each related to PG&E's RA sales in 2022.⁵ On October 6, 2023, PG&E filed a Motion to Strike the majority of Mr. Shuey's testimony based on its position that the testimony is not relevant to this proceeding.⁶

The Exhibits are therefore relevant to this proceeding because the documents demonstrate the Commission's resolution of a question that mirrors the fundamental question raised by PG&E's Motion to Strike Mr. Shuey's prepared testimony.⁷ Moreover, as CalCCA explains below, the Exhibits meet the standard for official notice because each document is a part of the record of a Commission proceeding, is not reasonably subject to dispute, and is capable of immediate and accurate determination by resort to the Commission's electronic docketing system. The Commission should therefore take official notice of the Exhibits.

To be clear, CalCCA is not requesting the Commission take official notice of the truth of the matters asserted in the Exhibits. In other words, CalCCA's request does not require the Commission to make any determination regarding the truth of any of the factual assertions in the Exhibits (for example, that SDG&E reported it had excess RA capacity available between June and October 2022, *see* Joint CCA Motion to Compel at 6). CalCCA requests only that the Commission take official notice of the existence of the Exhibits and the content therein (for

⁵ Attachment B to the Prepared Direct Testimony of Brian Shuey on behalf of the California Community Choice Association in Pacific Gas and Electric Company's 2022 ERRRA Compliance Proceeding (Sept. 22, 2023).

⁶ A.23-02-018, Motion to Strike Portions of the Prepared Direct Testimony of Brian Shuey on behalf of the California Community Choice Association by Pacific Gas and Electric Company (U 39-E) (Oct. 6, 2023) (Motion to Strike).

⁷ CalCCA references each of the Exhibits in its motion for the admission of the prepared testimony of Brian Shuey, filed on the same day as this Motion for Official Notice. CalCCA filed its Response to PG&E's Motion to Strike before the Joint CCAs filed the Motion to Compel in SDG&E's 2022 ERRRA Compliance proceeding, and CalCCA therefore could not have referenced the Joint CCA Motion to Compel (or SDG&E's Response to the Motion to Compel, or the ALJ's Ruling on the Motion to Compel) in that Response.

example, that the Joint CCAs sought a ruling compelling responses to certain discovery requests, and that the ALJ in SDG&E’s 2022 ERRRA Compliance proceeding found the information requested by the Joint CCAs relevant to the scope of the proceeding). The Commission has previously found that taking official notice is appropriate “to the fact that [certain] documents exist and the indicated issues have been raised and are pending.”⁸ The Commission should similarly take notice of the existence of the Exhibits and content therein, but not the truth of the matters asserted therein.

I. LEGAL STANDARD

Rule 13.10 provides that “[o]fficial notice may be taken of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 et seq.”⁹ Evidence Code section 452(c) in turn permits notice of “[o]fficial acts of the legislative, executive and judicial departments of the United States and of any state in the United States.”¹⁰ Moreover, Evidence Code section 452(h) permits judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”¹¹ As CalCCA discusses below, the Exhibits meet the requirements of Evidence Code sections 452(c) and (h).

Evidence Code section 453 imposes certain procedural requirements on parties seeking judicial notice. Namely, parties seeking judicial notice must provide adverse parties sufficient

⁸ A.09-02-022, *Application of Pacific Gas and Electric Company for Approval of its 2009 Rate Design Window Proposals for Dynamic Pricing and Recovery of Incremental Expenditures Required for Implementation*, D.10-02-032 at 150 (granting request for official notice of a letter to the Commission from a legislator and of a Commission press release).

⁹ California Public Utilities Commission Rules of Practice and Procedure 13.10.

¹⁰ Cal. Evid. Code sec. 452(c).

¹¹ Cal. Evid. Code sec. 452(h).

notice of the request and furnish the court with sufficient information to enable it to take judicial notice.¹² This Motion for Official Notice meets the requirements of Evidence Code section 453 because it provides parties sufficient notice of CalCCA’s request and furnishes the Commission with the information necessary to grant CalCCA’s request.

II. DISCUSSION

A. The Commission Should Take Official Notice of the Exhibits Because Those Documents are Relevant to a Key Disputed Evidentiary Issue in this Proceeding

The evidentiary question before the Commission—Whether CalCCA’s testimony regarding PG&E’s attempts to sell its excess RA during the summer of 2022 is relevant to the scope of this ERRA Compliance proceeding?—mirrors a question that was recently resolved in San Diego Gas & Electric Company’s (SDG&E) 2022 ERRA Compliance proceeding. As the table below demonstrates, Scoping Issues 1 through 3 of the SDG&E proceeding are exceedingly similar to Scoping Issues 1 and 3 of the instant proceeding:

Scoping Issue	A.23-02-018, PG&E 2022 ERRA Compliance proceeding ¹³	Scoping Issue	A.23-06-002, SDG&E 2022 ERRA Compliance proceeding ¹⁴
Scoping Issue 1	Whether PG&E, during the record period, prudently administered and managed, in compliance with all applicable rules, regulations and Commission decisions, including but not limited to Standard of Conduct No. 4 (SOC 4), the following: a. Utility-Owned Generation Facilities, except for the Elkhorn Battery Energy Storage System and Pit 1 Powerhouse outages which will be reviewed in the 2023 ERRA Compliance proceeding;	Scoping Issue 1	Whether SDG&E administered and managed its own generation resources prudently, to include the management of outages and associated fuel costs, according to Standard of Conduct (“SOC”) 4
		Scoping Issue 2	Whether SDG&E administered and managed its Qualifying Facility (“QF”) and non-QF contracts for generation and power purchase agreements in accordance with the contract provisions and otherwise followed Commission guidelines relating to those contracts and

¹² Cal. Evid. Code sec. 453.

¹³ A.23-02-018, Assigned Commissioner’s Scoping Memo and Ruling at 2-3 (June 2, 2023).

¹⁴ Exhibit A at 2-3.

	b. Qualifying Facilities (QF) Contracts; and c. Non-QF Contracts If not, what adjustments, if any, should be made to account for imprudently managed or administered resources?		their amendments according to SOC 4.
Scoping Issue 3	Whether the entries recorded in the ERRA and the Portfolio Allocation Balancing Account are reasonable, appropriate, accurate, and in compliance with Commission decisions.	Scoping Issue 3	Whether the entries recorded during the record year in the following accounts are correctly stated and in compliance with Commission directives: [. . .] b. Portfolio Allocation Balancing Account [. . .].

In SDG&E’s 2022 ERRA Compliance proceeding, certain community choice aggregators (collectively, the Joint Community Choice Aggregators or “Joint CCAs”) sought a ruling compelling SDG&E to produce information fully responsive to data requests seeking to scrutinize SDG&E’s attempt to maximize its RA sales during the record period.¹⁵ The Joint CCAs explained that between June and October of 2022, SDG&E relied on excess RA capacity from its existing resources to count toward its incremental system reliability procurement targets¹⁶—mirroring PG&E’s treatment of excess RA during the summer of 2022. Joint CCAs asserted, therefore, that “[a]n important question for the Commission to consider in [SDG&E’s 2022 ERRA compliance] proceeding is whether SDG&E should have offered more RA for sale in 2022 given this substantial excess RA capacity, *i.e.*, whether SDG&E prudently managed its portfolio during the record year that is the focus of this proceeding.”¹⁷ That question parallels the key disputed issue between CalCCA and PG&E in this proceeding: whether PG&E made reasonable attempts to sell its excess capacity to other LSEs during the summer of 2022 before transferring that capacity to CAM.

¹⁵ Exhibit B.

¹⁶ *Id.* at 4-5.

¹⁷ *Id.* at 5.

In order to help the Commission address that question in SDG&E’s proceeding, according to the Joint CCAs’ Motion to Compel, the Joint CCAs issued data requests seeking information regarding SDG&E’s RA solicitation materials, RA positions, and bid outcomes of SDG&E’s sales of excess RA.¹⁸ The CCAs explained SDG&E’s attempts to maximize its RA sales “[go] directly to the heart of whether [SDG&E] prudently managed its generation portfolio during the 2022 compliance period. SDG&E’s efforts in this regard ultimately impact the entries it made into its balancing accounts, including the [PABA], which is subject to a compliance review in this proceeding.”¹⁹ Similarly, here, CalCCA’s testimony adduces facts regarding PG&E’s attempts to sell its excess RA, including PG&E’s RA positions and solicitations, because those facts go to whether PG&E prudently managed its resource portfolio (Scoping Issue 1); whether PG&E’s entries to the PABA were appropriate (Scoping Issue 3); and whether PG&E complied with its BPP (Scoping Issue 5).

SDG&E objected to the Joint CCAs’ data requests.²⁰ It contended any information regarding its attempts (or lack thereof) to sell excess RA was not relevant to its ERRA Compliance proceeding.²¹ In response to the Joint CCAs’ Motion to Compel, while acknowledging intervening parties in an ERRA Compliance proceeding “may make a threshold inquiry as to whether SDG&E sold excess RA in the record year”, SDG&E asserted intervenors “are not allowed to review or examine the specifics of those activities for the purposes of contesting their reasonableness.”²² SDG&E also argued it had already “justified its methodology for determining how much of its

¹⁸ *Id.* at 5-6.

¹⁹ *Id.* at 1-2.

²⁰ *Id.* at 5-6.

²¹ *Id.*

²² Exhibit C at 12.

PCIA-eligible RA is reserved in its BPP” and the Commission “recently confirmed that SDG&E’s methodology for determining how much of its [PCIA]-eligible RA is reserved in its BPP is reasonable.”²³ SDG&E further argued its RA transactions in compliance with an approved BPP are not subject to any additional “after-the-fact” reasonableness review.²⁴

The substance of SDG&E’s evidentiary arguments echoes the substance of the arguments PG&E advances in this proceeding, even if the form of each utility’s argument differs (*i.e.* SDG&E sought to deny Joint CCAs the opportunity to review its RA activities by objecting to discovery, whereas PG&E seeks to deny CalCCA the opportunity to meaningfully dispute its RA activities by moving to strike portions of its testimony after objecting to discovery). Like SDG&E, PG&E argues CalCCA’s data and arguments on PG&E’s RA activities during the summer of 2022 “are not relevant to the scope of this proceeding”;²⁵ asserts its BPP establishes an “upfront reasonableness standard” by which the Commission evaluates PG&E’s RA sales;²⁶ and asserts the Commission’s review of PG&E’s RA activities during the record year is limited to a review of PG&E’s compliance with its BPP.²⁷

The ALJ in SDG&E’s proceeding ruled in favor of the Joint CCAs. The Ruling concludes the Joint CCAs “showed that SDG&E’s responses to [their] Data Requests are relevant to the scope of this proceeding.”²⁸ The Exhibits therefore support the relevance of CalCCA’s prepared testimony in this proceeding, and CalCCA reference the Exhibits in its motion for the admission

²³ *Id.* at 12-13.

²⁴ *Id.* at 11.

²⁵ Motion to Strike at 1.

²⁶ *Id.* at 4.

²⁷ *Id.* at 6-7.

²⁸ Exhibit D at 2-3.

of the prepared testimony of Brian Shuey. The Commission should take official notice of the Exhibits because the documents are plainly relevant to a key disputed evidentiary issue between PG&E and CalCCA in this proceeding.

B. Official Notice of the Exhibits is Proper Under Commission Rule 13.10.

The Commission may take official notice of the Exhibits under Rule 13.10 because these documents may be judicially noticed by California courts pursuant to Evidence Code section 450 *et seq.*

First, the Exhibits meet the standard set forth in Evidence Code section 452(c). That section permits notice of “[o]fficial acts of the legislative, executive and judicial departments of the United States and of any state in the United States.”²⁹ Official acts include records, reports and orders of administrative agencies³⁰ and therefore include the Exhibits, each of which constitute records of the Commission.

Second, the Exhibits meet the standard set forth in Evidence Code section 452(h). That section permits notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”³¹ The existence of the Exhibits, and the content therein, are facts and propositions that are not reasonably subject to dispute because each document includes the Docket Office’s electronic filing stamp. Further, the existence of the Exhibits, and the content therein, are capable of immediate and accurate determination by resort to the Commission’s electronic filing system, which is a source of reasonably indisputable accuracy.

²⁹ Cal. Evid. Code sec. 452(c).

³⁰ *Rodas v. Spiegel*, 87 Cal. App. 4th 513, 518 (2d Dist. Jan. 30, 2001).

³¹ Cal. Evid. Code sec. 452(h).

Consistent with the requirements of Evidence Code section 453, CalCCA has attached copies of the SDG&E Scoping Ruling, Joint CCA Motion to Compel, SDG&E Response to Motion to Compel, and SDG&E Ruling as exhibits to this Motion. In addition, prior to filing this Motion, CalCCA notified the parties and the Commission of its intention to file this request, including via the Joint Report of Meet and Confer filed in this proceeding on January 8, 2024.³² CalCCA has therefore provided adverse parties sufficient notice of CalCCA's request and furnished the Commission with sufficient information to enable it to take notice of the existence of, and content in, the Exhibits.

III. CONCLUSION

For the reasons described herein, CalCCA respectfully requests the Commission grant this Motion and take official notice of the Exhibits attached to this Motion.

Respectfully submitted,



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Dated: January 18, 2024

³² Joint Report of Meet and Confer by Pacific Gas and Electric Company (U 39 E), Public Advocates Office, and the California Community Choice Association at 4 (Jan. 8, 2024).

Exhibit A

SDG&E Scoping Ruling



FILED

10/31/23

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A2306002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902E) for Approval of:
(i) Contract Administration, Least-Cost Dispatch and Power Procurement Activities in 2022, (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account, Portfolio Allocation Balancing Account, Power Charge Indifference Adjustment Undercollection Balancing Account, Transition Cost Balancing Account, and Local Generating Balancing Account in 2022, and (iii) Costs Recorded in Related Regulatory Accounts in 2022.

Application 23-06-002

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

This scoping memo and ruling sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure (Rules).

1. Procedural Background

On June 1, 2023, San Diego Gas & Electric Company (SDG&E) filed an application to seek Commission approval of contract administration, least-cost dispatch and power procurement activities, and costs recorded in its Energy Resource Recovery Account, Portfolio Allocation Balancing Account, Power Charge Indifference Adjustment Undercollection Balancing Account, Transition

Cost Balancing Account, Local Generating Balancing Account, and other related accounts. On July 6, 2023, Public Advocates Office at the California Public Utilities Commission (Cal Advocates) and California Energy Alliance and San Diego Community Power (Joint CCAs) timely filed protests to SDG&E's application. SDG&E filed a reply to Cal Advocates' and the Joint CCAs' protests on July 17, 2023. On August 4, 2023, an Administrative Law Judge (ALJ) ruling noticed the prehearing conference (PHC). A PHC was held on August 21, 2023, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary.

After considering SDG&E's application, Cal Advocates' and the Joint CCAs' protests, SDG&E's reply to protests, and discussion at the PHC, I have determined the issues and initial schedule of the proceeding to be set forth in this scoping memo. I have also determined that no environmental and social justice issues have been raised at this time.

2. Issues

The issues to be determined or otherwise considered are:

1. Whether SDG&E administered and managed its own generation resources prudently, to include the management of outages and associated fuel costs, according to Standard of Conduct ("SOC") 4.
2. Whether SDG&E administered and managed its Qualifying Facility ("QF") and non-QF contracts for generation and power purchase agreements in accordance with the contract provisions and otherwise followed Commission guidelines relating to those contracts and their amendments according to SOC 4.
3. Whether SDG&E used the most cost-effective mix of energy resources under its control and achieved Least Cost Dispatch of its energy resources according to SOC 4.

4. Whether SDG&E administered its demand response programs to minimize costs to its ratepayers according to SOC 4.
5. Whether the entries recorded during the record year in the following accounts are correctly stated and in compliance with Commission directives:
 - a. the Energy Resource Recovery Account;
 - b. Portfolio Allocation Balancing Account;
 - c. Undercollection Balancing Account;
 - d. Transition Cost Balancing Account;
 - e. Local Generating Balancing Account;
 - f. New Environmental Regulatory Balancing Account (NERBA);
 - g. Independent Evaluator Memorandum Account;
 - h. Litigation Cost Memorandum Account;
 - i. Green Tariff Marketing Education & Outreach Memorandum Account;
 - j. Green Tariff Shared Renewables Administrative Cost Memorandum Account;
 - k. Enhanced Community Renewable ME&O Memorandum Account;
 - l. Green Tariff Shared Renewables Balancing Account;
 - m. Tree Mortality Non-Bypassable Charge Balancing Account (TMNBCBA);
 - n. Disadvantaged Communities – Single Family Solar Homes Balancing Account;
 - o. Disadvantaged Communities-Green Tariff Balancing Account; and
 - p. Community Solar Green Tariff Balancing Account
6. Whether SDG&E's Greenhouse Gas (GHG) Compliance Instrument procurement was consistent with applicable

standards and in compliance with SDG&E's Commission-approved procurement plans.

7. Whether the entries in SDG&E's Greenhouse Gas Revenue Balancing Account and Greenhouse Gas-related entries in other ERRA sub-accounts are accurate, and whether SDG&E met its burden of proof regarding its claim for these entries.
8. Whether the Commission should authorize SDG&E to pursue adjustment of the undercollection in SDG&E's NERBA in the Annual Electric Regulatory Account Update filing.
9. Whether the Commission should authorize SDG&E to pursue adjustment of the undercollection in SDG&E's TMNBCBA in the Annual Electric Public Purpose Program Account Update filing.

3. Need for Evidentiary Hearing

Based on party feedback at the PHC, there may be disputed issues of material fact including but not limited to SDG&E's prudent management and administration of utility-owned generation resources, purchased power contracts, demand response programs, GHG compliance instrument procurement, and generation-related balancing accounts. Accordingly, parties will be allowed to present evidence on these issues if evidentiary hearings are needed. The need for evidentiary hearings will be determined by the assigned ALJ and further instructions provided at the status conference.

4. Schedule

The following schedule is adopted here and may be modified by the assigned ALJ as required to promote the efficient and fair resolution of the application:

Event	Date
Intervenors' prepared direct testimony served	December 15, 2023
Status Report on Settlement Talks (if needed)	February 17, 2024
Rule 13.9 Meet and Confer Deadline	March 8, 2024
Status Conference on Need for Hearings	March 11, 2024
Evidentiary Hearings	March 18, 2024
Opening Briefs	April 12, 2024
Reply Briefs	May 3, 2024
Proposed Decision	Third Quarter 2024

The purpose of the March 11, 2024 status conference is to ascertain whether, pursuant to Rule 13.8(c), the parties stipulate to the receipt of prepared testimony into evidence without direct or cross examination or other need to convene an evidentiary hearing or, in the alternative, the parties' resources, readiness and needs for the effective remote conduct of the evidentiary hearing, including estimates of time requested for cross-examination and identification of anticipated exhibits.

The proceeding will stand submitted upon the filing of reply briefs, unless the ALJ requires further evidence or argument. Based on this schedule, the proceeding will be resolved within 18 months as required by Public Utilities (Pub. Util.) Code Section 1701.5.

5. Alternative Dispute Resolution (ADR) Program and Settlements

The Commission's Alternative Dispute Resolution (ADR) program offers mediation, early neutral evaluation, and facilitation services, and uses ALJs who have been trained as neutrals. At the parties' request, the assigned ALJ can refer

this proceeding to the Commission's ADR Coordinator. Additional ADR information is available on the Commission's website.¹

Any settlement between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Rules and shall be served in writing. Such settlements shall include a complete explanation of the settlement and a complete explanation of why it is reasonable in light of the whole record, consistent with the law and in the public interest. The proposing parties bear the burden of proof as to whether the settlement should be adopted by the Commission.

The schedule set forth in this Scoping Memo includes a date for the completion of settlement talks. No later than this date, the parties will submit to the assigned ALJ a status report of their efforts, identifying agreements reached and unresolved issues requiring hearing.

6. Category of Proceeding and Ex Parte Restrictions

This ruling confirms the Commission's preliminary determination that this is a ratesetting proceeding. Accordingly, ex parte communications are restricted and must be reported pursuant to Article 8 of the Rules.

7. Public Outreach

Pursuant to Pub. Util. Code Section 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on communities and businesses that subscribe to it and posted on the Commission's website.

¹ See Decision 07-05-062, Appendix A, § IV.O.

8. Intervenor Compensation

Pursuant to Pub. Util. Code Section 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by September 20, 2023, 30 days after the PHC.

9. Response to Public Comments

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the “Add Public Comment” button on the “Public Comment” tab of the online docket card for the proceeding.

10. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission’s Public Advisor at 866-849-8390 or 866-836-7825 (TTY), or send an email to public.advisor@cpuc.ca.gov.

11. Filing, Service, and Service List

The official service list has been created and is on the Commission’s website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission’s Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.²

When serving any document, each party must ensure that it is using the current official service list on the Commission’s website.

² The form to request additions and changes to the Service list may be found at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/additiontoservicelisttranscriptordercompliant.pdf>

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

The Commission encourages those who seek information-only status on the service list to consider the Commission's subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.

12. Receiving Electronic Service from the Commission

Parties and other persons on the service list are advised that it is the responsibility of each person or entity on the service list for Commission proceedings to ensure their ability to receive emails from the Commission. Please add "@cpuc.ca.gov" to your email safe sender list and update your email

screening practices, settings and filters to ensure receipt of emails from the Commission.

13. Assignment of Proceeding

John Reynolds is the assigned Commissioner and Rajan Mutialu is the assigned ALJ and presiding officer for the proceeding.

IT IS RULED that:

1. The scope of this proceeding is described above and is adopted.
2. The schedule of this proceeding is set forth above and is adopted.
3. Evidentiary hearings may be needed.
4. The presiding officer is Administrative Law Judge Rajan Mutialu.
5. The category of the proceeding is ratesetting.

Dated October 31, 2023, at San Francisco, California.

 /s/ JOHN REYNOLDS
John Reynolds
Assigned Commissioner

Exhibit B

Joint CCA Motion to Compel

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

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Application of San Diego Gas & Electric Company (U 902-E) for Approval of: (i) Contract Administration, Least-Cost Dispatch and Power Procurement Activities in 2022, (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account, Portfolio Allocation Balancing Account, Power Charge Indifference Adjustment Undercollection Balancing Account, Transition Cost Balancing Account, and Local Generating Balancing Account in 2022, and (iii) Costs Recorded in Related Regulatory Accounts in 2022.

Application 23-06-002
(Filed June 1, 2023)

**MOTION TO COMPEL DISCOVERY OF SAN DIEGO
COMMUNITY POWER AND CLEAN ENERGY ALLIANCE**

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November 22, 2023

*On behalf of San Diego Community
Power and Clean Energy Alliance*

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company (U 902-E) for Approval of: (i) Contract Administration, Least-Cost Dispatch and Power Procurement Activities in 2022, (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account, Portfolio Allocation Balancing Account, Power Charge Indifference Adjustment Undercollection Balancing Account, Transition Cost Balancing Account, and Local Generating Balancing Account in 2022, and (iii) Costs Recorded in Related Regulatory Accounts in 2022.

Application 23-06-002
(Filed June 1, 2023)

**MOTION TO COMPEL DISCOVERY OF SAN DIEGO
COMMUNITY POWER AND CLEAN ENERGY ALLIANCE**

Pursuant to Rule 11.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (the “Commission”), San Diego Community Power (“SDCP”)¹ and Clean Energy Alliance (“CEA”)² (together, “Joint CCAs”) hereby submit this Motion to Compel (“Motion”) San Diego Gas & Electric Company (“SDG&E”) to produce information fully responsive to the Joint CCAs’ Data Requests 1.09, 1.10, 2.02, 2.03, and 2.05 (the “Data Requests”).

The Data Requests seek information regarding the solicitation materials, resource adequacy (“RA”) positions, and bid outcomes of SDG&E’s sales of excess RA in 2021 and 2022. SDG&E’s attempts to maximize its RA sales — and thereby lower costs to customers — goes

¹ SDCP is the CCA for the cities of Chula Vista, Encinitas, Imperial Beach, La Mesa, National City and San Diego and the unincorporated areas of San Diego County.

² CEA is the CCA for the cities of Carlsbad, Del Mar, Solana Beach, Escondido, San Marcos, Oceanside, and Vista.

directly to the heart of whether it prudently managed its generation portfolio during the 2022 compliance period. SDG&E's efforts in this regard ultimately impact the entries it made into its balancing accounts, including the Portfolio Allocation Balancing Account ("PABA"), which is subject to a compliance review in this proceeding.

Despite the broad implications of SDG&E's attempts (or lack thereof) to sell excess RA, SDG&E contends this information is not relevant for stakeholder or Commission review in this proceeding. In addition, SDG&E improperly seeks to withhold the requested information from representatives of the Joint CCAs that have executed non-disclosure agreements, arguing that it would be improper to disclose confidential and commercially sensitive information to the reviewing representatives for community choice aggregators ("CCAs") that participate in its RA solicitations. SDG&E's objections should be rejected.

The information sought through the Data Requests is relevant to whether SDG&E prudently managed its generation resources and should not be withheld from Commission review. SDG&E's efforts to sell excess RA have a direct impact on its customers' rates, and its efforts to prevent a thorough review of its actions raise larger concerns surrounding SDG&E's perception of the Commission's ability to oversee its operations. Further, the Commission adopted a framework to provide market-sensitive data to reviewing representatives for market participants that has largely operated successfully since D.06-06-006. That framework addresses the confidentiality concerns SDG&E has raised; no market participant will receive any market-sensitive materials.

Consequently, and given the December 15, 2023, deadline for intervenor testimony, the Joint CCAs respectfully request the Commission direct SDG&E to produce information fully

responsive to the Data Requests to the Joint CCAs' reviewing representatives by December 8, 2023.

I. FACTUAL AND PROCEDURAL BACKGROUND

On June 1, 2023, SDG&E filed its *Application for Approval of ERRA Compliance for Record Period 2022*. The Application requests, among other things, review and approval of costs related to activities recorded to the ERRA, the PABA, and the PCIA.³ CCA and other unbundled customers are subject to several non-bypassable charges ("NBCs"), including PCIA rates to recover above market costs of the utility's PCIA-eligible resources and the Local Generation Charge rate to recover Cost Allocation Mechanism costs.

SDG&E's PCIA rates are set in the ERRA Forecast proceeding based on: (1) the Indifference Amount (the difference in the forecast year between the cost of the IOU's supply portfolio and the market value of the IOU's supply portfolio); and (2) the year-end balance in the Portfolio Allocation Balancing Account ("PABA"). The Indifference Amount and the year-end PABA over- or under-collection are added together to form the PABA revenue requirement underlying PCIA rates. The ERRA Forecast case sets those rates for implementation on January 1 of the record year.

For bundled customers, the PCIA-related costs are included in the commodity revenue requirement and recovered through a bundled commodity rate, which is also set in the ERRA Forecast case. Costs to meet bundled customers' energy and ancillary service requirements through the CAISO market, along with costs of resources not eligible for recovery in the PABA or CAM, are recovered via the ERRA. The total bundled customer commodity revenue requirement is

³ Application (A.) 23-06-002, Application of San Diego Gas & Electric Company (U 902-E) for Approval of ERRA Compliance for Record Period 2022, p. 1 (June 1, 2023).

calculated by combining ERRA costs with bundled customers' share of above market cost of PCIA-eligible contracts and utility owned resources.

SDG&E then tracks actual costs and revenues incurred over the course of the year for PCIA-eligible resources in the PABA. Costs to meet bundled customers' energy and ancillary service requirements are recorded and tracked in the ERRA balancing account during the record year. The result in both balancing accounts is SDG&E recording either an under- or over-collection based on many factors tied to actual market costs, actual market revenues, and actual customer revenues from retail sales. The resulting under- or over-collection is then included in the revenue requirement for the following year's ERRA and PCIA rates. For example, customers are currently paying (in 2023) the under- and over-collections that SDG&E recorded over the course of 2022.

One important factor in whether an over- or under-collection exists in the PABA is the actual amount of RA capacity SDG&E sold during the record year ("Sold RA") compared to the amount of Sold RA it had forecasted it would sell. A close review of both (1) the accounting tracking those sales, and (2) whether SDG&E prudently managed its portfolio in making those sales, takes place in the ERRA Compliance proceeding, *i.e.*, the instant proceeding. There is no other proceeding in which to scrutinize these factors from SDG&E's RA sales: this proceeding is the Commission and parties' only opportunity to review SDG&E's accounting of its 2022 RA sales and whether it prudently managed its portfolio in making those sales in 2022.

In the 2022 record year, SDG&E reported it relied on excess RA capacity from existing resources to count toward its incremental system reliability procurement targets.⁴ In other words, SDG&E reported it had substantial excess RA capacity available from June through October 2022,

⁴ SDG&E Excess Resources Report (last updated September 28, 2023). Accessible at: <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/resource-adequacy-homepage/resource-adequacy-compliance-materials/sdge-excess-resource-reporting-d2112015octpublic081522.xlsx>.

and, as a result, it 1) counted that capacity toward its incremental targets, and 2) transferred the RA value to CAM for cost recovery. An important question for the Commission to consider in this proceeding is whether SDG&E should have offered more RA for sale in 2022 given this substantial excess RA capacity, *i.e.*, whether SDG&E prudently managed its portfolio during the record year that is the focus of this proceeding.

The Joint CCAs issued discovery on August 31, 2023, to further evaluate SDG&E's attempts to sell its excess RA. The Data Requests seek information regarding the solicitation materials, RA positions, and bid outcomes related to SDG&E's sales of excess RA in 2021 and 2022. The Data Requests are attached as Exhibit B. Notably, the Data Requests are substantially similar to information requested by the California Public Advocates Office ("Cal Advocates") in its Master Data Requests ("MDR"). Specifically, MDR 3.20.2 sought the system, local, and flex positions for each solicitation in which RA for delivery in the record year was offered for sale.⁵ MDR 3.20, which indicates that parties beyond the Joint CCAs believe this information to be relevant in the present proceeding, is attached as Exhibit D.

SDG&E issued responses to the Joint CCAs' First Set of Data Requests on September 29, 2023. However, SDG&E objected to Data Requests 1.09 and 1.10 in their entirety.⁶ In its objections, SDG&E argued that the Data Requests seek production of information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.⁷ In addition, SDG&E argued that because the Joint CCAs participate in its RA solicitations, it would be improper to disclose confidential and commercially sensitive information.⁸

⁵ Joint CCA Exhibit D, Cal Advocates MDR 3.20.2 (issued March 30, 2023).

⁶ Joint CCA Exhibit B, SDG&E Response to SDCP and CEA Data Request 001, pp. 5-6 (September 29, 2023) and SDG&E Response to SDCP and CEA Data Request 002, pp. 1-3 (November 16, 2023).

⁷ *Id.*

⁸ *Id.*

On October 23, 2023, the Joint CCAs sent an electronic message to counsel for SDG&E to request a meet and confer pursuant to Rule 11.3 to discuss the discovery dispute.⁹ The meet and confer took place on November 6, 2023, during which the parties resolved disputes surrounding two additional data requests. However, counsel for SDG&E later notified the Joint CCAs that it maintained its objection to the Data Requests.¹⁰

On November 2, 2023, the Joint CCAs issued an additional set of discovery requests, including Data Requests 2.02, 2.03, and 2.05.¹¹ The Data Requests sought information regarding SDG&E's monthly RA requirements, its final net RA position for each month of the 2022 compliance period, and any attachments to its 2022 Quarterly Compliance Reports that address its RA solicitations, RA volumes made available, RA-related filings with the Commission, and the calculation and reporting of SDG&E's net RA position.¹²

SDG&E served its responses to the Joint CCAs' Second Set of Data Requests on November 16, 2023. In its response, SDG&E objected to Data Requests 2.02, 2.03, and 2.05 in their entirety, arguing these requests are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.¹³ Further, SDG&E argued the Data Requests are irrelevant to any issue presented in this proceeding and are therefore out of scope.¹⁴

Given the similar nature of Data Requests 1.09 and 1.10 to Data Requests 2.02, 2.03, and 2.05 and the unsuccessful meet and confer, counsel for the Joint CCAs sent an electronic message to counsel for SDG&E on November 21, 2023 inquiring as to whether an additional meet and

⁹ Joint CCA Exhibit C.

¹⁰ *Id.*

¹¹ Joint CCA Exhibit B.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

confer was likely to be productive.¹⁵ Counsel for SDG&E indicated that another meet and confer was not necessary.¹⁶ As a result, the Joint CCAs must now request the Commission compel SDG&E to produce the information requested in the Data Requests.

II. CALIFORNIA LAW SUPPORTS A BROAD INTERPRETATION OF RELEVANCY.

SDG&E claims that information regarding its solicitation materials, RA positions, bid outcomes of its 2021 and 2022 excess RA solicitations, and the additional RA-related information requested in the Data Requests is not relevant or reasonably calculated to lead to the discovery of admissible evidence. However, California law favors a broad interpretation of relevancy and supports the Joint CCAs' position that the requested information is, in fact, relevant to the issues in this proceeding.

The California Evidence Code defines "relevant evidence" as evidence "having *any* tendency in reason to prove or disprove *any* disputed fact that is *of consequence* to the determination of the action."¹⁷ The definition is "manifestly broad," and evidence is relevant "no matter how weak it tends to prove a disputed issue."¹⁸ Further, "any 'doubts as to relevance should generally be resolved in favor of permitting discovery.'"¹⁹

Commission rules also support a broad interpretation of relevance to ensure the Joint CCAs have a meaningful opportunity to rebut evidence affecting the PCIA rates their customers will pay. Under Commission Rule 13.6(a), California's "technical rules of evidence . . . need not be applied

¹⁵ Joint CCA Exhibit C.

¹⁶ *Id.*

¹⁷ Cal. Evid. Code § 210 (emphasis added).

¹⁸ *See, e.g., People v. Tauber*, 56 Cal. Rptr. 2d 656, 660 (1996).

¹⁹ *Williams v. Superior Court*, 3 Cal. 5th 531, 542 (2017) (quoting *Pacific Tel. & Tel. Co. v. Superior Court*, 2 Cal.3d 161, 173 (1970)).

in hearings” before the Commission.²⁰ However, “the rights of parties to meaningfully participate in the proceeding and to public policy protections shall be preserved.”²¹

III. ARGUMENT

A. The Requested Information is Relevant to Whether SDG&E Prudently Managed its Portfolio.

Scoping Issue One of the *Assigned Commissioner’s Scoping Memo and Ruling* asks “[w]hether SDG&E administered and managed its own generation resources prudently, to include the management of outages and associated fuel costs, according to Standard of Conduct (‘SOC’) 4.”²² SDG&E argues that Scoping Issue One is narrowly constrained to whether it administered and managed its generation resources in compliance with the Commission’s Good Utility Practice and reasonable manager standards.²³ Specifically, SDG&E argues that only keeping up with maintenance obligations is essentially all that is required to meet these standards.²⁴

However, Scoping Issue One is broader than SDG&E contends. SOC 4 requires utilities to prudently administer all contracts and generation resources and dispatch the energy in a least-cost manner.²⁵ In an ERRA Compliance proceeding, the Commission’s review typically extends to whether the utility administered and managed its generation resources and contracts in compliance with all applicable rules, regulations, and Commission decisions, including but not limited to SOC 4.²⁶ No Commission decision has limited the applicability of this review solely to utility maintenance and upkeep of generation resources, and nothing prevents the Commission from

²⁰ Rule 13.6(a).

²¹ *Id.*

²² A.23-06-002, *Assigned Commissioner’s Scoping Memo and Ruling*, p. 2 (October 31, 2023).

²³ Joint CCA Exhibit C.

²⁴ Joint CCA Exhibit C; A.23-06-002, Direct Testimony of Kevin Counts, p. KMC-5 (June 1, 2023).

²⁵ D.02-10-062, Conclusion of Law 11 (October 24, 2002).

²⁶ See e.g., A.21-06-004, *Assigned Commissioner’s Scoping Memo and Ruling*, Scoping Issue One (August 13, 2021).

including SDG&E's management of its RA resources in its evaluation of SDG&E's management of its generation resources more generally.

Moreover, the "Good Utility Practice" standard is also broader than SDG&E asserts. SDG&E's compliance with the Good Utility Practice standard includes the need to exercise proper management of its entire business, not just to maintain its utility-owned generation ("UOG"). This includes making reasonable efforts to ensure SDG&E gets value for all its resources, a key consideration in determining whether the utility has prudently managed its generation portfolio.

"Good Utility Practice" was defined in D.02-12-069 as:

*"[A]ny of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice does not require the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the Western Electric Coordinating Council region."*²⁷

In addition, the reasonable manager standard holds utilities to a standard of reasonableness based upon facts that are known or should have been known at the time.²⁸ The act of the utility should "comport with what a reasonable manager of sufficient education, training, experience and skills using the tools and knowledge at his disposal would do when faced with a need to make a decision and act."²⁹ While the reasonable manager standard is generally applied to evaluate the reasonableness of outages and contract administration,³⁰ nothing constrains the Commission to applying the Good Utility Practice standard solely within the prism of utility maintenance

²⁷ D.02-12-069, Attachment A, p. 5 (December 19, 2002) (emphasis added).

²⁸ D.90-09-088, 37 CPUC2d 488, 499 (September 25, 1990).

²⁹ D.90-09-088 at 499.

³⁰ See D.16-04-006, pp. 11-12 (April 7, 2016) (describing the application of the reasonable manager standard in ERRa compliance proceedings).

decisions. Rather, SDG&E takes an unduly narrow view of the scope of this proceeding, its obligations, and the Commission's authority. In a compliance proceeding, it is appropriate to review the prudence of portfolio management – including whether the utility maximized the value of its resources for the benefit of its customers. Contrary to SDG&E's suggestion, the Good Utility Practice standard can appropriately be applied to this evaluation.

SDG&E's prudent management of its generation portfolio, specifically the efficiency of its sales of excess RA, directly contributes to the rates its customers ultimately pay. It is crucial that the Commission is able to scrutinize these practices, as “[a]ll charges demanded or received by a public utility for any product or service shall be just and reasonable.”³¹ To ensure rates are just and reasonable, “it is critical that the Commission have access to **full and accurate information** from utilities to carry out the Commission's responsibilities **to set equitable, just, and reasonable rates.**”³²

If excess RA is not sold or retained to meet RA compliance obligations, it is valued at zero in Indifference Amount.³³ In turn, the Unsold RA valued at zero increases the overall Indifference Amount, which is a key factor in determining the PCIA rates paid for by both bundled and unbundled customers. The reasonableness of SDG&E's attempts to sell excess RA during the summer of 2022 is relevant to issues in scope in this proceeding because that issue ultimately impacts the entries SDG&E ultimately made to its balancing accounts, including the PABA, during the 2022 record period. Given the direct correlation excess RA has to customer rates, Good Utility Practice would dictate that SDG&E make all reasonable attempts to sell excess RA to lower costs for customers.

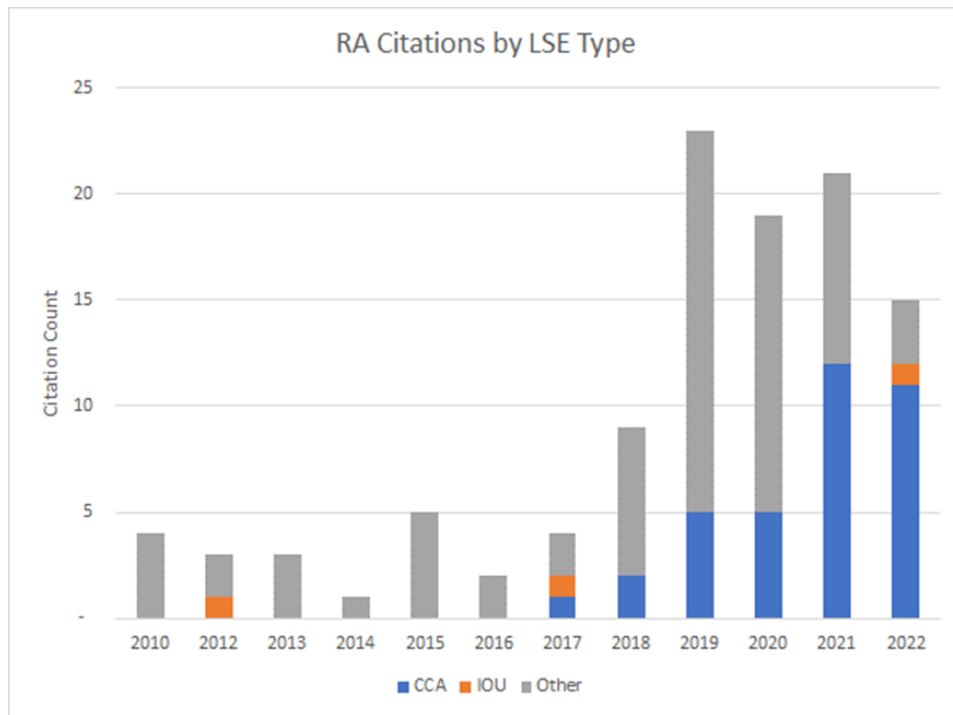
³¹ D.21-01-017, p. 17 (January 21, 2021); *see also* D. 19-12-041, p. 217 (emphasis added).

³² D.19-12-041, p. 217 (emphasis added).

³³ D.19-10-001, Attachment B (October 10, 2019).

In addition, the reasonableness of SDG&E’s attempts to sell excess RA has larger implications for other load-serving entities (“LSEs”) in its service territory. During the summer of 2022, LSEs faced a severely constrained RA market, which led to difficulty procuring sufficient RA to meet compliance obligations. The Enforcement Actions Spreadsheet updated by the Commission’s Consumer Protection and Enforcement Division tracks RA citations issued to various entities for deficiencies meeting RA compliance requirements.³⁴ As shown in Figure 1, there was a sharp increase in the number of citations for RA deficiency for LSEs in 2019, and elevated levels continued through 2022.

Figure 1



³⁴ California Public Utilities Commission Consumer Protection Enforcement Division, Enforcement Actions Spreadsheet (2023). Accessible at: <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/consumer-protection-and-enforcement-division/documents/ueb/energy-citations/2023/july-2023-ueb-energy-citations.pdf>.

Under these market conditions, maximizing RA sales to interested LSEs is a Good Utility Practice to both lower costs to customers and ensure that regional RA needs are able to be met. That SDG&E reported substantial amounts of excess RA given the constrained RA market conditions suggests that further Commission scrutiny is needed into whether SDG&E reasonably offered enough RA for sale.

The information requested by the Data Requests, *i.e.*, the details of SDG&E’s solicitation materials, RA positions, and accepted versus rejected bids, along with the additional information requested in Data Requests 2.02, 2.03, and 2.05, will provide the Commission and the Joint CCAs with the information necessary to evaluate the reasonableness of the large amounts of excess RA SDG&E reported for the summer of 2022. Whether SDG&E acted reasonably in conducting solicitations to attempt to sell this excess RA speaks directly to Scoping Issue One — whether SDG&E prudently managed its generation portfolio. Without the requested information, the Joint CCAs will be unable to determine whether the large amount of excess RA, and its ultimate impact on the PABA, were the result of prudent portfolio management. Moreover, the requested information is essential to the Commission’s ability to evaluate whether the resulting rates are just and reasonable.

Finally, there is no other venue in which the Commission can review this issue. SDG&E’s RA solicitations are governed by its Bundled Procurement Plan (“BPP”).³⁵ Pursuant to § 454.5 of the California Public Utilities Code, transactions in compliance with an approved BPP are not subject to an after-the-fact reasonableness review of the utility’s actions.³⁶ That is, if SDG&E followed its BPP, the Commission cannot later require SDG&E to record different amounts to the PABA if it believes SDG&E should have sold RA for a higher price.

³⁵ See SDG&E Advice Letter 3738-E, Attachment B, Original Sheet 31-33 (April 15, 2021).

³⁶ See Cal. Pub. Util. Code § 454.5(d)(2).

However, parties can contest whether SDG&E followed SOC 4 and prudently managed its resources in making those RA sales through the ERRA Compliance application and review process. Parties can contest if SDG&E's actions during the record year are in compliance with the BPP. In fact, if the question involves actions the IOU should have taken, but did not pursue, the only available venue for parties to utilize is the ERRA Compliance Application and review process. Consequently, the Joint CCAs are limited to raising the question of whether SDG&E followed its BPP and prudently conducted solicitations to sell excess RA to this ERRA Compliance proceeding. While opportunities for oversight of particular contracts or decisions made with respect to BPPs are limited, the Commission's procurement review framework allows the Joint CCAs' narrowly tailored inquiry.

B. The Commission's Well-Established Confidentiality Practices Adequately Protect SDG&E.

SDG&E argues that because the Joint CCAs participate in RA solicitations, it would be improper for SDG&E to disclose confidential and commercially sensitive information regarding SDG&E's sales strategy and other solicitors' bidding strategies.³⁷ SDG&E asserts that disclosing the requested information could provide an undue competitive advantage, and therefore is not subject to disclosure.³⁸

The Commission is bound by constitutional due process requirements,³⁹ which require that parties be given the opportunity to be heard.⁴⁰ The Commission has often stated that it applies the elements of due process that the U.S. Supreme Court articulated in *Mullane v. Central Hanover Bank & Trust Co.*:

³⁷ Joint CCA Exhibit B, SDG&E Response to SDCP and CEA DR 001 at 5-6.

³⁸ *Id.*

³⁹ *People v. Western Airlines Inc.* (1954) 42 Cal.2d 621; *Railroad Commission of California v. Pacific Gas and Electric Company* (1938) 302 U.S. 388.

⁴⁰ *People v. Western Airlines Inc.* (1954) 42 Cal.2d at 632.

An elementary and fundamental requirement of due process . . . is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. [Citation omitted.] The notice must be of such nature as reasonably to convey the required information, [citation omitted], and must afford a reasonable time for those interested to make their appearance. . . .⁴¹

While the “opportunity to be heard” does not require the exact same process or procedure in every case, the key is that parties have an opportunity to participate at a meaningful time and in a meaningful manner.⁴²

The balance between allowing for meaningful stakeholder participation and providing adequate protections for confidential information has been the subject of extensive legislative and Commission consideration.⁴³ To this end, the Commission issued D.06-06-066 establishing confidentiality procedures for the disclosure of market sensitive information.⁴⁴ The procedures set forth in D.06-06-066 are intended to further the Commission’s policy directive of open decision-making and to ensure that stakeholders are afforded a meaningful opportunity to participate in accordance with the Commission’s constitutional requirements.⁴⁵

The Joint CCAs’ ability to meaningfully participate in ERRA proceedings is critical because the outcome of these proceedings has a direct impact on the rates their customers pay. To participate and advocate on behalf of their customers, the Joint CCAs have always complied with the confidentiality practices established in D.06-06-006. These procedures ensure that information is not directly disclosed to entities that participate in market transactions, but that they are still afforded the opportunity to be heard in Commission proceedings. As in every other ERRA

⁴¹ *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314; see e.g., D.01-10-036, Order Modifying Decision 01-09-060 and Denying Rehearing as Modified.

⁴² See e.g., *Ryan v. California Interscholastic Federation-San Diego Section* (2001), 94 Cal.App.4th 1048, 1071-1072.

⁴³ D.06-06-066, p. 2 (June 29, 2006).

⁴⁴ See generally, D.06-06-066.

⁴⁵ D.06-06-066 at 2-3.

proceeding the Joint CCAs have participated in, the Joint CCAs have engaged Reviewing Representatives that will abide by the confidentiality practices the Commission has adopted to ensure that adequate protections are in place for SDG&E's confidential information. SDG&E provides no explanation as to why these well-established procedures do not provide sufficient protection in this case and should therefore be rejected by the Commission. No CCA market participant will have any access to SDG&E's market-sensitive information.

IV. CONCLUSION

For the reasons set forth above, the Joint CCAs respectfully request that the Commission grant this Motion, direct SDG&E to produce information responsive to the Data Requests by 5:00 p.m. on December 8, 2023, and provide any other relief the Commission deems reasonable.

Respectfully submitted,

/s/ Alissa Greenwald

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November 22, 2023

*Counsel to San Diego Community Power and
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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company (U 902-E) for Approval of: (i) Contract Administration, Least-Cost Dispatch and Power Procurement Activities in 2022, (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account, Portfolio Allocation Balancing Account, Power Charge Indifference Adjustment Undercollection Balancing Account, Transition Cost Balancing Account, and Local Generating Balancing Account in 2022, and (iii) Costs Recorded in Related Regulatory Accounts in 2022.

Application 23-06-002
(Filed June 1, 2023)

EXHIBIT A

**[PROPOSED] RULING GRANTING MOTION OF THE
JOINT CCAS TO COMPEL DISCOVERY**

On November 22, 2023, San Diego Community Power (“SDCP”) and Clean Energy Alliance (“CEA”) (together, the “Joint CCAs”) filed a Motion to Compel San Diego Gas & Electric Company (“SDG&E”) to produce information fully responsive to the Joint CCAs’ Data Requests 1.09, 1.10, 2.02, 2.03, and 2.05 (the “Data Requests”).

The Motion requests an order directing SDG&E to provide all information responsive to the Data Requests by 5 p.m. on December 8, 2023. The Joint CCAs have demonstrated that the Data Requests are proper in light of the scope of issues in this proceeding and a complete response should be provided forthwith by that date and time.

IT IS RULED THAT the Motion of the Joint CCAs to Compel SDG&E to produce information responsive to the Data Requests is granted in its entirety. SDG&E shall provide the requested information to the Joint CCAs by 5 p.m. on December 8, 2023.

SO ORDERED.

Dated: _____, 2023 at San Francisco, California.

Administrative Law Judge

EXHIBIT B

**JOINT CCA'S DATA REQUESTS 1.09, 1.10, 2.02, 2.03, 2.05,
AND SDG&E'S RESPONSE**

**SDG&E RESPONSE TO
SDCP AND CEA DR001
RESPONDED: SEPTEMBER 29, 2023**

SDCP/CEA to SDG&E 1.09:

Referring to the Prepared Testimony of Michelle Menvielle and the table at MM-18; for each RA solicitation in 2022 where SDG&E sought to sell excess RA for 2022, please provide the following:

- a. All solicitation materials
- b. SDG&E's detailed 2021 RA position, by month, at the time of the solicitation, detailed by Local, Flex and System RA.
- c. Details of all bids received in the solicitation.
- d. Details of all bids awarded.
- e. Details of all bids rejected and why they were rejected.

Response to SDCP/CEA to SDG&E 1.09:

SDG&E objects to this request pursuant to Rule 10.1 on the Commission's Rules of Practice and Procedure on the grounds that it seeks production of information that is neither relevant to the subject matter involved in the pending proceeding nor is reasonably calculated to lead to the discovery of admissible evidence. Specifically, the details of the solicitation materials, RA position, bids received, bids awarded and the reasons bids were rejected are irrelevant to any issue presented in this ERRR Compliance proceeding. Furthermore, SDG&E notes that SDCP and CEA regularly participate in solicitations, and therefore, it would be improper for SDG&E to disclose confidential and commercially sensitive information regarding SDG&E's sales strategy and other solicitors' bidding strategies. Specific quantitative analysis involved in scoring and evaluation of participating bids is confidential pursuant to D.06-06-066. Finally, this information is confidential, commercially sensitive and could provide an undue competitive advantage, and therefore, is not subject to disclosure.

SDG&E RESPONSE TO
SDCP AND CEA DR001
RESPONDED: SEPTEMBER 29, 2023

SDCP/CEA to SDG&E 1.10:

Referring to the Prepared Testimony of Michelle Menvielle and the table at MM-18; for each RA solicitation conducted in 2021 where SDG&E sought to sell excess RA with delivery in 2022, please provide the following:

- a. All solicitation materials
- b. SDG&E's detailed 2021 RA position, by month, at the time of the solicitation, detailed by Local, Flex and System RA.
- c. Details of all bids received in the solicitation.
- d. Details of all bids awarded.
- e. Details of all bids rejected and why they were rejected.

Response to SDCP/CEA to SDG&E 1.10:

SDG&E objects to this request pursuant to Rule 10.1 on the Commission's Rules of Practice and Procedure on the grounds that it seeks production of information that is neither relevant to the subject matter involved in the pending proceeding nor is reasonably calculated to lead to the discovery of admissible evidence. Specifically, the details of the solicitation materials, RA position, bids received, bids awarded and the reasons bids were rejected are irrelevant to any issue presented in this ERRRA Compliance proceeding. Furthermore, SDG&E notes that SDCP and CEA regularly participate in solicitations, and therefore, it would be improper for SDG&E to disclose confidential and commercially sensitive information regarding SDG&E's sales strategy and other solicitors' bidding strategies. Specific quantitative analysis involved in scoring and evaluation of participating bids is confidential pursuant to D.06-06-066. Finally, this information is confidential, commercially sensitive and could provide an undue competitive advantage, and therefore, is not subject to disclosure.

**SDG&E Response to
SDCP and CEA DR 002
RESPONDED: 11/16/2023**

SDCP/CEA to SDG&E 2.02

For each month during the 2022 compliance period,

- a. Please quantify SDG&E's monthly RA requirement as determined by the CPUC for System, Local, and Flexible RA.
- b. Please provide workpapers with details demonstrating whether SDG&E met the monthly RA requirements in subpart (a), specifying capacity provided by resource.

SDG&E Response to SDCP/CEA to SDG&E 2.02

- a. SDG&E objects to this request pursuant to Rule 10.1 on the Commission's Rules of Practice and Procedure on the grounds that it seeks production of information that is neither relevant to the subject matter involved in the pending proceeding nor is reasonably calculated to lead to the discovery of admissible evidence. Specifically, SDG&E's monthly RA requirements for System, Local, and Flexible RA are irrelevant to any issue presented in this ERRRA Compliance proceeding, and therefore out of scope.
- b. SDG&E objects to this request pursuant to Rule 10.1 on the Commission's Rules of Practice and Procedure on the grounds that it seeks production of information that is neither relevant to the subject matter involved in the pending proceeding nor is reasonably calculated to lead to the discovery of admissible evidence. Specifically, SDG&E's monthly RA requirements for System, Local, and Flexible RA are irrelevant to any issue presented in this ERRRA Compliance proceeding, and therefore out of scope.

**SDG&E Response to
SDCP and CEA DR 002
RESPONDED: 11/16/2023**

SDCP/CEA to SDG&E 2.03

Referring to SDG&E's response to Cal Advocates MDR 3.20: Please provide SDG&E's final net RA position for each month of the 2022 compliance period. The net RA position should include details demonstrating:

- a. Total RA capacity owned or purchased
- b. Adjustments for resource outages
- c. Other adjustments for operating constraints
- d. RA sales to third parties
- e. SDG&E's RA requirements
- f. Excess RA

SDG&E Response to SDCP/CEA to SDG&E 2.03

SDG&E objects to this request pursuant to Rule 10.1 on the Commission's Rules of Practice and Procedure on the grounds that it seeks production of information that is neither relevant to the subject matter involved in the pending proceeding nor is reasonably calculated to lead to the discovery of admissible evidence. Specifically, information regarding SDG&E's final net RA position for each month is irrelevant to any issue presented in this ERRA Compliance proceeding, and therefore out of scope.

**SDG&E Response to
SDCP and CEA DR 002
RESPONDED: 11/16/2023**

SDCP/CEA to SDG&E 2.05

Referring to SDG&E's response to Cal Advocates MDR 4.1 wherein it provided Advice Letters related to its 2022 Quarterly Compliance Report: For each QCR filed in 2022, please provide all confidential attachments that address, at least in part, any of the following:

- a. SDG&E activity in RA solicitations (for RA purchases or sales).
- b. RA volumes made available for sale by SDG&E.
- c. SDG&E RA transactions executed or amended.
- d. SDG&E RA-related CPUC filings.

Calculation and reporting of SDG&E's net RA position.

SDG&E Response to SDCP/CEA to SDG&E 2.05

SDG&E objects to this request pursuant to Rule 10.1 on the Commission's Rules of Practice and Procedure on the grounds that it seeks production of information that is neither relevant to the subject matter involved in the pending proceeding nor is reasonably calculated to lead to the discovery of admissible evidence. Specifically, SDG&E's RA transactions and net RA position are irrelevant to any issue presented in this ERRRA Compliance proceeding, and therefore out of scope.

EXHIBIT C

**CONFERRAL CORRESPONDENCE RELATED
TO THE JOINT CCAS' DATA REQUESTS**

From: "Cerda, Roger A" <RCerda@sdge.com>
Subject: RE: SDG&E ERRR Compliance: SDCP/CEA DRs 1.09, 1.10, 2.02, 2.03, 2.05, 2.08, and 2.09
Date: November 21, 2023 at 1:50:27 PM CST
To: agreenwald <agreenwald@keyesfox.com>
Cc: Tim Lindl <tlindl@keyesfox.com>, Jacob Schlesinger <jschlesinger@keyesfox.com>

Hi Alissa – Thank you for the courtesy notice. Given that DRs 2.02, 2.03 and 2.05 deal with the same subject matter, we don't believe it is necessary to have an additional meet and confer. We look forward to reviewing your motion.

With respect to DR 2.08 and 2.09, we intend to serve the supplemental responses next week (following the Thanksgiving Holiday).

Regards,

Roger

From: Alissa Greenwald <agreenwald@keyesfox.com>
Sent: Tuesday, November 21, 2023 11:23 AM
To: Cerda, Roger A <RCerda@sdge.com>
Cc: Tim Lindl <tlindl@keyesfox.com>; Jacob Schlesinger <jschlesinger@keyesfox.com>
Subject: [EXTERNAL] SDG&E ERRR Compliance: SDCP/CEA DRs 1.09, 1.10, 2.02, 2.03, 2.05, 2.08, and 2.09

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Roger,

I am emailing to let you know in advance that we plan to file a motion to compel tomorrow for SDCP and CEA's DRs 1.09 and

1.10. Given SDG&E's objections to SDCP/CEA DRs 2.02, 2.03, and 2.05 which are similar in nature, we plan to include those in our motion. If you think that a meet and confer could potentially change SDG&E's position on DRs 2.02, 2.03, and 2.05, please let me know today so that we can get this scheduled ASAP.

In light of the tight turnaround for intervenor testimony, we will also be asking for a shortened timeframe for responses, with December 1st being the deadline for SDG&E to respond.

Finally, SDG&E indicated that it will supplement DRs 2.08 and 2.09 as soon as possible, but provided no expectation as to when those answers will be served. Will you please let me know SDG&E's timeline for supplementing these answers? If we do not have them by next week, we may need to request an extension to the intervenor testimony deadline.

Best,

--

Alissa Greenwald

Associate, Keyes & Fox LLP

(913) 302-5567 (mobile)

agreenwald@keyesfox.com | www.keyesfox.com

[\[keyesfox.com\]](http://keyesfox.com)

Pronouns: (She/Her)

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From: "Cerde, Roger A" <RCerde@sdge.com>
Subject: SDG&E 2022 ERRRA Compliance - Meet and Confer re Data Request 1.09 and 1.10
Date: November 10, 2023 at 7:38:15 PM CST
To: Jacob Schlesinger <jschlesinger@keyesfox.com>, agreenwald <agreenwald@keyesfox.com>
Cc: "Hughes, Zackary J" <ZHughes@sdge.com>, Carlo Bencomo-Jasso <cbencomojasso@newgenstrategies.net>, Brian Dickman <bdickman@newgenstrategies.net>

Hi Jake – SDG&E has considered your client’s position and stated need for the Resource Adequacy (RA) solicitation information requested in Data Request 1.09 and 1.10. However, after careful review, SDG&E stands by its objections that the solicitation information requested is out of scope of SDG&E’s ERRRA Compliance proceeding.

During our meet and confer, you indicated that you believed this information was relevant to Scoping Issue No. 1 (“Whether SDG&E administered and managed its own generation resources prudently, to include the management of outages and associated fuel costs, according to SOC 4.”) However, Scoping Issue No. 1 pertains to SDG&E’s compliance with the CPUC’s Good Utility Practice and reasonable manager standards with respect to Utility Owned Generation (UOG) resources planned and unplanned outages during the record period. This Scoping Issue is covered by the testimony of Kevin Counts. Scoping Issue 1 does not involve contract administration or solicitation practices.

Rather, it is SDG&E’s position that Scoping Issue No. 2 governs and that it limits the ERRRA compliance review to the administration and management of executed contracts and power purchased agreements. Scoping Issue No. 2 says nothing about the RA solicitation process.

SDG&E also notes that solicitations are fundamentally different than how it administers contracts. Contractual administration is reviewed “after the fact” in the ERRRA compliance proceeding because there is no real-time review or approval from the Commission or stakeholders. This is fundamentally different than

the solicitation process. When SDG&E launches a RA solicitation, it has an independent evaluator, informs the procurement review group (PRG) before launch, consults with PRG during evaluation, and ultimately outlines any transactions in SDG&E's quarterly compliance report (QCR). Given that there are already mechanisms in place to review SDG&E's solicitation transactions, SDG&E believes they are out of scope of ERRA compliance.

We appreciate the meet and confer discussion on this issue.

Roger A. Cerda

Sr. Counsel - Regulatory Law

San Diego Gas & Electric Company

8330 Century Park Court, CP32D | San Diego, CA 92123

Tel: (858) 654-1781

E-mail: rcerda@sdge.com

From: Jacob Schlesinger <jschlesinger@keyesfox.com>
Subject: Re: 1.23-06-002: 2022 ERRA Compliance: Meet and Confer Request
Date: November 2, 2023 at 9:21:38 AM CDT
To: "Cerda, Roger A" <RCerda@sdge.com>, "Hughes, Zackary J" <ZHughes@sdge.com>
Cc: Carlo Bencomo-Jasso <cbencomojasso@newgenstrategies.net>, "BDickman@NewgenStrategies.net" <bdickman@newgenstrategies.net>, agreenwald <agreenwald@keyesfox.com>, Tim Lindl <tlindl@keyesfox.com>

Thanks, Roger. Let's do Monday, please.

Jake Schlesinger

Partner at Keyes & Fox LLP
Renewable Energy & Public Utilities Law
1580 Lincoln St., Suite 1105 Denver, CO 80203
Office: (720) 639-2190 Mobile: (970) 531-2525
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From: Cerda, Roger A <RCerda@sdge.com>
Date: Wednesday, November 1, 2023 at 11:18 AM
To: Jacob Schlesinger <jschlesinger@keyesfox.com>, Hughes, Zackary J <ZHughes@sdge.com>
Cc: Carlo Bencomo-Jasso <cbencomojasso@newgenstrategies.net>, BDickman@NewgenStrategies.net <bdickman@newgenstrategies.net>, agreenwald <agreenwald@keyesfox.com>, Tim Lindl <tlindl@keyesfox.com>
Subject: RE: 1.23-06-002: 2022 ERRA Compliance: Meet

and Confer Request

Hi Jake – Coordinating SME availability on these particular issues has been challenging. Here are the earliest dates we could get:

- Monday Nov. 6 from 2-2:30
- Thursday Nov. 9 from 2:30-3

Hopefully one of those slots works for your team. Let me know and I can circulate a teams invite.

Roger

From: Cerda, Roger A
Sent: Tuesday, October 31, 2023 1:37 PM
To: Jacob Schlesinger <jschlesinger@keyesfox.com>; Hughes, Zackary J <ZHughes@sdge.com>
Cc: Carlo Bencomo-Jasso <cbencomojasso@newgenstrategies.net>; BDickman@NewgenStrategies.net; agreenwald <agreenwald@keyesfox.com>; Tim Lindl <tlindl@keyesfox.com>
Subject: RE: 1.23-06-002: 2022 ERRA Compliance: Meet and Confer Request

Hi Jake – We've had scheduling issues on our end with the SMEs that we want to participate on the call. Zack and I are working on it and will get you some dates/time soon.

Roger

From: Jacob Schlesinger <jschlesinger@keyesfox.com>
Sent: Tuesday, October 31, 2023 12:01 PM
To: Cerda, Roger A <RCerda@sdge.com>; Hughes, Zackary J <ZHughes@sdge.com>
Cc: Carlo Bencomo-Jasso <cbencomojasso@newgenstrategies.net>; BDickman@NewgenStrategies.net; agreenwald <agreenwald@keyesfox.com>; Tim Lindl <tlindl@keyesfox.com>
Subject: [EXTERNAL] Re: 1.23-06-002: 2022 ERRA Compliance:

Meet and Confer Request

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Hey Roger,

We'd very much like to move this along. We were hoping to meet last week; is your team available this week? Please let us know ASAP.

Jake

Jake Schlesinger

Partner at Keyes & Fox LLP

Renewable Energy & Public Utilities Law

1580 Lincoln St., Suite 1105 Denver, CO 80203

Office: (720) 639-2190 Mobile: (970) 531-2525

| jschlesinger@keyesfox.com | www.keyesfox.com | kfwlaw.com |

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From: Cerda, Roger A <RCerda@sdge.com>

Date: Tuesday, October 24, 2023 at 1:26 PM

To: Jacob Schlesinger <jschlesinger@keyesfox.com>,
Hughes, Zackary J <ZHughes@sdge.com>

Cc: Carlo Bencomo-Jasso

<cbencomojasso@newgenstrategies.net>,

BDickman@NewgenStrategies.net
<bdickman@newgenstrategies.net>, agreenwald
<agreenwald@keyesfox.com>, Tim Lindl
<tlindl@keyesfox.com>

Subject: RE: 1.23-06-002: 2022 ERRR Compliance: Meet
and Confer Request

Hi Jake – Confirming receipt of this email. Let me confer internally
about dates and attendees and I will get back to you shortly with
our availability.

We will also follow up on 1.13(d). Thanks for flagging that.

Roger

From: Jacob Schlesinger <jschlesinger@keyesfox.com>
Sent: Monday, October 23, 2023 3:51 PM
To: Cerda, Roger A <RCerda@sdge.com>; Bucsit, Geneveve
<GBucsit@sdge.com>
Cc: Carlo Bencomo-Jasso
<cbencomojasso@newgenstrategies.net>;
BDickman@NewgenStrategies.net; agreenwald
<agreenwald@keyesfox.com>; Tim Lindl <tlindl@keyesfox.com>
Subject: [EXTERNAL] 1.23-06-002: 2022 ERRR Compliance:
Meet and Confer Request

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Hi Roger,

I'm emailing to schedule meet-and confer on four DRs in our
first set, which SDG&E objected to. Those include DRs,
1.09, 1.10, 1.11 and 1.12. Can we please meet this week to

discuss if we can resolve these disputes and find a way to get us what we need? Please let us know a few times on Thursday or Friday that might work.

Also, we did not receive any response or objection to DR 1.13(d). Assuming that was simply an oversight and not an objection, we would ask SDG&E to produce a response to this past due DR as soon as possible.

Best,
Jake

Jake Schlesinger

Partner at Keyes & Fox LLP
Renewable Energy & Public Utilities Law
1580 Lincoln St., Suite 1105 Denver, CO 80203
Office: (720) 639-2190 Mobile: (970) 531-2525
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EXHIBIT D

CAL ADVOCATES MASTER DATA REQUEST

3.20

**SDG&E RESPONSE TO CAL ADVOCATES
ERRA 2022 MASTER DATA REQUEST
DATE RECEIVED: MARCH 30, 2023
DATE RESPONDED: JULY 5, 2023**

3.20. Provide Resource Adequacy (RA) information as follows:

- 3.20.1. Sold, unsold, and retained resource adequacy by resource and balancing account (RA Tracker)
- 3.20.2. System, local, and flex positions for each solicitation in which RA for delivery in the record year was offered for sale using:
“2022_SDGE_ERRA_Comp_MDR_3.20.2_RA_Position_Tables_TEMPLATE”
- 3.20.3. All Tier 1 advice letter filings addressing Operational Constraints, including confidential attachments.

SDG&E Response to 3.20:

Please note that the file “3.20.1 CONFIDENTIAL Resource Adequacy 2022” contains “Protected Materials” (*i.e.*, trade secret, market sensitive, or other confidential and/or proprietary information) as determined by SDG&E in accordance with the provisions of D. 06-06-066 and subsequent decisions. The Protected Materials have been highlighted in yellow and a confidentiality declaration is attached.

Please refer to attached file “3.20.1 CONFIDENTIAL Resource Adequacy 2022.” Note that this resource adequacy report is not adjusted for outages and some substitutions. Also note that because SDG&E offers its excess RA for sale regularly, any RA not used for compliance or sold is considered unsold.

Exhibit C

SDG&E Response to Motion to Compel

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

12/01/23

04:59 PM

A2306002

Application of San Diego Gas & Electric Company (U 902-E) for Approval of: (i) Contract Administration, Least-Cost Dispatch and Power Procurement Activities in 2022, (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account, Portfolio Allocation Balancing Account, Power Charge Indifference Adjustment Undercollection Balancing Account, Transition Cost Balancing Account, and Local Generating Balancing Account in 2022, and (iii) Costs Recorded in Related Regulatory Accounts in 2022.

Application 23-06-002
(Filed June 1, 2023)

**SAN DIEGO GAS & ELECTRIC COMPANY'S (U 902-E) RESPONSE TO SAN
DIEGO COMMUNITY POWER AND CLEAN ENERGY ALLIANCE'S MOTION
TO COMPEL DISCOVERY**

Roger A. Cerda
Senior Regulatory Counsel
San Diego Gas & Electric Company
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Attorney for:
SAN DIEGO GAS & ELECTRIC COMPANY

December 1, 2023

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company (U 902-E) for Approval of: (i) Contract Administration, Least-Cost Dispatch and Power Procurement Activities in 2022, (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account, Portfolio Allocation Balancing Account, Power Charge Indifference Adjustment Undercollection Balancing Account, Transition Cost Balancing Account, and Local Generating Balancing Account in 2022, and (iii) Costs Recorded in Related Regulatory Accounts in 2022.

Application 23-06-002
(Filed June 1, 2023)

**SAN DIEGO GAS & ELECTRIC COMPANY’S (U 902-E) RESPONSE TO SAN
DIEGO COMMUNITY POWER AND CLEAN ENERGY ALLIANCE’S MOTION TO
COMPEL DISCOVERY**

I. INTRODUCTION

Pursuant to Rule 11.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (the “Commission”), San Diego Gas & Electric Company (“SDG&E”) hereby submits this response opposing San Diego Community Power and Clean Energy Alliance’s (the “CCA Parties”) motion to compel discovery (“Motion”). By its Motion, the CCA Parties seek to expand the scope of the ERRRA Compliance proceeding to include a detailed examination into the reasonableness of SDG&E’s Resource Adequacy (“RA”) solicitation practices and activities that are not subject to review pursuant to Public Utilities Code Section 454.5(d)(2). Section 454.5(d)(2) makes clear that transactions in compliance with an approved Bundled Procurement Plan are not subject to an after-the-fact reasonableness review. By allowing the CCA Parties to obtain the detailed, underlying information about SDG&E’s excess RA sales, solicitations, and related activities and allowing them to contest whether those activities were appropriate, the Commission would be authorizing an “after-the-fact

reasonableness review,” which Section 454.5 expressly prohibits. This type of review has never been part of SDG&E’s ERRA Compliance proceeding and the Commission should reject the CCA Parties’ invitation to expand the scope of this year’s proceeding.

II. STANDARDS OF REVIEW APPLICABLE TO THIS MOTION

The crux of this discovery disputes centers around what activities are within the scope of the ERRA Compliance proceeding. The following standards of review are applicable in deciding the issue.

A. ERRA Compliance Standard of Review

In the ERRA Compliance proceeding, the Commission conducts a *compliance* review of the utility’s prior period energy resource contract administration, least-cost dispatch, and ERRA balancing account. The Commission is required to perform a compliance review as opposed to a “reasonableness review” of the ERRA compliance application.¹ “A compliance review considers whether a utility has complied with all applicable rules, regulations, opinions, and laws, while a reasonableness review evaluates not only a utility’s compliance, but also whether the data or actions resulting from, for example, the calculation of a forecasted expense, are reasonable, based on the methods and inputs used.”²

In D.02-10-062, the Commission adopted minimum standards of conduct the utilities must follow in performing their procurement responsibilities. Standard of Conduct #4 (“SOC 4”) describes the compliance review criteria for contract administration and economic dispatch of generation resources on which the utilities will be evaluated: “The utilities shall prudently administer all contracts and generation resources and dispatch the energy in a least-cost manner.

¹ D.16-05-003, p. 3.

² *Id.*

Our definitions of prudent contract administration and least cost dispatch are the same as our existing standard.”³

The scope of compliance review described in D.02-10-062 and D.02-12-074 includes Commission review of utility owned generation (“UOG”) management of planned and unplanned outages, fuel expenses, contract administration, California Independent System Operator (“CAISO”)-related costs, existing Qualified Facilities (“QF”) contracts, other power purchase agreements, and economic dispatch of electric generation resources. Accordingly, the Commission’s annual compliance review focuses on UOG management of planned and unplanned outages, prudent contract administration, least-cost dispatch, and UOG fuel procurement activities.

B. Rule 10.1 Standard for Discovery

Rule 10.1 governs discovery from parties in Commission proceedings and states in pertinent part that “any party may obtain discovery from any other party regarding any matter, not privileged, *that is relevant to the subject matter involved in the pending proceeding, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence*, unless the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.” (emphasis added)

Per this standard, SDG&E is not required to provide information that is not relevant to issues in scope of the ERRA Compliance proceeding.

³ D.02-10-062 at Conclusion of Law 11.

III. THE CCA PARTIES' MOTION SHOULD BE DENIED IN ITS ENTIRETY

A. The CCA Parties' Effort to Conduct a Detailed Review of SDG&E's Excess RA Sales is Outside the Scope of the ERRA Compliance Proceeding

By its data requests, the CCA Parties seek detailed information regarding SDG&E's efforts to sell excess RA during the record year, including solicitation materials, monthly RA positions, bid information (*i.e.*, who bid, how much they bid, why bids were rejected or awarded), and much more. For context, some of the questions include the following requests:⁴

- For each RA solicitation where SDG&E sought to sell excess RA: (a) All solicitation materials regarding excess RA sales, (b) SDG&E's detailed monthly RA position, detailed by Local, Flex and System RA, (c) Details of all bids received, (d) Details of all bills awarded, and (e) Details of all bids rejected and why they were rejected. (DR 1.09).
- For each month the 2022 compliance period: (a) quantify SDG&E's monthly RA requirement for System, Local and Flexible RA, and (b) provide workpapers whether SDG&E met the monthly RA requirements, specifying capacity provided by resource (DR 2.02)
- Provide SDG&E's final net RA position for each month in 2022, including details demonstrating (a) total RA capacity owned or purchased, (b) adjustments for resource outages, (c) adjustments for operating constraints, (d) RA sales to third parties, (e) SDG&E's RA requirements, and (f) excess RA. (DR 2.03)
- For each Quarterly Compliance Report filed in 2022, provide (a) SDG&E activity in RA solicitations, (b) RA volumes made available for sale by SDG&E, (c) RA transactions executed or amended, and (d) SDG&E RA-related CPUC filings. (DR 2.05)

The CCA Parties argue that this information is relevant to Scoping Issue No. 1, which reads: "*Whether SDG&E administered and managed its own generation resources prudently, to include the management of outages and associated fuel costs, according to SOC 4.*" As noted

⁴ The full version of the CCA Parties' data requests and SDG&E's objections are attached to the CCA Parties' Motion at Exhibit B.

above, SOC 4 provides for the utilities to prudently administer all contract and generation resources and dispatch the energy in a least-cost manner.

The CCA Parties argue that the requirement for a utility to “prudently administer and manage its own generation resources” should be construed very broadly and include any and all issues related to “generation resources,” without any limitation. Under this broad interpretation, the CCA Parties argue that they are entitled to examine every detail related to SDG&E’s efforts to sell excess RA, so that they can in turn, question and contest SDG&E’s conduct in making those sales. The CCA Parties are wrong for several reasons.

1. The Language of Scoping Issue No. 1 Does Not Open the Door to Unlimited Inquiry into All Things Related to Generation Resources

First and foremost, SDG&E strongly disagrees with the CCA Parties’ view that Scoping Issue No. 1 allows for inquiry into all areas related to a utility’s generation resources, such as its efforts to sell excess RA. Indeed, the CCA Parties’ interpretation constitutes a massive reinterpretation of what Scoping Issue No. 1 is intended to cover. As has been the case with previous ERRA Compliance proceedings, Scoping Issue No. 1 is intended to cover compliance issues with respect to SDG&E’s Utility Owned Generation (“UOG”) resources *planned and unplanned outages during the 2022 record period*. In other words, the question of whether SDG&E “prudently administered and managed its own generation resources” in Scoping Issue No. 1 centers on whether SDG&E physically operated and maintained its UOG resources (*i.e.*, Palomar Energy Center, Desert Star Energy Center, Miramar Energy Facility, and Cuyamaca Peak Energy Plant) in a reasonable and prudent manner consistent with “Good Utility Practice”

and the “reasonable manager standard” to maximize their availability and minimize the amount of times units are on forced outages.⁵

The Commission defined “Good Utility Practice” in D.02-12-069 as follows:⁶

[A]ny of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice does not require the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the Western Electric Coordinating Council region.

Consistent with “Good Utility Practice,” SDG&E submitted testimony in this year’s ERRA Compliance proceeding demonstrating that it followed an established maintenance program to maximize the availability of its generation units.⁷ Specifically, SDG&E’s testimony shows that its maintenance program factors in a number of considerations, including manufacturer guidelines, appropriate power industry practices, safety considerations, and good engineering and technical judgment to allocate resources most effectively to maximize the availability of its UOG resources.⁸ Additionally, the testimony demonstrates that SDG&E’s maintenance program incorporates practices that are generally accepted within the electric power generation industry and the Western Electricity Coordinating Council (“WECC”) and the North American Electric Reliability Corporation (“NERC”).⁹

⁵ SDG&E makes its showing that it complied with the applicable standards related to planned and unplanned outages in the Prepared Direct Testimony of Keven M. Counts (dated June 1, 2023).

⁶ D.02-12-069, Attachment A-3 at 5.

⁷ Direct Testimony of Kevin M. Counts, pp. 4-5.

⁸ *Id.*

⁹ *Id.*

Similarly, the Commission has explained the “reasonable manager” standard in ERRA compliance cases, as follows: Under the “reasonable manager standard, utilities are held to a standard of reasonableness based on the facts that are known or should have been known at the time. The act of the utility should comport with what a reasonable manager of sufficient education, training, experience, and skills using the tools and knowledge at his or her disposal would do when faced with a need to make a decision and act.”¹⁰ Again, the testimony of Mr. Counts demonstrates that SDG&E complied with the reasonable manager standard with respect to UOG resources’ planned and unplanned outages during the record year. Mr. Counts’s testimony includes an Appendix A and B, which identifies all UOG forced outages in 2022 and SDG&E’s efforts to minimize the outages. It is this area of testimony that Scoping Issue No. 1 was intended to cover.

The CCA Parties’ effort to expand these operational and maintenance standards to other areas of UOG activities – in particular the sale of excess RA – is entirely meritless and unsupported by any law or Commissions precedent. Indeed, the CCA Parties acknowledge that the reasonable manager standard is generally applied to evaluate the reasonableness of outages and contract administration.¹¹ However, they argue that nothing constrains the Commission to applying these standards solely within the prism of utility maintenance decisions.¹² SDG&E strongly disagrees and urges the Commission to decline the CCA Parties’ invitation to expand the application of these compliance standards to areas that they were never intended to govern. SDG&E has always understood and interpreted Scoping Issue No. 1 to apply to SDG&E’s

¹⁰ D.14-05-023, p. 15.

¹¹ Motion, pp. 10-11.

¹² *Id.*

prudent management of its physical operation and maintenance of its UOG assets and that it was not intended to cover other areas such as RA sales or solicitations. There is no compelling reason for the Commission to depart from this well-established precedent in this year's proceeding.

Indeed, SDG&E notes that Scoping Issue No. 2 covers ERRA Compliance review issues pertaining to the administration and management of executed contracts and power purchase agreements:

2. Whether SDG&E administered and managed its Qualifying Facility ("QF") and non-QF contracts for generation and power purchase agreements in accordance with the contract provisions and otherwise followed Commission guidelines relating to those contracts and their amendments according to SOC 4.

Notably, Scoping Issue No. 2 says nothing about the review of excess RA sales or the solicitation process. That is because solicitations are fundamentally different than how SDG&E administers contracts. Contractual administration is properly reviewed in the ERRA Compliance proceeding pursuant to Pub. Util. Code Section 454.5(d)(2) because there is no real-time review or approval from the Commission or stakeholders. Therefore, Section 454.5(d)(2) expressly authorizes a regulatory process "to verify and ensure that each contract was administered in accordance with the terms of the contract, and contract disputes that may arise are reasonably resolved." (*see* discussion below on application of Section 454.5(d)(2)).

Contractual administration is fundamentally different than the RA solicitation process. For example, as set forth in SDG&E's Bundled Procurement Plan ("BPP"), when SDG&E launches a RA solicitation, it has an independent evaluator ("IE") involved in all aspects of the solicitation formation and review of bids, informs the procurement review group ("PRG") before launch, consults with PRG during evaluation and prior to short-list notification, and ultimately outlines any transactions, and necessary support in SDG&E's quarterly compliance report

(“QCR”). For bilateral sales of RA, outside of a RA solicitation, D.03-06-067 OP 3(d) requires utilities to provide strong showing justification in Attachment M of the QCR for bilateral transactions with terms longer than one calendar month. Contracts originating through the solicitation process, through brokers or bilaterally are all reported in the QCR. The QCR is filed via Advice Letter (“AL”) and reviewed and audited by the Utility Audits Branch of the CPUC. During that time SDG&E responds to data requests, outlines any corrective actions and in some cases files a supplemental advice letter before it is ultimately approved. Thus, unlike the contract administration issues covered under Scoping Issue No. 2, there is *already* a well-established mechanism in place to review SDG&E’s RA transactions. This is why SDG&E’s RA sale transactions have not been (and should not be) within scope of the ERRA Compliance proceeding. The CCA Parties’ proposal to expand the scope of the ERRA Compliance proceeding to conduct a redundant review process for RA transactions would impose a tremendous burden on both the Commission and SDG&E and could result in significant delays in the proceeding.

To be clear, nothing in Scoping Issue No. 2 allows for inquiry into excess RA sales or the solicitation process. As has been the case with previous ERRA Compliance proceedings, Scoping Issue No. 2 covers the administration and management of *executed* contracts and power purchase agreements, the clear distinction being the review of contract administration *after the contract has been executed* (as opposed to *prior to contract execution*). In other words, the question of whether SDG&E “administered and managed its Qualifying Facility (“QF”) and non-QF contracts...” in Scoping Issue No. 2 centers on whether each contract was administered in accordance with the terms of the contract *after* such contract was executed. The management of excess RA sales or solicitation processes that may result in the execution of these contracts

is reviewed and scrutinized through other means discussed above (*i.e.*, the IE, PRG and QCR process).

2. SDG&E’s RA Solicitations are Governed by its Bundled Procurement Plan and are Not Subject to an After-the-Fact Reasonableness Review Pursuant to Pub. Util. Code Section 454.5

As the CCA Parties correctly note, SDG&E’s procurement process (including RA sales and solicitations) are governed by its Bundled Procurement Plan (“BPP”).¹³ Section II.A of the BPP sets forth SDG&E’s procurement organizational structure and process, describes procurement products and energy market products utilized by SDG&E, and discusses the role of the Procurement Review Group (“PRG”) in SDG&E’s procurement activity. With respect to excess RA sales SDG&E’s BPP states in pertinent part:

SDG&E may make excess local, system, or flexible RA supply (i.e., RA in excess of what SDG&E requires to meet its own RA obligations) available to the market. SDG&E may procure excess capacity from resources to enhance local area reliability in order to reduce the chance of the backstop by the ISO as part of the ISO’s capacity procurement mechanism Tariff authorization. SDG&E may offer such excess RA products to the market through an RFO process, through the CAISO’s Competitive Solicitation Process where the offers are submitted to the CAISO and CAISO optimizes to procure backstop capacity to meet deficiencies or significant events, through a response to a counter-party RFO or through bilateral negotiations with counterparties. Such transactions would be for capacity or rights to capacity, and the related cost would be fully recoverable through SDG&E’s Energy Resource Recovery Account (ERRA). Current Commission rules permit SDG&E to buy and/or sell products bilaterally when (1) SDG&E is approached by an outside non-affiliated third party seeking to sell or purchase short-term RA of one year or less in duration; or (2) SDG&E has a need to purchase or sell short term system, local, or flexible RA capacity. **SDG&E will periodically brief its PRG on its RA positions. SDG&E may choose to retain all or some portion of excess RA in order to retain surplus RA for use**

¹³ SDG&E’s Commission approved SDG&E 2014 Bundled Procurement Plan (“BPP”) implemented by Advice Letter 2850-E (including subsequent updates thereto such as AL 3738-E approved by Resolution No. E-5196).

in management of scheduled outage replacement or lowering the CAISO's RA product charges.¹⁴

Pursuant to Pub. Util. Code Section 454.5(d)(2), transactions in compliance with an approved BPP are not subject to an after-the-fact reasonableness review. Specifically, this section states:

(d) A procurement plan approved by the commission shall accomplish each of the following objectives:

(2) Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and ensure that each contract was administered in accordance with the terms of the contract, and contract disputes that may arise are reasonably resolved.

By allowing the CCA Parties to obtain the detailed, underlying information about SDG&E's excess RA sale activities and allowing them to contest whether those activities were appropriate, the Commission would be authorizing an "after-the-fact reasonableness review," which Section 454.5 expressly prohibits. As section 454.5(d)(2) notes, the extent of the Commission's compliance review of BPP activities is limited to verification "that each contract was administered in accordance with the terms of the contract, and contract disputes that may arise are reasonably resolved." SDG&E has already produced the necessary information for the Commission and intervening parties to conduct this compliance review.¹⁵ Any additional inquiry regarding the reasonableness of SDG&E's procurement and sale activities prior to the contracts being executed – *i.e., why* were certain contracts executed, *why* were certain bids awarded or rejected – constitutes an after-the-fact reasonableness review

¹⁴ BPP, Section II.A.4.g. *Resource Adequacy Products*, at Original Sheet Nos. 31-32 (emphasis added). For purposes of this response, SDG&E is citing to the updated version of the BPP set forth in AL 3738-E which was approved by Resolution No. E-5196.

¹⁵ See Prepared Direct Testimony of Michelle Menvielle (dated June 1, 2023).

that is not only prohibited by statute, but outside the scope of the ERRA Compliance proceeding. Again, as noted above, there already exists a well-established mechanism in place to review SDG&E's RA transactions.

With respect to the ERRA Compliance proceeding, while intervening parties may make a threshold inquiry as to whether SDG&E sold excess RA in the record year, they are not allowed to review or examine the specifics of those activities for the purpose of contesting their reasonableness. To that end, SDG&E already provides the Commission and parties with a summary of procurement-related resource solicitations in the record year.¹⁶ However, additional inquiry into issues such as “*Why did SDG&E reject a specific bid and award another?*” or “*Why did SDG&E sell excess RA at price X instead of price Y?*” are all outside the scope of the ERRA Compliance proceeding as they would be tantamount to an after-the fact reasonableness inquiry which is not permitted. In fact, there is no existing compliance standard or objective “test” by which the Commission could evaluate whether SDG&E's RA underlying solicitation activities for a record period should be deemed sufficient. For example, how would the Commission evaluate whether SDG&E's decision to sell excess RA to Party A instead of Party B was reasonable? Similarly, how would the Commission evaluate whether SDG&E's decision to sell excess RA at price X instead of price Y was appropriate? Yet, that is exactly what the CCA Parties will be asking the Commission to do if this Motion is granted. Such a determination would need to be done retroactively without a clear and objective standard in place – which again is contrary to the role of the ERRA Compliance proceeding.

In addition, it is important to note that the Commission recently confirmed that SDG&E's methodology for determining how much of its power charge indifference adjustment (“PCIA”)-

¹⁶ Prepared Direct Testimony of Michelle Menvielle, pp. 18-19.

eligible RA is reserved in its BPP is reasonable.¹⁷ As SDG&E understands it, the amount of PCIA-eligible RA reserved and/or available for sale, is central to the issues the CCA Parties would like to contest in the ERRA Compliance proceeding.¹⁸ In Advice Letter 3836-E and 3836-E-A, SDG&E justified its methodology for determining how much of its PCIA-eligible RA is reserved in its BPP, and includes a discussion of its RA Reservation Methodology, Excess RA Determination, Availability of Excess RA, and Sales Volume Reporting.¹⁹ With respect to making excess RA available, AL 3836-E states that “SDG&E will issue at least one Request for Offers (“RFO”) prior the deadline for LSEs’ annual RA filing. SDG&E may issue additional RFOs during the compliance year if additional Excess RA becomes available due to changes in RA requirements and/or resource availability. SDG&E may also utilize brokers and bilateral negotiations to sell RA outside of the RFO process.”²⁰ With respect to Sales Voume Reporting, AL 3836-E states that: “SDG&E reports the amount of Excess RA determined to be available for sale through competitive solicitation in Attachment E of its Quarterly Compliance Report (“QCR”). SDG&E also discusses the volume and pricing for its Excess RA solicitations with its Independent Evaluator (“IE”) and its Procurement Review Group (“PRG”).²¹

Based on this submission, the Commission confirmed that SDG&E’s methodology for reserving PCIA RA in its BPP was appropriate:

The Commission requires the IOUs to manage their portfolios reliably and safely; the Energy Division has not seen evidence that SDG&E’s methodology and

¹⁷ SDG&E AL 3836-E and 3836-E-A were approved by disposition letter on May 10, 2022.

¹⁸ CCA Parties Motion, p. 4-5.

¹⁹ SDG&E AL 3836-E, pp. 2-3.

²⁰ *Id.* at p. 3.

²¹ *Id.*

justification, detailed in AL 3836-E and AL 3836-E-A, is unreasonable for doing so or prevents other LSEs from managing their portfolios reliably and safely.

The Energy Division has reviewed AL 3836-E and AL 3836-E-A. The Energy Division finds that AL 3836-E and AL 3836-E-A meet the requirements of D.21-05-030. **Based on what SDG&E has provided, its methodology for reserving PCIA-eligible RA capacity is reasonable to manage its portfolio risks and uncertainties.**²²

SDG&E provides this information to emphasize that the Commission has already considered the types of issues and concerns raised by the CCA Parties and has already found that the process and methodology set forth in the BPP are reasonable. The Commission should not accept the CCA Parties' invitation to litigate these types of procurement related issues in the context of the ERRA Compliance proceeding.

B. The Information Requested Implicates Confidentiality Concerns

In its objections to the data requests at issue, SDG&E raised confidentiality concerns with respect to the disclosure of highly sensitive information to the CCA Parties given their role as market participants. Specifically, SDCP and CEA regularly participate in solicitations, and therefore, it seemed improper for SDG&E to disclose confidential and commercially sensitive information regarding SDG&E's sales strategy and other solicitors' bidding strategies. Providing this commercially sensitive information could provide an undue competitive advantage. Moreover, specific quantitative analysis involved in scoring and evaluation of participating bids is confidential pursuant to D.06-06-066.

SDG&E acknowledges that the CCA Parties should have the ability to meaningfully participate in the ERRA proceeding and SDG&E does not question the CCA Parties' intent to comply with the confidentiality practices established in D.06-06-066. SDG&E appreciates the

²² May 10, 2022 CPUC disposition letter approving AL 3836-E and AL 3836-E-A, p. 5.

CCA Parties' affirmation that "[n]o CCA market participant will have any access to SDG&E's market-sensitive information."²³

However, SDG&E raises its confidentially concerns in light of the fact that the commercially sensitive information being requested is not at all relevant to the issues in scope of the ERRA Compliance proceeding. Since the information is not relevant to any issue in dispute, SDG&E has concerns about being compelled to provide this confidential information in the first place. SDG&E appreciates that ruling on these types of discovery motions is challenging, and that sometimes, the simplest solution is to grant discovery and take a "wait and see approach" on relevancy-based objections. But given the highly confidential nature of the information being requested, it is imperative that the Commission take a close look at the arguments being presented to determine whether it is even necessary to disclose this confidential information as a threshold matter.

IV. CONCLUSION

For all the foregoing reasons, SDG&E respectfully submits that the CCA Parties' Motion to Compel Discovery be denied in its entirety.

Respectfully submitted,

/s/ Roger A. Cerda

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SAN DIEGO GAS & ELECTRIC COMPANY

December 1, 2023

²³ Motion, p. 16.

Exhibit D

SDG&E Ruling

ALJ/RM3/fzs 12/4/2023



FILED

12/04/23

04:59 PM

A2306002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U 902-E) for Approval of: (i) Contract Administration, Least-Cost Dispatch and Power Procurement Activities in 2022, (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account, Portfolio Allocation Balancing Account, Power Charge Indifference Adjustment Undercollection Balancing Account, Transition Cost Balancing Account, and Local Generating Balancing Account in 2022, and (iii) Costs Recorded in Related Regulatory Accounts in 2022.

Application 23-06-002

**EMAIL RULING GRANTING SAN DIEGO COMMUNITY POWER AND CLEAN ENERGY ALLIANCE MOTION TO COMPEL SAN DIEGO GAS & ELECTRIC COMPANY TO FULLY RESPOND TO SAN DIEGO COMMUNITY POWER AND CLEAN ENERGY ALLIANCE DATA REQUESTS
BY 5 P.M. ON DECEMBER 8, 2023**

Dated December 4, 2023, at San Francisco, California.

/s/ RAJAN MUTIALU
Rajan Mutialu
Administrative Law Judge

From: Mutialu, Rajan <rajan.mutialu@cpuc.ca.gov>
Sent: Monday, December 4, 2023 10:51 AM
To: JSchlesinger@KeyesFox.com; RCerda@sdge.com; Huber, Patrick <Patrick.Huber@cpuc.ca.gov>; alu@sdcommunitypower.org; mrw@mrwassoc.com; CPUCdockets@eq-research.com; BDickman@NewgenStrategies.net; CBencomoJasso@NewGenStrategies.net; Douglass@EnergyAttorney.com; ZHughes@sdge.com; CentralFiles@SempraUtilities.com; Oh, Frances <Frances.Oh@cpuc.ca.gov>; Stellrecht, Karl <Karl.Stellrecht@cpuc.ca.gov>; Ammermuller, Michael <Michael.Ammermuller@cpuc.ca.gov>; Mutialu, Rajan <rajan.mutialu@cpuc.ca.gov>; Saraie, Ryan <Ryan.Saraie@cpuc.ca.gov>; Buckley, Theresa <Theresa.Buckley@cpuc.ca.gov>; TLindl@KeyesFox.com; regulatory@braunlegal.com; Blaising@BraunLegal.com
Cc: ALJ_Support ID <alj_supportid@cpuc.ca.gov>; ALJ Docket Office <ALJ_Docket_Office@cpuc.ca.gov>
Subject: A.23-06-002 Ruling Granting Joint CCAs' Motion to Compel SDG&E to Fully Respond to Joint CCAs' Data Requests by 5 p.m. on December 8, 2023

To the Service List in Application 23-06-002:

On November 22, 2023, San Diego Community Power and Clean Energy Alliance (Joint CCAs) filed a motion to compel San Diego Gas & Electric Company (SDG&E) to fully respond to Joint CCA Data Requests 1.09, 1.10, 2.02, 2.03, and 2.05 (Data Requests) related to SDG&E's 2022 Resource Adequacy (RA) solicitations where SDG&E sought to sell excess RA. The motion requested that SDG&E provide a response by 5 p.m. on December 8, 2023.

Pursuant to Rule 11.3, a motion to compel discovery must show that parties previously met and conferred in a good faith effort to informally resolve the dispute, state facts showing a good faith attempt at an informal resolution of the discovery dispute, and include a proposed ruling that clearly indicates the requested relief. Based on documentation provided in the motion, Joint CCAs demonstrated compliance with Rule 11.3 and showed that SDG&E's responses to

Joint CCAs' Data Requests are relevant to the scope of this proceeding. Accordingly, this ruling orders SDG&E to fully respond to Joint CCAs' Data Requests by 5 p.m. on December 8, 2023.

IT IS SO ORDERED.

The Docket Office shall formally file this ruling.

Rajan Mutialu (he/him)
Administrative Law Judge
California Public Utilities Commission
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