BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U 902 E) to Fill Local Capacity Requirement Need Identified in D. 13-03-029	Application 13-06-015 (Filed June 21, 2013)

RESPONSE OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR TO APPLICATIONS FOR REHEARING OF DECISION 14-02-016

On March 13 and 14, 2014, Protect Our Communities/San Diego Energy District Foundation (POC/SDED) and Sierra Club/CEJA filed applications for rehearing in this proceeding. Pursuant to Rule 16.1 of the Commission's Rules of Practice and Procedure, the California Independent System Operator Corporation (ISO) hereby submits its response to these rehearing requests. As discussed below, these parties have failed to show that D.14-02-016 contains legal error or is otherwise unlawful or unreasonable.

I. The ISO's Study Methodology, Including the N-1-1 Critical Contingency for the San Diego Area, Was Thoroughly Litigated in A.11-05-023.

POC/SDED argues that the Commission committed legal error by excluding from consideration in this proceeding issues related to the ISO's study methodology that led to the finding of need for additional resources in D.13-03-029. In particular, POC claims that there should have been an opportunity to challenge the "reasonableness of the N-1-1" contingency,

and that the Commission's decision not to re-litigate this topic "violates POC's constitutional and statutory due process rights."[1]

These arguments are ill-founded and should be rejected. All of POC's assertions are based on the premise that that the N-1-1 contingency is "matter of public interest" that was **not "**validly resolved" in Docket A.11-05-023, the proceeding that developed the need for an additional 298 MW of local resources in the San Diego area.[2] This is simply incorrect. In D.14-02-016, the Commission correctly notes that the need determination adopted in D.13-03-029 was based on the ISO's once-through-cooling (OTC) power flow study in which the non-simultaneous loss of a portion of the Sunrise transmission line, followed by the loss of the Southwest Powerlink line, *i.e.,* an N-1-1 contingency, was the limiting contingency.[3] D.13-03-029 found that the ISO's power flow study is a more accurate means by which to determine local reliability needs than the spreadsheet approached used by SDG&E, and therefore the ISO's study methodology provided a reasonable basis for determining need.[4] Thus, D.13-03-029 was based on the ISO's power flow contingency studies, which identified the N-1-1 contingency as the limiting contingency for the San Diego local area.

POC/SDED incorrectly argues that the ISO's "use" of the N-1-1 contingency, rather than the G-1/N-1 "standard" described in the ISO's grid planning standards as the minimum contingency to be studied in San Diego LCR studies, was a "substantial departure" from prior

[1] POC/SDED application for rehearing, pp. 2-3.

[2] *Id.,* p. 5.

[3] D.14-02-016, p. 5. See also D.13-03-029, p. 7.

[4] D.13-03-029, p. 5; .

ISO studies that was not thoroughly examined during the evidentiary hearing in A.11-05-023.[5] POC/SDED incorrectly opines that the ISO used the G-1/N-1 limiting contingency in studies supporting the approval of the Sunrise transmission line, and that the ISO changed to the N-1-1 contingency based on "hearsay" evidence from SG&E described only in ISO witness Sparks' supplemental testimony.[6]

POC/SDED's description of the evidentiary record in A.11-05-023 fails for two important reasons. In the first place, POC/SDED does not understand the engineering analysis that was described in the ISO's testimony in that proceeding, and the very robust evidentiary record that led up to the Commission's adoption of the ISO's study methodology. In conducting power analysis, which the ISO uses to test the transmission network under certain grid operating conditions mandated by NERC reliability standards, the ISO does not "choose" the limiting condition that triggers a reliability need in a local area. The most severe contingency is a factual determination based on the result of the studies, not a policy determination. The policy determination for the ISO and for other decision-makers such as the Commission is how the identified reliability need is mitigated. For example, if under NERC reliability standards the most severe limiting contingency, which for the San Diego area is the N-1-1 contingency, a Category C3 contingency, the policy-makers may consider whether load shedding is an appropriate mitigation solution.

Secondly, POC/SDED's description of the evidentiary record in A.11-05-023 is completely incorrect. The findings in D.13-03-029 were solidly grounded on testimony provided

[5] POC/SDED application for rehearing, pp.5-8.

[6] POC/SDED's the statement that "the only evidence in support of the adoption of N-1-1 presented in A.11-05-023 proceeding was the Supplemental Testimony of CAISO witness Sparks…" is completely off the mark. (POC/SDED application for rehearing, p. 7).

by the ISO. Specifically, the ISO presented the initial testimony, supplemental testimony and rebuttal testimony of Robert Sparks. In each piece of testimony, Mr. Sparks discussed the ISO's power flow studies, the limiting contingencies for the San Diego area and how the needs for the area were established.

In Mr. Sparks' initial testimony, he described the ISO's local capacity area analysis, NERC reliability requirements, and the limiting contingency for the greater San Diego local capacity area. In the ISO's local area studies and the once-through-cooling study described in the initial testimony, the limiting contingency was the simultaneous outage of segments of the Sunrise and Southwest Powerlink lines (G-1/N-2), constrained by the south of SONGS separation scheme.[7] For the G-1/N-2 contingency, the ISO assumed a certain amount of load shedding.

Mr. Sparks later submitted supplemental testimony because, subsequent to the submission of the initial testimony, WECC changed the criteria for a common mode outage and the ISO conducted a reassessment of the San Diego local capacity needs.[8] In this supplemental testimony, Mr. Sparks explained, in much detail, how the ISO's reassessment now produced the more likely N-1-1 contingency as the limiting contingency.[9] Mr. Sparks also noted in his supplemental testimony, that the ISO conducted a workshop on the technical details of the

[7] *See* Sparks initial testimony, A. 11-05-023, pp. 3-8. The limiting contingency is described on page 8.

[8] Mr. Sparks explained that SDG&E advised the ISO that the WECC criteria had been changed. This statement in the supplemental testimony apparently has given rise to POC/SDED's claim that the ISO "changed its mind" based on "hearsay" evidence. This is obviously incorrect, since a change in WECC criterion is public and easily verified. In conducting the reassessment, the ISO relied on the change in criterion, not on SDG&E's information.

[9] *See* Sparks supplemental testimony, A.11-05-023, pp. 2-5; see in particular page 5 where Mr. Sparks describes the limiting contingency as being the N-1-1. Later in the testimony he describes a reduction in LCR need assuming that the south of SONGS separation scheme is eliminated.

reassessment so that the parties to A.11-05-023 could have a more in-depth understanding of the study and ask questions about the ISO's methodology.

In response to the ISO's initial and supplemental testimony, other parties to A.11-05-023 presented evidence that addressed the N-1-1 limiting contingency in the ISO's studies. Several parties took issue with the ISO's recommendation that load shedding not be adopted as a mitigation solution for the capacity needs in the local area, but all of the testimony recognized that the ISO's studies were based on the N-1-1 contingency, which results from the power flow analysis. For example, testimony presented by ORA contained a comparison of the SDG&E and ISO evaluations and explained how the ISO tested both the G-1/N-1 and the N-1-1 contingencies.[10] CEJA presented a witness who took issue with the deterministic nature of the ISO's power flow studies, questioning the number of times that the N-1-1 contingency would occur and the ISO's recommendation that load shedding not be used as a mitigation solution for San Diego.[11] CEJA witness Powers also questioned the ISO's "conservative" contingency analysis.[12]

Clearly POC/SDED's conclusions about the record in A.11-05-023 are simply incorrect. Whether the all of the parties to the proceeding agreed with the ISO's study results or not, all

[10] *See* ORA witness Fagan, opening testimony in A.11-05-023, pp.9-10:

SDG&E presumes that a generation contingency (i.e., the loss of the Otay Mesa gas generation plant southeast of San Diego) coupled with the loss of one 500 kV transmission line (i.e., "G-1/N-1") is the correct set of contingency events to use for determining the local capacity need requirements. The CAISO does not use this contingency. The CAISO tested the G-1/N-1 condition but found that the loss of two 500 kV transmission lines (the N-1-1 contingency) is a more severe case, and thus used the N-1-1 for its LCR need calculations.

[11] *See* CEJA witness Firooz, opening testimony in A.11-05-023, pp. 6-9.

[12] *See* CEJA witness Powers opening testimony in A. 11-05-023, pp. 35.

parties had ample opportunities to present testimony and to test the ISO's N-1-1 analysis and conclusions on cross-examination, and they did. The Commission had a robust evidentiary record upon which to make a decision regarding the reasonableness of the ISO's local capacity study, including, in particular, how the N-1-1 contingency was derived and how it was used to determine the local area needs. It is readily apparent that POC/SDED's arguments constitute an improper collateral attack on the Commission's findings in D.13-03-029.

Because the basis for POC/SDED's claim is incorrect, its remaining arguments that are all premised on this basis, must fail. Thus, POC/SDED's assertion that the Commission failed to meet its statutory responsibilities under Public Utilities Code Section 451, and 1705 by declining to once again consider the N-1-1 contingency is not valid.[13] Similarly, because the Commission had already established the local area need in San Diego in Docket A.11-05-023, it was not an abuse of discretion or an act "in excess of its powers" to focus on the issue of whether the Pio Pico PPTA filled those needs in this proceeding.[14] There simply was no factual or legal basis to re-litigate issues that previously been addressed and decided in D.13-03-029.

Despite the abundance of record evidence in A.11-05-023 upon which the Commission based its decision regarding the N-1-1 in D.13-03-029, POC nonetheless claims that the Commission did not "resolve" the N-1-1 issue. Thus, according to POC/SDED, because the Commission struck POC's testimony in this proceeding on the N-1-1 issue, the Commission violated POC/SDED's due process rights.[15] POC/SDED then claims that because POC was not

[13] *Id.*, pp.3-8.

[14] *Id.,* p. 10.

[15] *Id.*, pp.11-2.

permitted to submit evidence regarding the N-1-1 issue, there is no substantial evidence to support the findings in D.14-02-016.

These arguments are misplaced and are based on the erroneous premise that the Commission did not consider the N-1-1 contingency in predicate proceeding Docket A.11-05-023. The sole purpose of the instant proceeding was to decide whether the Pio Pico PPTA meets the need established in D.13-03-029. The CPUC determined the need in D.13-03-029 based on an N-1-1 analysis that was actively litigated. As discussed below, the Commission acted reasonably and well within its administrative discretion in limiting the focus of the proceeding and not broadening the scope to re-litigate matters already determined. The D.14-02-016 findings were based on record testimony directed to the issues identified in the scoping ruling. Those issues did not include the N-1-1 issued because that issue had already been decided in D.13-03-029; the issue in this proceeding was much narrower, namely whether the Pio Pico unit meets the need previously identified in D.13-03-029.

II. It is Not an Abuse of Discretion for the Commission to Manage Its Dockets and Limit the Scope of a Proceeding.

POC/SDED continues its "bootstrapping" arguments with the claim that the Commission committed legal error by precluding an "essential issue" from the amended scoping ruling issued in this proceeding on August 27, 2013. This argument is similar to POC/SDED's flawed assertion that the Commission acted outside of its statutory authority by striking POC's testimony about the N-1-1 contingency as a collateral attack on D.13-02-029.[16] Not only are these arguments based on the faulty factual premise that the N-1-1 contingency was never resolved in proceeding A.11-05-023, but they also have no valid legal foundation.

[16] POC application for rehearing, pp. 10, 13-19.

As POC/SDED admits, the Commission has discretion to define the scope of its proceedings. In this proceeding, the Commission clearly followed statutory mandate under Pub. Util. Code. §1701.1(b) to hold a prehearing conference and issue a ruling setting forth the issues to considered in the proceeding.[17] At the prehearing conference, the parties engaged in a robust discussion of the scope of the proceeding, including the need determination in D.13-03-029 and the ISO's study N-1-1 methodology used in that proceeding.[18] The ALJ expressed the opinion, subject to confirmation by the assigned commissioner, that the ISO's study methodology had in fact been addressed in A.11-05-023 and, therefore, it would not be included in the scope of this proceeding. [19] Indeed, the ALJ was quite clear at the prehearing conference that the Commission was not inclined to revisit any of the matters addressed in Docket A.11-05-023.[20]

Besides general allegations that the Commission acted in violation of Pub. Util. Code Section 1757, POC/SDED makes no specific showing as to how the Commission's determination that certain matters should not be re-litigated amounted to an abuse of discretion or was otherwise unreasonable. Indeed, just the opposite is the case. In light of the urgent need for resources in the San Diego area, it would have been unreasonable for the Commission to spend time reconsidering and re-litigating the D.13-03-029 need determination – which was directly relevant to and precondition of this proceeding -- based on the same information that was available to it at the time it issued D.13-03-029.

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[17] *See* also Rules of Procedure 7.2 and 7.3.

[18] PHC Tr. 11:2-15.

[19] PHC Tr. 11:26-12:6.

[20] PHC Tr.18:24-19:4. The ISO notes that despite the fact that POC should have been well aware that the scoping ruling would likely not include the ISO's study methodology and the N-1-1 matter, neither POC nor any other party contested the scope of the proceeding when the scoping memo was issued.

POC/SDED's res judicata and collateral estoppel arguments fare no better. First, POC/SDED fails to show, via case law or statute, that the Commission is *required* to consider every issue raised by every party to a rate-setting proceeding. POC/SDED argues when the Commission exercises its quasi-legislative authority, such as it in the instant proceeding, issues conclusively resolved in Commission determinations may be re-litigated.[21] In support of this position, POC/SDED points to dicta in *Camp Meeker Water System, Inc. v. Public Utilities Com*., 51 Cal.3d 845 (1990), claiming that this case provides an exemption from Pub. Util. Code Section 1709 provision that final orders and decisions of the Commission shall be conclusive "in collateral actions or proceedings." POC/SDED's argument is not persuasive. The dicta in *Camp Meeker*, citing *Southern Pacific Co. v. Railroad Commission* (1924) 194 Cal. 734, 739, addressed the rights described the rights of property owners to challenge, in court proceedings, a Commission determination interpreting certain property deeds and water easements. The case has little to do with the Commission's ability, in a subsequent *Commission* proceeding, to find that a prior factual determination is conclusive and will not be re-litigated.

POC/SDED also states that the Commission has established a three-pronged "test" for determining whether res judicata applies in a particular proceeding, and argues that the N-1-1 issue fails the first prong because it is "not identical" to the issue resolved in D.13-03-029. This is incorrect, as discussed above. Importantly in D.04-10-039 -- the Commission decision cited by POC/SDED as setting forth the test for res judicata -- the Commission noted that courts generally apply principles of res judicata to administrative adjudications where the administrative agency is deciding issues of fact, not issues of law.[22] Clearly the reasonableness

[21] POC application for rehearing, pp. 14-15.

[22] D.04-10-039 at p. 14 citing *United States v. Utah Constr. & Mining Co*. (1966) 384 U.S. 394, 422.

of the ISO's study methodology and the N-1-1 as the limiting contingency is a factual issue, not a legal issue. POC/SDED's collateral estoppel argument is also invalid, because the five-pronged test for collateral estoppel (as described by POC/SDED) is based on the identical issue being litigated in the prior proceeding,. That is clearly the case here.

POC/SDED also asserts that in D.13-03-029, the Commission stated that the question of need would be revisited in a later proceeding upon a renewed application. This is not correct, and POC does not -- and cannot -- provide a citation to such a statement in the decision.[23] In D.13-03-029, the Commission determined that there was a need for additional local resources in the San Diego area, and directed SDG&E to either conduct an RFO or to resubmit the Pio Pico PPTA with a different online date.[24] Nowhere in the decision was there a statement that the ISO's study methodology would be revisited when SDG&E brought forward the resources that had been procured for approval, and POC/SDED failed to provide a citation for this assertion. Therefore, the argument must be disregarded.

III. The Decision to Approve the Pio Pico PPTA is Based on Record Evidence and is Not Unreasonable or Unlawful.

Sierra Club/CEJA argue that the Commission erred in not taking into account the intervening events that have taken place since the issuance of D.13-03-029 that might change the need for the Pio Pico PPTA. They assert that the Commission "sidestepped its own procedures" by not considering the SONGS outage and the possibility of accelerated deployment of preferred resources. [25] These arguments are unfounded.

[23] POC application for rehearing, p. 17.

[24] D.13-03-029, p. 5; ordering paragraph 8.

[25] Sierra Club/CEJA application for rehearing, pp. 4-8.

The Commission in D.14-02-016 specifically considered the arguments advanced by Sierra Club/CEJA, and TURN, that 1) intervening events should be taken into account in determining whether the PPTA should be approved; 2) the Commission should consider the availability of the Cabrillo II unit; 3) a decision should be deferred until a decision is reached in the LTPP proceeding, R.12-03-014, Track 4; and 4) the Commission should take into account the status of permitting for the Pio Pico generating facility.[26] Sierra Club/CEJA fail to identify any valid legal error, but instead simply re-argue the factual positions taken in their testimony in this proceeding. Interestingly, these parties also acknowledge that the proposed (now final) decision in LTPP Track 4 found the need for additional resources in the absence of SONGS, which is consistent with the Commission's determination in D.14-02-016.[27]

Sierra Club/CEJA's argument that the Commission had no substantial evidence upon which to base its decision is equally unpersuasive. As discussed above, the need for generating resources, in the amount that will be provided by the Pio Pico generating facility, was well established in D.13-03-029. The parties to this proceeding had ample opportunity to provide testimony on the duration, terms, and conditions, of the PPTA, and the Commission took this information into account in reaching a decision. The mere fact that Sierra Club/CEJA do not agree with this decision does not constitute a legal basis for rehearing D.14-02-016. Rehearing should be denied.

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[26] D.14-02-016, pp. 3-6.

[27] Sierra Club/CEJA application for rehearing, pp. 7; D.14-02-016 at p.4 :

> While Sierra Club and CEJA contend that future Commission action in response to the SONGS closure may eliminate Pio Pico as a reasonable or necessary solution for meeting the Local Capacity Requirements (LCR) need, it is at least equally possible that the SONGS closure creates an additional need for Pio Pico.

IV. Conclusion

The parties seeking rehearing of D.14-02-016 have failed to meet the requirements for rehearing, as set forth in Rule 16.1(b). They have raised no basis for the notion that the Commission acted unreasonably or abused its discretion in limiting the scope of the proceeding to issues that had not been litigated and resolved in A.11-05-023 and determining that intervening events had not obviated the need for the Pio Pico PPTA. For the reasons discussed above, the rehearing requests should be rejected.

Respectfully submitted,

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Dated: April 1, 2014