165 FERC ¶ 61,070
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

San Diego Gas & Electric Company
Sempra Gas & Power Marketing, LLC

Docket No. ER18-2050-000

ORDER GRANTING AUTHORIZATION TO MAKE AFFILIATE SALES

(Issued October 31, 2018)

1. In this order, we grant San Diego Gas & Electric Company's (SDG&E) and Sempra Gas & Power Marketing, LLC's (Sempra Gas) (collectively, Applicants) request under section 205 of the Federal Power Act (FPA)[1] for authorization of an affiliate transaction in which Sempra Gas will sell Resource Adequacy capacity at market-based rates to its affiliate, SDG&E (Transaction). As discussed below, we find that the competitive solicitation process conducted by SDG&E satisfies the Commission's concerns regarding the potential for affiliate abuse and we grant Applicants' request for authority for Sempra Gas to make sales to SDG&E that resulted from the competitive solicitation.

## I. Background

2. On July 20, 2018, Applicants requested authority for the Transaction, which resulted from a competitive solicitation that SDG&E conducted in spring of 2018.

3. Applicants state that SDG&E is a California corporation engaged in the transmission, distribution, and sale of energy services. Applicants represent that SDG&E is a subsidiary of Enova Corporation, which is a wholly owned subsidiary of Sempra Energy. Applicants also state that SDG&E has conveyed operational control over its transmission facilities to the California Independent System Operator Corporation (CAISO). Applicants state that Sempra Gas is an indirect, wholly owned subsidiary of Sempra Energy that markets the energy and capacity from its affiliated Termoelectrica de Mexicali power plant, which is interconnected to the CAISO-controlled grid at the

[1] 16 U.S.C. § 824d (2012).

230 kV Imperial Valley Substation and which is the source of the Resource Adequacy capacity for the Transaction.

4. Applicants state that, under California's Resource Adequacy program, each California Public Utilities Commission (CPUC)-jurisdictional load serving entity is required to procure sufficient capacity to cover its forecasted annual peak demand plus a planning reserve margin of 15 percent, and to maintain that capacity during all months of the year and all operating hours of the month. Applicants explain that the Resource Adequacy compliance obligation has two parts: load serving entities are first obligated to procure their share of Local Resource Adequacy capacity within the applicable local reliability areas designated annually by CAISO; and second, required to procure Resource Adequacy on a system-wide basis.[2] Applicants also explain that recent revisions to the Resource Adequacy program have added a flexibility attribute, developed in part in response to the increasing prevalence of renewable generation resources and the associated need for sufficient quantities of flexible quick response generation to address intermittency issues.[3] Applicants state that compliance with the Local Resource Adequacy obligation is satisfied once annually through a year-ahead showing that is not adjusted monthly (but is trued-up semi-annually) to account for load shifting between utilities and other load serving entities.[4]

5. Applicants state that in preparation for its year-ahead 2019 Local Resource Adequacy showing, SDG&E conducted a formal solicitation process to procure capacity in order to address a short position. SDG&E issued its 2019 Load Resource Adequacy Request for Proposals (RFP) on March 16, 2018 in order to obtain needed Local San Diego – Imperial Valley Resource Adequacy Capacity.[5] As a result of the March 16 solicitation, SDG&E selected a portfolio of resources offered by several respondents, including Sempra Gas.

6. Applicants represent that SDG&E retained an independent evaluator to ensure that the solicitation process was designed and conducted in a fair, consistent, unbiased, and objective manner, and that the best offers were selected and acquired consistent with the solicitation requirements.[6] Applicants state that SDG&E also briefed its Procurement

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[2] Application at 3.

[3] *Id*. at 3-4.

[4] *Id*. at 4.

[5] *Id*.

[6] *Id*. at 5.

Review Group concerning Resource Adequacy procurement issues. Applicants explain that the Procurement Review Group is a standing advisory body consisting of representatives of several non-market participants, including representatives of consumer advocate organizations and the Energy Division of the CPUC.[7] Applicants represent that the competitive solicitation complies with the Commission's standards for approving affiliate sales that result from participation in a competitive procurement process, as set forth in *Boston Edison Co. Re: Edgar Electric Energy Company (Edgar)*[8] and *Allegheny Energy Supply Company, LLC (Allegheny).*[9] Accordingly, Applicants request that the Commission grant authorization of the Transaction.

## II. <u>Notices and Responsive Pleadings</u>

7. Notice of Applicants' July 20, 2018 filing was published in the *Federal Register*,[10] with interventions and protests due on or before August 10, 2018. None was filed.

## III. <u>Discussion</u>

### A. <u>Affiliate Abuse Analysis</u>

8. At issue here is whether Applicants' filing satisfies the Commission's concerns regarding the potential for affiliate abuse. In *Edgar*, the Commission stated that, in cases where affiliates are entering into market-based rate agreements, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted.[11] Under *Edgar*, the Commission has approved affiliate sales resulting from competitive bidding processes after the Commission has determined that, based on the evidence, the proposed sale was a result of direct head-to-head competition between affiliated and competing unaffiliated suppliers.[12]

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[7] *Id*. at 5-6.

[8] 55 FERC ¶ 61,382 (1991).

[9] 108 FERC ¶ 61,082 (2004).

[10] 83 Fed. Reg. 35,629 (2018).

[11] 55 FERC at 62,167.

[12] *Id.* at 62,167-69. *See also Connecticut Light & Power Co.*, 90 FERC ¶ 61,195, at 61,633-34 (2000); *Aquila Energy Marketing Corp.*, 87 FERC ¶ 61,217, at 61,857-58 (1999); *MEP Pleasant Hill*, *LLC*, 88 FERC ¶ 61,027, at 61,059-60 (1999).

9. When an entity presents evidence seeking to satisfy the *Edgar* criteria using a competitive solicitation, the Commission has required assurance that: (1) a competitive solicitation process was designed and implemented without undue preference for an affiliate; (2) the analysis of bids did not favor affiliates, particularly with respect to non-price factors; and (3) the affiliate was selected based on some reasonable combination of price and non-price factors.[13]

10. In *Allegheny*, the Commission provided guidance as to how it will evaluate whether a competitive solicitation process satisfies the *Edgar* criteria.[14] As the Commission stated in *Allegheny*, the underlying principle when evaluating a competitive solicitation process under the *Edgar* criteria is that no affiliate should receive undue preference during any stage of the process. The Commission stated that the following four guidelines will help the Commission to determine if a competitive solicitation process satisfies that underlying principle: (1) Transparency: the competitive solicitation process should be open and fair; (2) Definition: the product or products sought through the competitive solicitation should be precisely defined; (3) Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders; and (4) Oversight: an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection.[15] The *Edgar* criteria and *Allegheny* guidelines are designed to ensure that the transactions between affiliates do not unduly favor affiliates, and thereby protect captive customers from affiliate abuse.

11. As discussed below, we conclude that the competitive solicitation described by Applicants satisfies the Commission's concerns regarding affiliate abuse. Accordingly, we grant Applicants' request for authorization of the Transaction pursuant to the competitive solicitation process described herein.

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[13] *Edgar*, 55 FERC at 62,168.

[14] *Allegheny*, 108 FERC ¶ 61,082. *See also Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 540, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Public Citizen, Inc. v. FERC*, 567 U.S. 934 (2012).

[15] *Allegheny*, 108 FERC ¶ 61,082 at P 22.

### 1. Transparency Guideline

12. Applicants claim that the competitive solicitation satisfies the Transparency guideline because SDG&E sent the solicitation to a very large distribution list of nearly 8,000 contacts, provided notices of the RFP to major trade publications, and established a website for the RFP that provided a forum for providing all interested parties with information and responses to questions.[16]

13. Based on Applicants' representations, we find that the competitive solicitation is consistent with the Commission's Transparency guideline.

### 2. Definition Guideline

14. Applicants claim that the competitive solicitation satisfies the Definition guideline because it indicated clearly the product sought was 2019 Local San Diego - Imperial Valley Resource Adequacy, with a mechanism for considering resources with flexible attributes. Applicants note that the Resource Adequacy products needed by SDG&E were defined by the CPUC and CAISO, not SDG&E, and SDG&E's purpose in conducting the RFP was to procure necessary quantities at the best value to ratepayers.[17]

15. Based on Applicants' representations, we find that the competitive solicitation is consistent with the Commission's Definition guideline.

### 3. Evaluation Guideline

16. Applicants claim that the solicitation satisfies the Evaluation guideline because the RFP involved consideration of competing offers for quantities of a discrete, fungible product for a defined period of time, with SDG&E's purchase decisions made on clear, objective grounds: the need to procure sufficient quantities at the lowest prices possible.[18] Applicants explain that the RFP materials stated that offers would be ranked based on per unit pricing, and this ranking was used for inclusion in the overall portfolio. For resources able to provide the flexibility attribute, Applicants maintain that the RFP specified SDG&E's preference for alternative proposals, one of which would be for the

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[16] Application at 8-9.

[17] *Id*. at 9.

[18] Applicants state that, where SDG&E intended to take into account non-price factors, as in the case of Once-Through Cooling considerations for California resources, those factors were identified in the RFP. *Id*. at 10.

Resource Adequacy product alone and a separate proposal that bundled the flexibility attribute.[19]

17. Based on Applicants' representations, we find that the competitive solicitation is consistent with the Commission's Evaluation guideline.

### 4. Oversight Guideline

18. Applicants claim that the solicitation satisfies the Oversight guideline because it employed multiple sources of independent oversight. Applicants explain that SDG&E retained an independent evaluator prior to the issuance of the RFP, provided the independent evaluator with all of the bids received, and the independent evaluator monitored all negotiations between SDG&E and Sempra Gas. Applicants additionally state that the solicitation process also benefited from third-party oversight provided by SDG&E's Procurement Review Group.[20]

19. Based on Applicants' representations, we find that the competitive solicitation is consistent with the Commission's Oversight guideline.

20. Based on all of the above, we conclude that the competitive solicitation described by Applicants satisfies the Commission's concerns regarding affiliate abuse. Accordingly, we grant Applicants' request for authorization for Sempra Gas to make affiliate sales at market-based rates to SDG&E that resulted from the competitive solicitation process described herein.

## B. Other Issues

21. This order satisfies the requirement that Sempra Gas must first receive Commission authorization, pursuant to section 205 of the FPA, before engaging in power sales at market-based rates for the affiliate sales discussed herein. We note that Sempra Gas must receive prior authorization from the Commission under FPA section 205 for any other sales to affiliates with a franchised electric service territory and captive customers.[21]

22. Finally, we direct Sempra Gas to submit a compliance filing, within 30 days of the date of this order, revising the limitations and exemptions section of its market-based rate

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[19] *Id*.

[20] *Id*. at 10-11.

[21] *See* 18 C.F.R. § 35.39(b) (2018).

tariff to list the specific, limited waivers granted herein and to include a citation to this order.[22]

The Commission orders:

(A) Applicants' request for authorization for Sempra Gas to make Resource Adequacy capacity sales to SDG&E is granted, effective October 20, 2018, as requested, and as discussed in the body of this order.

(B) Sempra Gas is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner McIntyre is not voting on this order.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[22] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at App. C; Order No. 697-A, FERC Stats & Regs. ¶ 31,268 at P 384.