168 FERC ¶ 61,158
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

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

Docket No. ER19-2422-000

ORDER GRANTING AUTHORIZATION TO MAKE AFFILIATE SALES

(Issued September 19, 2019)

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 18, 2019, Applicants submitted a request for authorization for the Transaction, which resulted from a competitive solicitation that SDG&E conducted in the spring of 2019.

3. Applicants state that SDG&E is a California corporation engaged in the transmission, distribution, and sale of energy services. Applicants state 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). They state that Sempra Gas is an indirect, wholly owned subsidiary of

[1] 16 U.S.C. § 824d (2012).

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

4. Applicants explain 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. They 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, they are 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] They state that compliance with the Local Resource Adequacy obligation is satisfied for three years forward with the requirement that a load-serving entity meet 100 percent of its next two years forecasted obligation and 50 percent of the third year through a multi-year 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 three years forward 2020-2022 Local Resource Adequacy showing, SDG&E conducted a formal solicitation process to procure capacity by purchase or swap. SDG&E issued its 2020-2022 Local Resource Adequacy Request for Proposals (RFP) on March 15, 2019, in order to obtain needed Local San Diego – Imperial Valley Resource Adequacy Capacity.[5] As a result of the March 15 solicitation, SDG&E selected a portfolio of resources offered by several respondents, including Sempra Gas. Further, they state that, subsequent to notification of its selection,

---

[2] Application at 3.

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

[4] *Id*. at 4.

[5] *Id.* at 4-5.

Sempra Gas indicated to SDG&E that it had additional volumes to sell beyond those included in its proposal and that it would sell those incremental volumes to SDG&E at the same unit price as originally bid.[6]

6. Applicants represent that SDG&E retained an independent evaluator to ensure that the solicitation process was done fairly with no preferential treatment to any respondent.[7] Applicants explain that the independent evaluator had broad responsibilities, including monitoring the solicitation and discussion processes, valuation methodologies, selection processes, reviewing proposals to ensure competitive process and no market collusion or market manipulation, and reporting on the RFP process.[8] They further explain that SDG&E consulted with the independent evaluator prior to accepting Sempra Gas' modified proposal.

7. Applicants state that SDG&E also briefed its Procurement 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.[9] They 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*[10] and *Allegheny Energy Supply Company, LLC.*[11] Accordingly, Applicants request that the Commission grant authorization for the Transaction.

---

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

[7] *Id*. at 6.

[8] *Id*.

[9] *Id*. at 7.

[10] *Boston Edison Co. Re: Edgar Electric Energy Company*, 55 FERC ¶ 61,382 (1991) (*Edgar*).

[11] *Allegheny Energy Supply Company, LLC*, 108 FERC ¶ 61,082 (2004) (*Allegheny*).

## II. Notices and Responsive Pleadings

8. Notice of Applicants' July 18, 2019, filing was published in the *Federal Register*,[12] with interventions and protests due on or before August 8, 2019. None was filed.

## III. Discussion

### A. Affiliate Abuse Analysis

9. 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.[13] 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.[14]

10. 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.[15]

11. In *Allegheny*, the Commission provided guidance as to how it will evaluate whether a competitive solicitation process satisfies the *Edgar* criteria.[16] As the

---

[12] 84 Fed. Reg. 36,096 (2019).

[13] *Edgar*, 55 FERC at 62,167.

[14] *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).

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

[16] *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, 119 FERC ¶ 61,295, at P 540, *clarified*, 121 FERC ¶ 61,260 (2007*), order on reh'g*, Order No. 697-A, 123 FERC ¶ 61,055, *clarified*, 124 FERC ¶ 61,055, *order on*

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.[17] 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.

12. 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 for the Transaction pursuant to the competitive solicitation process described herein.

### 1. Transparency Guideline

13. Applicants claim that the competitive solicitation satisfies the Transparency guideline because SDG&E sent the solicitation to a very large distribution list, established a website for the RFP that provided all the RFP documents for all interested parties, and required that the independent evaluator monitor all directed contact between SDG&E and any respondent to the RFP.[18]

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

### 2. Definition Guideline

15. Applicants claim that the competitive solicitation satisfies the Definition guideline because it indicated clearly that the product sought was 2020-2022 Local San Diego -

---

*reh'g*, Order No. 697-B, 125 FERC ¶ 61,326 (2008), *order on reh'g*, Order No. 697-C, 127 FERC ¶ 61,284 (2009), *order on reh'g*, Order No. 697-D, 130 FERC ¶ 61,206 (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).

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

[18] Application at 9-10.

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/or CAISO, not SDG&E, and SDG&E's purpose in conducting the RFP was to procure necessary quantities at the best value to ratepayers.[19]

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

### 3. Evaluation Guideline

17. Applicants claim that the competitive solicitation satisfies the Evaluation guideline because the RFP documents provided clear and complete product definitions and full disclosure of the evaluation process. Applicants state that the RFP involved consideration of competing offers for quantities of a discrete, fungible product for defined periods of time, with SDG&E's purchase decisions made on clear, objective grounds: the need to procure sufficient quantities at the lowest prices possible.[20] Applicants state that SDG&E gave all prospective participants clear information as to the products being sought and the competitive solicitation process to be employed to evaluate the proposals, and that the independent evaluator found that the evaluation criteria were applied to all Respondents in the same manner.[21]

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

### 4. Oversight Guideline

19. Applicants claim that the competitive solicitation satisfies the Oversight guideline because it employed multiple sources of independent oversight. They 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 also state that the solicitation process benefited from third-party oversight provided by SDG&E's Procurement Review Group.[22]

---

[19] *Id*. at 10.

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

[21] *Id*.

[22] *Id*. at 11-13.

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

**5. Benchmark Analysis**

21. Under *Edgar*, the Commission has approved affiliate sales where a utility provides "benchmark" evidence of the prices, terms and conditions of sales by non-affiliated sellers. This evidence can include purchases made by the utility itself or by other buyers in the relevant market. Two major considerations with respect to the credibility of benchmark evidence are whether the benchmark sales are contemporaneous and whether they are for similar services when compared to the transaction in question.[23]

22. Applicants submitted benchmark evidence to further demonstrate that there are not any affiliate abuse concerns with respect to the incremental capacity that Sempra Gas offered to SDG&E after the deadline established in the RFP. They state that *Edgar* permits applicants to demonstrate the comparability of prices to sales by nonaffiliated sellers, and that the Commission has accepted the use of contemporaneous bid pricing in making that showing.[24] Applicants represent that the benchmark evidence demonstrates that "[t]he incremental capacity offered by [Sempra Gas] is attractively priced relative to bids for the same product that non-affiliates submitted in response to the same RFP."[25] Applicants also state that, on an annual average price basis, Sempra Gas' incremental capacity offered compelling value to SDG&E's ratepayers.[26]

23. Based on all of the above, we conclude that the competitive solicitation and benchmark evidence as 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**

24. We find that this order satisfies the requirement that Sempra Gas must first receive Commission authorization, pursuant to FPA section 205, before engaging in power sales

---

[23] *Edgar*, 55 FERC at 62,169.

[24] Application at 13 (citing *San Diego Gas & Electric Co.*, 137 FERC ¶ 61,232, at PP 55-56 (2011)).

[25] *Id*. at 14; *see also id.*, Attachment 1, Report of the Independent Evaluator at 5.

[26] *Id*.

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.[27]

25. 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 tariff to list the specific, limited waivers granted herein and to include a citation to this order.[28]

The Commission orders:

(A) Applicants' request for authorization for Sempra Gas to make Resource Adequacy capacity sales to SDG&E is hereby granted, effective September 19, 2019, 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.

( S E A L )

Kimberly D. Bose,
Secretary.

[27] *See* 18 C.F.R. § 35.39(b) (2019).

[28] Order No. 697, 119 FERC ¶ 61,295 at App. C; Order No. 697-A, 123 FERC ¶ 61,055 at P 384.