Dissent of Commissioner Dian M. Grueneich

Overview

I dissent from today's majority decision to approve the $2 billion Sunrise Powerlink Transmission Project (Sunrise) because it fails to include a clean energy guarantee even though the legal, factual, and policy basis for Sunrise is to deliver renewable resources. My Alternate proposed decision contained such a provision and explained in detail why this requirement was both workable and necessary. The text of that renewable requirement is attached hereto as Attachment A.

Because the majority decision does not include such a renewable requirement, I cannot support it. Without a renewable requirement, we spend billions of ratepayer money on a new transmission line that provides no guarantee of benefits to San Diego Gas and Electric Company (SDG&E) ratepayers, can be used to transmit non-renewable energy, and may well undercut the state's global warming goals. We also miss a major opportunity to create a vibrant green collar economy in Imperial Valley, and risk exporting these skilled jobs across our borders.

The majority decision puts its faith – and ratepayer money - in expectations for the invisible hand of market forces to produce the results the Commission desires, in promises of possible reforms, and in waiting to see what happens while hoping for the best. As the Assigned Commissioner to this case, this "just trust us" approach is one I cannot support.

Discussion

The majority decision finds that Sunrise is not needed for reliability in San Diego until at least 2014 nor is it needed to meet a 20% Renewable

Portfolio Standard (RPS). I agree. SDG&E has already received more than enough offers for renewable projects that do not need Sunrise to fulfill its entire RPS obligation of 20% by 2010.[1] The record for this case also shows that Sunrise would actually increase costs to meet the RPS target of 20% by approximately $90 million. In sum, the majority decision agrees with my Alternate proposed decision that this massive investment of ratepayer money cannot be justified based on near term reliability or 20% RPS needs.

The basis for the majority decision's approval of Sunrise is that the line is needed to meet a 33% RPS and that doing so provides significant economic, reliability and greenhouse gas (GHG) reduction benefits. The California Independent System Operator (CAISO) projects that Sunrise can facilitate development of over 1,900 MW of Imperial Valley renewable resources between 2011 and 2015, including 1,000 MW of high capacity-factor geothermal resources. According to the record in this case, if these resources are developed and delivered on Sunrise, Sunrise will generate $94 million per year in net benefits for ratepayers.

However, the majority decision does not impose any enforceable obligations on SDG&E to develop renewable resources or to carry them over Sunrise. The Commission's decision is silent regarding any requirements for SDG&E to develop any renewables to be transmitted over Sunrise, to contract for any new Imperial Valley renewable resources, or to conduct any procurement activities specific to Imperial Valley. It does not state any commitment by this Commission, or for SDG&E, to ensure a specific level of renewable development in the Imperial Valley

[1] For example, SDG&E has placed enough in-state projects north of the San Onofre Nuclear Generating Station (SONGs) on its short list to meet its full 20% RPS obligation. These projects do not require Sunrise.

will be carried over Sunrise, even though the legal, factual, and policy rationale for approving Sunrise hinges on success in these matters. In these difficult times, where regulators' failure to regulate has contributed to major financial crises, the majority decision to trust instead of imposing meaningful requirements is inappropriate.

With the majority decision, this Commission will wait and see what happens in our usual procurement process for 2009. If there are no or few bids from Imperial Valley developers, we will consider proposals that our staff monitor what is happening in the Imperial Valley and that the utilities hold bidders conferences in their procurement processes, and perhaps require that the utilities short list any Imperial Valley bids that they receive in 2010, if they do receive any at all.

The California ratepayers who will fund Sunrise cannot afford "trust us" as a business justification for this hugely expensive line. The history of our RPS procurement to date, and for SDG&E in particular, has been criticized by many as too slow and based more on contracts - or promises of contracts - than renewable delivery. In addition, CAISO itself states that delay in procurement of Imperial Valley renewables by only one year will reduce Sunrise's benefits by $11 million per year. Further, the RPS statute clearly intended that the majority of the renewable resources would be in state. Public Utilities Code Section 399.11 specifies that the RPS can protect public health and improve environmental quality throughout the state, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels. According to a recent study on green energy jobs, a full build out of renewable potential in Imperial Valley could result in thousands of new jobs in Imperial

County.[2] Imperial County had a 22.6 percent unemployment rate in June, the highest in California.

There are three things that needed to have been included in the Sunrise decision to meet the promise of Sunrise as a renewable line. First, the decision needed to include specific requirements for SDG&E to develop Imperial Valley renewables. That is missing from the majority decision. Second, the decision needed to include firm commitments from this Commission to expand Imperial Valley renewable development to our other electric investor-owned utilities at a specified level consistent with the record in this decision. That is also missing from the majority decision. And, finally, the decision needed to mandate the first two items starting with procurement requirements in 2009. And, that too is missing from the majority decision.

The Commission's decision cites the off-the-record representations of SDG&E's Chief Executive Officer that SDG&E will voluntarily set a 33% RPS standard for itself, replace failed existing Imperial Valley contracts with new Imperial Valley renewables, and refrain from using Sunrise for coal fired generation contracts. However, the majority decision does not mandate that SDG&E comply with its own representations.

At a 33% RPS, Sunrise will generate $94 million per year in ratepayer benefits. However, the major assumption underlying this net benefit calculation is the development of new, high capacity renewable resources – 1,900 MW operational by 2015 - in the Imperial Valley. Without this development, the economic benefits of Sunrise disappear. The linkage is simple –SDG&E ratepayers and Californians as a whole will

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[2] "Harvesting California's Renewable Energy Resources: A Green Jobs Business Plan," by Peter Asmus, Center for Energy Efficiency and Renewable Technologies, August 15, 2008, p. 23, www.cleanpower.org.

receive the economic, reliability and GHG emission benefits of Sunrise if – but only if -- Imperial Valley renewables are developed at the levels and within the timeframe projected by the CAISO. Further, the distinction between Imperial Valley resources and resources in other states or outside the United States is important. With Sunrise, the San Diego local reliability area will include the Imperial Valley substation; therefore, SDG&E's ratepayers will receive free reliability benefits from renewables that connect to that substation that they would otherwise have to purchase from other resources.

SDG&E's current contracts for Imperial Valley will only generate about 20% of the energy that Sunrise is capable of delivering, assuming these projects are successfully developed, constructed, and operate as proposed. These proposed Imperial Valley renewable projects, which would generate 459 MWs, are far less than the 1,900 MW of Imperial Valley renewable development that the CAISO assumed would be operational by 2015. Of the amount under contract, only 60 MW is high capacity-factor geothermal resources, compared to development of the 1,000 MW of geothermal upon which the CAISO analysis – and Sunrise approval – is based.

Specific requirements to develop renewables are also needed because the record shows that Sunrise could carry existing fossil-fired generation and facilitate the development of new fossil-fired resources outside the state. Existing transmission lines will connect Sunrise to out-of state resources, not only in the Southwestern U.S. but also to two existing gas fired plants totaling over 1,000 MW of capacity in Baja California in Mexico. Sempra Energy through its unregulated affiliates owns and operates one of these facilities and also owns the Liquified Natural Gas (LNG) facilities that can provide natural gas to these plants.

As set forth in Attachment A hereto, my Alternate proposed decision would have imposed a 3,500 GWH/year procurement requirement on SDG&E to be acquired through existing contracts, bilateral negotiations, and a 2009 request for offers (RFO) in Imperial Valley. This amount is well within the amount of Imperial Valley renewables identified by the CAISO. My Alternate proposed decision also committed this agency to require Southern California Edison Company and Pacific Gas and Electric Company to issue Imperial Valley RFOs in 2010 in a combined amount of approximately 6,000 GWH/year, enough to achieve the level of renewable projects that the CAISO has claimed will be facilitated by Sunrise and is necessary to achieve ratepayer benefits from Sunrise. My Alternate proposed decision provided flexibility in procurement and also committed to include measures and conditions for the Imperial Valley RFOs to mitigate market power, protect ratepayers from unreasonable costs, and apply any newly developed contract viability rules to these resources.

All of these requirements are reasonable, all are workable, and most importantly they are not based on statements of hoped for outcomes, consideration of possible future regulatory actions, and undefined and unenforceable promises.

However, under any scenario that approves Sunrise, one group will still get benefits – SDG&E shareholders. They will receive approximately $1.5 billion over the lifetime of Sunrise as their rate of return for the ratepayer funded capital investment, whether or not Sunrise is ever used to deliver any renewable power.

Conclusion

Despite the deepening recession, the foreclosure crisis, growing unemployment rates, and steadily increasing electric service shut off rates, the majority decision imposes a requirement on SDG&E ratepayers to fund the $2 billion cost of Sunrise and the 11.5 percent rate of return for SDG&E shareholders. This is not our money, it is not SDG&E's money, it is ratepayer money. We have an obligation to ensure that SDG&E ratepayers, and not just shareholders, see a return on their investment.
I am not willing to risk billions of ratepayer money to the invisible hand of the market. I cannot, in good conscience, rely on promises to consider possible proposals for reform in our procurement process in the future, when the evidentiary basis for our decision so clearly depends upon development of Imperial Valley renewables at specific levels in specific timeframes.

Consequently, I dissent.

Dated December 18, 2008, at San Francisco, California.

/s/ DIAN M. GRUENEICH
Dian M. Grueneich
Commissioner

ATTACHMENT A

Commissioner Grueneich Alternate Section 19 – Renewable Requirement

19. Requirements to Ensure Imperial Valley Renewable Development

This decision finds, based on the evidentiary record, that Sunrise is justified on reliability, economic, and 33% RPS grounds ***provided that actual Imperial Valley renewable development occurs at the levels projected by CAISO.*** This decision also finds, however, that Sunrise could facilitate the development of new fossil fueled generation in the western United States.[1] Hence, we must take affirmative action to ensure Imperial Valley renewable development at meaningful levels.

CAISO estimates Sunrise will facilitate the development of over 1,900 MW of Imperial Valley renewables - 1,000 MW of high capacity geothermal generation and 900 MW of solar thermal generation, as shown in Table 2 in Section 6.10, above. The modeling we rely upon to reach our decision is based on this CAISO estimate of Imperial Valley renewable development. We find in Section 11.4 above that Sunrise will generate $94 million per year in economic benefits ***if*** the projected 1,900 MW of new Imperial Valley renewable resources are developed and flow over Sunrise. Specifically, CAISO's projected level of Imperial Valley renewable development will generate RPS compliance benefits of approximately $60 million per year and significant local area reliability benefits. We also find in Section 14 of this decision that development of Imperial Valley renewables will offset the construction-related GHG emissions of Sunrise

[1] SDG&E Exhibit SD-5, I-21 to I-22.

and will contribute to meeting this state's carbon reduction goals. For these reasons, we find in Section 4.3 above that Sunrise is needed for 33% RPS compliance. Development of Imperial Valley renewables will also raise tax revenues and create construction and other long-term skilled jobs in the Imperial Valley, an economically depressed area. Absent CAISO's projected level of Imperial Valley renewable development, ratepayers have no assurance that their $1.9 billion investment in Sunrise will produce economic, reliability and environmental benefits.

SDG&E claims that one of Sunrise's objectives is to provide transmission from Imperial Valley renewable resources to SDG&E's service area to assist in meeting or exceeding California's 20% RPS and the governor's proposed 33% RPS.[2] However, currently SDG&E is not legally obligated to procure renewables at a 33% RPS level. Because Sunrise could be used to import fossil fired generation into California, we have no assurance that Sunrise will deliver substantial amounts of renewable generation from the Imperial Valley. If this Commission adopts the October 29, 2008 proposed decision in R.06-02-012 (Renewable Portfolio Standard proceeding) that allows utilities to purchase tradable renewable energy credits (TRECs) in lieu of entering into contracts with renewable generators, there is even less assurance that significant amounts of renewable generation in the Imperial Valley will be developed.

Consequently, to ensure the development of CAISO's projected level of Imperial Valley renewables, which will provide ratepayers the economic and reliability benefits and GHG emission reductions that form the basis for this decision, we require the following:

[2] PEA, Section 3.1. The EIR/EIS distilled this objective into Basic Project Objective 3: to accommodate the delivery of renewable energy to meet state and federal renewable energy goals from geothermal and solar resources in the Imperial Valley and wind and other sources in San Diego County.

1. SDG&E shall procure a minimum cumulative total of 3,500 GWh/year of Imperial Valley renewables[3] to be delivered over Sunrise upon energization or soon thereafter, but no later than 2015.

2. SDG&E shall adjust its current compliance filings in the Long Term Procurement Plan and RPS proceedings to reflect a 33% RPS by 2020 goal within 60 days of the effective date of this decision. SDG&E shall also reflect this new RPS goal in its future procurement efforts. [4]

3. SDG&E shall refrain from procuring contracts for coal fired generation of any length. This condition shall not apply to spot market purchases of system power.

With regard to the first requirement, we find it is reasonable and appropriate to require a significant Imperial Valley renewable procurement obligation from SDG&E for several reasons. First, absent the level of Imperial Valley renewable development within the time frame projected by CAISO, Sunrise will not generate the economic benefits projected by CAISO or this decision, and will likely result in significant ratepayer costs.[5] Second, SDG&E has claimed throughout this proceeding that Sunrise is needed to ensure development of Imperial Valley renewable resources and that it desires to purchase Imperial Valley renewables. This requirement memorializes SDG&E's claims. Third, SDG&E will earn a return on equity for its investment in Sunrise, and SDG&E's ratepayers will enjoy the reliability benefits of Imperial Valley

[3] For purposes of this Section 19, we consider "Imperial Valley renewables" to be limited to renewables located in either Imperial County or in San Diego County that access the Sunrise line through either the Imperial Valley substation, or connections to Sunrise or to the Southwest Powerlink west of the Imperial Valley substation.

[4] SDG&E voluntarily offered to comply with Conditions 2 and 3 during our November 7, 2008 oral argument (Tr. 6244) and the November 13, 2008 All Party meeting with Commissioner Grueneich (Tr. 20-21).

[5] CAISO estimates ratepayer costs of $11 million per year resulting from delayed development of Imperial Valley renewables. CAISO Exhibit I-13, 19.

renewable development at no additional cost – including reliability benefits from those projects under contract to other utilities.

The 3,500 GWh/year amount is significantly less than the almost 10,000 GWh of Imperial Valley renewable development the CAISO projects will occur as a result of Sunrise between 2011 and 2015, and is just over one-half of SDG&E's projected need to meet 33% RPS.[6] The amount is reasonable given that SDG&E already has approximately 1,600 GWh/year of Imperial Valley renewable resources under Commission-approved contracts and approximately 1,300 GWh/year in additional options or rights.

Table 14: SDG&E Imperial Valley Renewable Resources[7]

Project	Status	GWh/year	Cumulative GWh/year
Esmeralda Geothermal	60 MW under contract	485	485
Bethel Solar	99 MW under contract	472	957
Stirling Solar	300 MW under contract	648	1,605
Stirling Solar	300 MW option	648	2,253
Stirling Solar	300 MW right of first refusal	648	2,901

SDG&E's signed contracts, totaling 1,605 GWh/year, may count toward the 3,500 GWh/year requirement, provided that the viability of

[6] We project SDG&E's 33% RPS need will be 6,540 GWh by 2020. This assumes SDG&E's forecast of sales from Phase 1 for 2009 (17,418 GWh for bundled service customers) and 1.3% annual growth in sales (per the November 2007 CEC demand forecast).
[7] See Table 2 in Section 6.10, above. 1,000 MW of geothermal are equal to 7971 GWh/year assuming 91% capacity. 900 MW of solar thermal are equal to 1892 GWh/year assuming 24% capacity. See, e.g., CAISO Exhibit I-2, Table 4.3.

these contracts is verified in R.08-08-009.[8] Such contracts with material breaches shall be cured within a reasonable period of time or shall not be considered viable for purposes of counting towards SDG&E's procurement requirement set forth herein.[9]

SDG&E may pursue its procurement of incremental Imperial Valley renewables via three mechanisms. First, SDG&E may procure additional Imperial Valley renewables by successfully concluding by December 31, 2009 (as evidenced by executed power purchase agreements) any ongoing bi-lateral negotiations commenced prior to the issuance of this decision for renewable energy deliveries upon energization of Sunrise (or soon thereafter), but no later than 2015.

Second, to ensure opportunities for an open, competitive procurement process, SDG&E shall also conclude an Imperial Valley Request for Offers by no later than December 31, 2009 (SDG&E 2009 Imperial Valley RFO). The SDG&E 2009 Imperial Valley RFO shall solicit the amount of incremental GWh that is necessary to meet the 3,500 GWh/year target upon energization of Sunrise, but no later than 2015. The RFO responses will be reviewed by this Commission in accordance with our RPS requirements, including least-cost/best-fit principles. We do not intend to procure Imperial Valley renewables at any cost and will take steps in R.08-08-009 to ensure that our commitment to develop Imperial Valley renewable will not impose unreasonable costs on ratepayers.

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[8] SDG&E has only committed to replace the first 300 MW portion of its Stirling Solar contract, and so we only count that portion as committed under contract. Transcript from November 13, 2009 All Party Meeting, 36, 39.

[9] Closing the gap between Commission-approved contracts and viable projects that will come on-line within the RPS time frame is an increasingly critical item that we and the utilities must address. We undertake review of these SDG&E contracts as a first step in a broader review of Commission-approved RPS contracts and changes to our RPS process.

Third, to the extent that the above measures do not result in SDG&E's procurement of Imperial Valley renewables sufficient to meet the minimum 3,500 GWh/year target upon energization of Sunrise (or soon thereafter), but no later than 2015, SDG&E shall procure additional Imperial Valley renewables sufficient to meet the 3,500 GWh/year target through its future annual RPS solicitations.

In addition to the foregoing, in order to ensure the economic benefits of Sunrise pursuant to CAISO's projections, it is our intent that the Commission (through R.08-08-009) will direct Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E) to each issue a 2010 Imperial Valley RFO (SCE and PG&E 2010 Imperial Valley RFOs) to assure that the remainder of CAISO's projected Imperial Valley renewables will be developed if sufficient amounts have not been contracted for in 2009. The SCE and PG&E 2010 Imperial Valley RFOs shall each solicit a cumulative total target of 3,182 GWh/year of Imperial Valley renewables.[10] This amount may be decreased by SCE and PG&E's Imperial Valley renewable contracts executed prior to their 2010 Imperial Valley RFOs.

Further, we will use all reasonable authority to require the procurement of Imperial Valley renewables in R.08-08-009, consistent with the CAISO's projections that 9,864 GWh of Imperial Valley renewable development are necessary for Sunrise to produce the economic benefits upon which this decision rests. We will consider all appropriate measures and conditions for the Imperial Valley RFOs to mitigate market power

[10] This amount is equal to 50% of the difference between the amount of renewable generation projected by CAISO to be developed because of Sunrise (i.e., 9,864 GWh) and SDG&E's minimum procurement obligation from the Imperial Valley pursuant to this decision (3,500 GWh). (9,864 GWh – 3,500 GWh) * 0.5 = 3,182 GWh.

concerns, protect ratepayers from unreasonable costs, and apply any newly developed contract viability rules to these resources. We will also ensure that terminated contracts for Imperial Valley renewables shall be replaced with other Imperial Valley renewable contracts as soon as practicable. We require each of the utilities to file reports in R.08-08-009 every six months addressing the status of their Imperial Valley procurement efforts.

SDG&E's failure to comply with the conditions set forth herein shall be deemed a violation of this decision, and SDG&E shall be subject to remedies available to the Commission to enforce the Commission's intent.

We delegate the responsibility for implementation of the requirements set forth herein to the Assigned Commissioner in R.08-08-009.