Decision 05-12-021 December 15, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.	Rulemaking 04-04-003 (Filed April 1, 2004)

OPINION ON REALLOCATION OF DEPARTMENT OF WATER RESOURCES' CONTRACTS

I. Summary

This decision confirms the allocation of the Department of Water Resources' (DWR) Kings River Conservation District (Kings River) contract for operational purposes to Pacific Gas and Electric Company (PG&E), and the allocation of the DWR's City and County of San Francisco (CCSF) contract to PG&E, subject to the terms and conditions of the contract becoming final. The Williams Product D units (Williams) contract is allocated to Southern California Edison Company (SCE) as of January 1, 2007. We preserve the status quo with the two other DWR contracts at issue in this proceeding. The Sempra Energy (Sempra) contract will remain with SCE and the Sunrise Power Company (Sunrise) contract will stay with San Diego Gas & Electric Company (SDG&E). While we are not reallocating these contracts, the Investor-Owned Utilities (IOUs) are free to negotiate mutually agreeable allocations that allow each IOU to maintain grid reliability.

II. Background

On January 28, 2005, President Peevey issued an Assigned Commissioner's Ruling (ACR), initiating the Commission's consideration of the potential

reallocation of the following DWR contracts: Sempra, Williams, Kings River, CCSF and Sunrise. Sunrise was under consideration in Rulemaking (R.) 01-10-024, a proceeding slated for closing; Kings River and CCSF were under consideration in this docket; and the other contracts were not assigned to any proceeding. The ACR set forth various reallocation proposals advanced by the IOUs, DWR and Commission's Energy Division (ED) staff.

Parties were asked to file comments on the proposed alternatives, to suggest new proposals for the allocation of the above-referenced contacts and to discuss whether workshops and/or Evidentiary Hearings (EHs) would be effective in assisting the Commission with its decision. DWR was asked to work with the IOUs to provide the Commission with information on the effect of any reallocations. Comments were received from the CCSF, PG&E, SDG&E, and SCE. Responses to the comments were received from California Independent System Operator (ISO), Office of Ratepayer Advocates (ORA), PG&E, SDG&E, Sempra Global (Sempra), and SCE.

In general, parties did not think EHs would be helpful or necessary, but they did advance various scenarios concerning the possible reallocation of the contracts, including keeping the status quo.

A Prehearing Conference (PHC) was held on April 26, 2005. Parties discussed their proposed reallocation concepts and agreed that the Commission had enough information from the comments and the statements at the PHC to proceed without further briefings or hearings.

III. Discussion

At the PHC, the assigned Administrative Law Judge (ALJ) confirmed that the proceeding would not consider cost allocation but that the cost-follows-contract methodology established in Decision (D.) 04-12-014 would remain. In

addition, it was established that the DWR contracts themselves were not at-issue, but for planning purposes the Commission wanted to address whether the IOUs needed any of the contracts reallocated to enable them to manage their portfolios and to plan for their procurement needs.

PG&E discussed proposals for the Kings River, CCSF, Sunrise and Coral[1] contracts. In regards to the Kings River's contract, PG&E would be willing to take interim operational control of that contract. PG&E discussed that the 2005 DWR cost allocation proceeding, D.04-12-014, determined the basic cost-follows contract framework and that for 2005 only PG&E would be allocated the costs associated with the Kings River contract. However, all the other issues involved with this contract were not wrapped up in D.04-12-014 because the Kings River contract was not operational when that decision was issued. CCSF was also not allocated in that decision because the pricing issues still need to be resolved. When the CCSF contract is solid and the project is built, PG&E opines that it might make sense to allocate CCSF to PG&E, but thinks it is premature to do so now.

PG&E also vigorously opposes the suggestion by SDG&E that the Sunrise contract should be reallocated from SDG&E to PG&E. This proposal by SDG&E first emerged in SDG&E's motion in R.01-10-024 seeking Commission approval of new energy resource contracts that were the winning bids from a SDG&E Request for Proposal (RFP). Specifically, SDG&E asked the Commission to reallocate the Sunrise contract to PG&E as a condition precedent to the Commission's approval of the Otay Mesa Generating Plant (OMGP), since the

[1] The Coral contract was not one of the contracts identified in the ACR that was subject to possible reallocation, so we are not addressing it in this decision.

Sunrise contract would be superfluous and burdensome with all SDG&E's new resources. The Commission refused to address that request in its decision approving OMGP, D.04-06-011, and deferred any discussion of that proposal to this proceeding.

SCE offered for consideration that it would take Sunrise from SDG&E IF (1) SCE was allocated Williams D contract or the Product D contract associated with the Williams contract, and (2) the Sempra contract was reallocated from SCE to SDG&E. SCE also suggested that it could take all of the Williams contracts, Products A, B, C and D, but only if it no longer had the Sempra contract. SCE determined that it needs the Williams D contract for operational purposes, but it does not need both Williams D and Sempra. In response to PG&E's suggestion for the reallocation of the Coral contact, SCE opposes any allocation of Coral to SP 15. SCE accepts the cost-follows-contract methodology set forth in D.04-12-014.

SDG&E proposed that the Alamitos Unit 5 of the Williams D contract be reallocated from SDG&E to SCE for the remainder of the contract term and pursuant to the methodology adopted in D.04-12-014, the fixed annual adjustment amounts to SDG&E would be scaled up to represent an annual increase of approximately $60 million per year. The other DWR contracts would remain with SDG&E – including Sunrise. SDG&E recommended keeping Sempra with SCE because it is a very large must-take contract, 1,200 to 1,900 megawatts (MW),[2] where the Williams D contract is 1,200 MWs of dispatchable power. SDG&E does not want the Sempra contract, especially if it still has

[2] The Sempra contract ranges from 1,200 MW to 1,900 MW depending on the time of year.

Sunrise. Sunrise has a capacity of 500 MWs. The energy from the Sempra contract alone represents about 75% of SDG&E's entire bundled load and if it was reallocated to SDG&E, SDG&E is concerned that it would result in operational inefficiencies for the utility on a number of scales.

ORA presented the simple proposal of maintaining the status quo and not reallocating any of the DWR contracts.

DWR weighed in on the CCSF, Kings River and Williams D contracts. DWR proposes allocating both CCSF and Kings River to PG&E and does not think it is premature to address the CCSF issue now. Since DWR and PG&E reached an agreement on Kings River there is no issue in dispute on that contract. Of considerable concern to DWR is the possibility that some of the contracts that were allocated in D.02-09-053 might be modified now by the Commission and then DWR's schedules for the operating agreements for those contracts could be affected. We require the utilities to file advice letters to modify Schedule 1 of the Operating Agreements, or Operating Order in the case of SCE, to reflect the contract allocation adopted by this decision. In particular, DWR does not want the Williams D contract reallocated by unit, rather than by contract or a contract product, because that would cause operational complexities in DWR's power supply program. We therefore do not reallocate the Williams D. contract by unit.

TURN suggested that to the extent the Commission reallocates a contract from one IOU to another, that movement would affect the annual adjustments under the adopted cost allocation methodology, and the numbers should be moved in a straightforward mechanical manner to match any reallocation.

After reviewing the comments, reply comments and statements from the PHC, we find that it is reasonable at this time to reallocate the DWR Kings River and CCSF contracts to PG&E. We affirm the agreement reached between DWR and PG&E on the Kings River contract.

While some parties were concerned that we should not allocate the CCSF contract now since not all of the terms and conditions are finalized, we are mindful of the arguments presented by DWR in favor of allocating the CCSF contract to PG&E at this time because it would save future proceeding time. Therefore, we allocate CCSF to PG&E, subject to the following terms and conditions the contract is allocated after (1) approval of the CCSF Board of Supervisors to proceed with a sale of Initial Bonds to finance the facilities covered by the DWR contract with CCSF; and (2) expiration of DWR's rights to termination without recourse under Sections 4.02(1)(b) and (c) of the DWR/CCSF contract.

We are not reallocating the Sempra or Sunrise DWR contracts at this time. If the IOUs have resource or reliability needs that can be met by utilizing a DWR contract that is allocated to another IOU, the IOUs are free to make reallocation swaps that allow them to meet their grid reliability obligations and that are consistent with the Commission's previous decisions addressing DWR contract allocation and the associated cost recovery mechanisms.

We will, however, reallocate the Williams D contract from SDG&E to SCE, effective January 1, 2007. This does not address the concerns of DWR on what entity has legal entitlement to the reliability must run (RMR) portion of the Huntington Beach 1 portion of the Williams D contract. If that issue is still of

concern to DWR, it can be addressed in the 2006 long-term procurement proceeding. While encouraging the IOUs to negotiate on the side for arrangements that meet their specific resource and reliability needs, we emphasize that no bilateral negotiations should upset the IOUs' adopted procurement plans.

IV. Motions

Any motions not already ruled on by the ALJ or discussed below are deemed denied.

SCE's Motion to Strike Comments by Sempra Global

On April 22, 2005, SCE filed a motion to strike a portion of Sempra's reply comments that described the working relationship of SCE and Sempra concerning the Sempra Generation contract. SCE and Sempra reached a mutually satisfactory resolution and the motion is now moot.

PG&E's Motion Re: DWR Kings River Contract

On April 25, 2005, PG&E filed a motion seeking Commission confirmation of the agreement reached between PG&E and DWR concerning the Kings River contract. This agreement came about as follows: On February 14, 2005, DWR requested that the Commission allocate its Kings River contract to a utility for operational purposes. On March 14, 2005, PG&E submitted a response to the DWR request indicating that PG&E would accept operational allocation of the Kings River contract pending final resolution of the issue by the Commission. DWR responded to PG&E setting forth the specifics of what DWR needed PG&E to undertake concerning the contract. By letter dated April 22, 2005, PG&E confirmed to DWR that it would assume the requested undertakings concerning the Kings River contract.

This decision grants PG&E's motion and confirms the agreement reached between PG&E and DWR concerning allocation of the Kings River contract for operational purposes.

CARE's Motion on Otay Mesa Generating Plant Contract

On March 28, 2005, CALifornians for Renewable Energy, Inc. (CARE) filed a motion for leave to file out-of-time comments on the allocation of power purchase agreements (PPA) with the DWR. CARE's concern was that the 10-year PPA agreement the Commission approved between SDG&E and Calpine Corporation (Calpine) for the OMGP in D.04-06-011 was burdensome to SDG&E's ratepayers. Since CARE filed its motion, the Commission granted rehearing of D.04-06-011 specifically in regard to the approval of OMGP. While rehearing of OMPG is underway, there is no longer an approved PPA, so CARE's motion is moot. CARE should follow the rehearing phase for OMGP and voice its concerns in that forum.

CARE's Motion for Clarification of the CCSF Contract

On June 13, 2005, CARE filed a motion seeking clarification on the allocation of the CCSF DWR contract. Since the terms and conditions are not yet finalized, we are unable to provide further clarification at this time, and on that basis deny CARE's motion without prejudice.

V. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice

and Procedure. Comments were received from CARE,[3] DWR, SDG&E, Sempra and SCE.

PG&E asked the Commission to clarify when, and under what conditions, PG&E would assume the CCSF contract, and we modified the decision to reflect those changes. DWR requested changes to the sections on affects the reallocations might have on the IOUs' Operating Agreements and on the RMR aspects of the Williams D contracts and we made the changes. CARE raised concerns about the cost of the CCSF contract to PG&E ratepayers. Sempra and SCE generally supported the draft decision.

SDG&E, however, raised serious objections to the reallocation of the Williams D contract to SCE particularly on the ground that to execute the reallocation on such short notice would severely disrupt the utility's formal resource planning process and most likely create immediate resource deficiencies. In balancing our goal of enhancing grid reliability, but also promoting prudent resource planning, we modify the draft decision to have the reallocation effective January 1, 2007, rather than immediately. By deferring the allocation by two years, SDG&E will have ample opportunity to properly account for the loss of energy and capacity in its long-term resource plan.

VI. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Carol A. Brown is the assigned ALJ in this proceeding.

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[3] CARE's comments were accompanied by a Motion to File Comments One Day Out of Time. Motion granted.

Findings of Fact

1. Pursuant to an ACR, the Commission considered the possible reallocation of the following DWR contracts: Sempra, Williams, Kings River, CCSF and Sunrise. Sunrise was under consideration in R.01-10-024, a proceeding slated for closing; Kings River and CCSF were under consideration in this docket; and the other contracts were not assigned to any proceeding.

2. The ACR set forth various reallocation proposals advanced by the IOUs, DWR and Commission ED staff and sought comments from the parties on these proposals.

3. The proceeding did not consider cost allocation, but the cost-follows-contract methodology established in D.04-12-014 remained.

4. The DWR contracts themselves were not at-issue, but for planning purpose the Commission wanted to address whether the IOUs needed any of the contracts reallocated to enable them to manage their portfolios and to plan for their procurement needs.

5. We find it is reasonable to reallocate the DWR Kings River contract to PG&E and the CCSF contract to PG&E after (1) approval of the CCSF Board of Supervisors to proceed with a sale of Initial Bonds to finance the facilities covered by the DWR contract with CCSF; and (2) expiration of DWR's rights to termination without recourse under Sections 4.02(1)(b) and (c) of the DWR/CCSF contract.

6. We find it reasonable to reallocate the DWR Williams D contract to SCE, effective January 1, 2007.

7. We are not reallocating the DWR Sempra or Sunrise contracts at this time.

8. If the IOUs have resource needs that can be met by utilizing a DWR contract that is allocated to another IOU, the IOUs are free to make reallocation

swaps that allow them to meet their grid reliability obligations and that are consistent with the Commission's previous decisions addressing DWR contract allocation and the associated cost recovery mechanisms.

Conclusions of Law

1. It is reasonable to allocate the DWR contract with the Kings River to PG&E and affirm the agreement made between the two parties concerning this contract.

2. It is reasonable to the DWR CCSF contract to PG&E after (1) approval of CCSF Board of Supervisors to proceed with a sale of Initial Bonds to finance the facilities covered by the DWR contract with CCSF; and (2) expiration of DWR's rights to termination without recourse under sections 4.02 (1)(b) and (c) of the DWR/CCSF contract.

3. It is reasonable to allocate the DWR CCSF contract to PG&E, subject to the terms and conditions of the contract becoming final.

4. It is reasonable to allocate the DWR Williams Product D contract to SCE, effective January 1, 2007.

5. The DWR Sempra contract is allocated to SCE and it is reasonable to leave that contract with SCE.

6. The DWR contract with Sunrise Power Company is allocated to SDG&E and it is reasonable to leave that contract with SDG&E.

7. The IOUs may reallocate contracts between or among themselves to better meet grid reliability obligations as long as the reallocations are consistent with previous Commission decisions addressing contract allocations and the associated cost recovery mechanisms.

O R D E R

IT IS ORDERED that:

1. The Department of Water Resources (DWR) contract with the Kings River Conservation District is allocated to Pacific Gas and Electric Company (PG&E) pursuant to the terms agreed to by these two parties.

2. The DWR contract with the City and County of San Francisco is allocated to PG&E, after (1) approval of the CCSF Board of Supervisors to proceed with a sale of Initial Bonds to finance the facilities covered by the DWR contract with CCSF; and (2) expiration of DWR's rights to termination without recourse under Sections 4.02(1)(b) and (c) of the DWR/CCSF contract.

3. The DWR Williams Product D (Williams) contract is allocated to Southern California Edison Company (SCE), effective January 1, 2007.

4. The DWR Sempra Energy (Sempra) contract will stay with SCE and the DWR Sunrise Power (Sunrise) contract will remain with San Diego Gas & Electric Company (SDG&E).

5. PG&E, SCE and SDG&E may make reallocation swaps of DWR contracts between and among themselves as long as the allocations are consistent with previous Commission decisions addressing DWR contract allocation and the associated cost recovery mechanisms.

6. Any motions not already ruled on or discussed below are deemed denied. SCE's motion to strike is denied as moot; PG&E's motion for confirmation that it could assume the Kings River contract is granted and we confirm the agreement between DWR and PG&E concerning the allocation of this contract; CAlifornians for Renewable Energy, Inc.'s (CARE) motion to file comments on the allocation of the Otay Mesa Generating Plant power purchase agreement is denied as moot;

and CARE's motion for clarification of the allocation of the CCSF DWR contract is denied as premature.

7. PG&E and SDG&E are to file advice letters to modify Schedule 1 of the Operating Agreements and SCE is to file an advice letter to modify Schedule 1 of the Operating Order with DWR to reflect the changes from the reallocation of the DWR contracts as set forth herein.

This order is effective today.

Dated December 15, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners