

## The CPUC's Realistic Approach Toward Energy Security

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After attempting to rout a proposed San Diego County power plant at every administrative turn, the Sierra Club has now taken its campaign to the courts. On Dec. 7 of last year, the Sierra Club filed a petition in the First District Court of Appeal asking the San Francisco-based court to “set aside” the decision of the California Public Utilities Commission to approve the Carlsbad Energy Center, an approval that state agencies deemed necessary to secure a reliable source of electricity in the face of an impending shortage. The Sierra Club’s petition lacks legal merit, and demonstrates the unreasonableness of their quest to eliminate all conventional energy generation before the reliability of alternative energy sources is assured.

In 2015, both the California Energy Commission and the CPUC approved the Carlsbad Energy Center, a proposed natural, gas-fired power plant with an expected operational date of 2017.[1] The CPUC’s decision to approve the San Diego Gas and Electric Company’s request to purchase electricity from the Carlsbad Energy Center was made in the wake of two major blows to Southern California’s energy portfolio: the unexpected shut down of the San Onofre Nuclear Generating Station (SONGS) in 2013; and the announcement of the intended retirement of the Encina Power Station in 2017.[2]

In evaluating the system shocks that would ensue as a result of these closures, the CPUC found that the region’s remaining plants could guarantee sufficient energy generation only through 2018, and that a severe energy shortage could develop by 2018.[3] The studies the CPUC relied upon in making these findings yielded a worrisome picture of Southern California’s energy future. Taking into account the ever-growing region’s rising need, the shutdown of SONGS and Encina, and the expected shut down of several other plants with technologies that would soon become noncompliant with new environmental regulations,[4] a conservative study forecasts a Southern California energy deficiency gap of 2,399

megawatts to 2,534 megawatts by 2022.[5]

Despite this daunting forecast, the CPUC demonstrated restraint when authorizing the public utilities companies it regulates to procure additional energy in the wake of the aforementioned findings. In the ensuing San Onofre need determination, the CPUC authorized SDG&E to procure only 500 to 800 megawatts of electrical capacity, no later than 2022.[6]

In response, SDG&E sought the CPUC's approval to enter into a purchase power tolling agreement (PPTA) with the Carlsbad Energy Center, a privately funded proposed plant, which would be capable of generating 600 megawatts through natural, gas-fired generation, and which could be operational by late 2017, in time to prevent the looming 2018 shortage.[7] The CPUC approved the application in the spring of last year, but with caveats and contract-amount reductions that enabled the CPUC to then grant preferential treatment to alternative energy sources.[8]

Despite these caveats, the Sierra Club attempted to block the CPUC's approval of the Carlsbad Energy Center at every juncture. After the CPUC denied the Sierra Club's request that it reconsider approval of the Carlsbad PPTA, the Sierra Club filed a petition with the court of appeal, urging the First District to overturn the CPUC's approval of the PPTA.

The Sierra Club's petition boils down to two main arguments: (1) that alternative energy providers were not given sufficient opportunity to fill the anticipated 2018 energy gap; and (2) that the CPUC's own San Onofre need determination predicting the 2018 energy shortage did not give the CPUC sufficient justification for approving the Carlsbad PPTA to address the 2018 energy shortage. Both arguments are without merit and fail to take into account the current realities of energy generation.

With regard to the first argument, the Sierra Club claims that the CPUC's approval of the Carlsbad Energy Center foreclosed alternative energy providers from bidding to provide the electricity needed by 2018.[9] However, the larger picture of the CPUC's efforts to address the 2018 shortage demonstrates that this argument is not grounded in reality.

Again, the San Onofre need determination directed SDG&E to procure 500 to 800 megawatts of electrical capacity no later than 2022. In an attempt to honor the state's commitment to alternative energy investment, the San Onofre need determination mandated that 200 megawatts of this 500- to 800-megawatt procurement amount had to come from "preferred" (alternative) energy sources, such as renewable energy and energy storage.[10] Thus, far from being excluded from the process, alternative energy providers were given the real sweetheart deal in these proceedings — no other resource type received mandatory inclusion in the efforts to prevent the pending 2018 shortage.

The San Onofre need determination essentially gave SDG&E a free rein with regard to the remaining 600 megawatts, which was permitted to come from "any resource type including conventional resources." [11] The decision admonished SDG&E that it would be "necessary" for a "significant amount of this procurement level" to be "met through conventional gas-fired resources" in order to address the looming shortage, and cautioned SDG&E that procuring energy from alternative sources, "must be balanced by ensuring that grid operations are not potentially compromised by excessive reliance on intermittent resources and resources with uncertain ability to meet [regional] needs." [12] Additionally, the San Onofre determination declared that "[p]rocurement authorized by this decision should begin as soon as possible," in light of the "critical" need that could arise in 2018.[13] Finally, the San Onofre determination made it clear that SDG&E was authorized to make purely "bilateral" deals with energy providers — SDG&E was in no way required to fill all its procurement needs through an open bidding process.[14]

Given these marching orders, it would have been simple for the CPUC and SDG&E to fill the remaining 600-megawatt “any resource” gap with energy from conventional sources. But they did not. For a second time, the CPUC offered preferential treatment to alternative energy providers. The Carlsbad Energy Center has a nominal capacity of 600 megawatts.[15] Yet in approving the Carlsbad PPTA, the CPUC only authorized SDG&E to contract for 500 megawatts.[16] The CPUC then decreed that the remaining 100-megawatt gap, which could have been filled by “any resource,” now had to be filled with preferred (alternative) sources.[17]

When viewed in this greater context, the Sierra Club’s claim that alternative energy providers were excluded from the process is preposterous. When the whole process is taken into account, approximately 40 percent of the energy needed to address the looming 2018 energy shortage will come from alternative sources, which were given preferential treatment twice during these proceedings. Thus, the only argument that the Sierra Club could truthfully make based on these facts would be that alternative energy should have been allowed to “triple dip” and capture the whole of the 600 megawatts that the San Onofre decision essentially indicated should come from ultra-reliable conventional sources. Such argument, for reasons discussed below, would be ill-considered.

In their second main argument, the Sierra Club essentially claims that the CPUC’s own San Onofre need determination predicting the 2018 shortage did not give the CPUC sufficient justification for approving the Carlsbad PPTA to address the 2018 energy shortage.[18] In the San Onofre need determination, at one or two points, the CPUC stated that the predicted energy shortage “may become critical as early as 2018, and certainly by 2020.”[19]

The entirety of the Sierra Club’s argument hangs on the fact that in the San Onofre determination, the word “may” was used once or twice to identify 2018 as the exact onset date for the energy shortage that the CPUC unequivocally stated would occur. Thus, as the Sierra Club’s reasoning goes, the CPUC was unjustified in approving the Carlsbad Energy Center as a way to address the shortage, which the CPUC had by that point acknowledged would occur by the earlier, 2018 onset date, because they should be bound in perpetuity to their earlier statement that the shortage only might occur by 2018.[20] Such a line of argumentation is truly baffling.

First of all, it is absurd to argue that a need determination stating that there may be an energy shortage in 2018, (and that there will surely be one by 2020), does not give the CPUC any reason for taking steps to address this potential problem by 2018. The Sierra Club offers no legal authority for the contention that our state’s public utilities commission must wait to take any prophylactic measures to address an energy crisis until they are 100 percent sure the crisis will occur, or until the eleventh hour before it does. As the San Onofre decision itself states “the utilities should not wait until very close to when the need is critical to acquire such resources.”[21]

Second, this situation is simply not, as the Sierra Club attempts to characterize it, an instance of the CPUC trying to find a post hoc justification for their approval of the Carlsbad PPTA. As the CPUC recently explained, there was sufficient evidence before the commission at the time that the San Onofre determination was made, before SDG&E even submitted the Carlsbad application, which demonstrated that the shortage would occur by 2018. At the end of the day, that the CPUC used “may” to describe the 2018 onset date of the certain energy shortage in the San Onofre need determination, but not in the Carlsbad approval, is a semantics issue.

What really matters is the evidence and the reality of the situation. There was ample evidence in the San

Onofre determination record from studies conducted using conservative assumptions to support 2018 as the start date of the energy shortage.[22] More evidence confirming the shortage was published shortly after the San Onofre determination was made.[23] Going through a duplicative, lengthy need determination process just to clarify that the shortage would, not could, occur in 2018 rather than 2020, would have been senseless. Moreover, it would have been a dereliction of the CPUC's duty to ensure the safety, comfort and health of millions, in the face of a looming crisis. The CPUC's decision to use the Carlsbad PPTA approval decision to clarify 2018 as the start date of the shortage was a blessedly practical one, and one that was well within the agency's discretion.[24]

### **The Future of Safe, Reliable Electric in California**

Clearly, the arguments made in the Sierra Club's petition are not tethered to law or fact. Instead, they represent a quixotic attempt to prevent any conventional power plant from being used to stave off an imminent energy shortage. While such a policy aim does not come as a surprise, it is especially ill-considered given the circumstances.

Most importantly, this myopic opposition to power from conventional sources does a great disservice to the millions of Southern Californians who will be the ones to suffer from any energy shortage. Alternative energy is certainly a good thing for our region, state, country and planet, but it is unrealistic to expect this large of a gap in California's energy portfolio to be filled by alternative sources by 2018, especially given the years it takes for any type of energy plant to become permitted, built and hooked into the grid. The CPUC acknowledged in the Carlsbad decision that it was simply not feasible to meet 100 percent of the 2018 need by opening every last megawatt up for bids, selecting a patchwork of suppliers, ushering them through the application and approval process, and then waiting for them to complete permitting and construction.[25]

The CPUC did right by millions of Californians when it decisively selected a power plant that had already been planned, had gained the support of the city of Carlsbad, could be operational by 2017, and would use tried and true technology that will provide power to hundreds of thousands of Californians.[26] Through its approval, the CPUC fulfilled its core duty to ensure that homes, hospitals, schools, offices and public facilities have the energy they need to function, and to ensure energy security for the future. The CPUC said it best when, in their Carlsbad approval decision, they expressed hope that public utilities could continue to incorporate alternative energy, but stated that "we cannot base the future of safe and reliable electric service in southern California on hope." [27]

Additionally, the Sierra Club's obstructionist stance against conventional energy is not doing the environment any favors. For instance, the outcome of opposing new natural gas plant construction is frequently not a flurry of investment in alternative energy, but rather the continued operation of older, less environmentally friendly, gas-fired plants. This case is a prime example. The Carlsbad Energy Center is to be built on the grounds of the 61-year old Encina Power Station, which uses an ocean-water cooling system that allegedly poses a risk to marine life and which is now noncompliant with state water regulations.[28]

Once the Carlsbad Energy Center begins generating, its operators have agreed to demolish the Encina Station and to return a significant portion of the old plant to open space and public use.[29] The Carlsbad plant will be much smaller than the Encina station, will be built in a depression to minimize visibility, and will use generators that are substantially less polluting than those employed in previous decades.[30] However, the CPUC explained that if it had withheld approval of the Carlsbad Energy Center, it would have been necessary for the Encina Power Station to have postponed its retirement and to have continued generating despite its regulatory noncompliance and risk to marine life.[31] Thus, no matter what the Sierra Club's stated intentions are, its efforts often result in more environmental harm than good.

Further, the Sierra Club's unyielding stance disincentives conventional power suppliers from engaging in pollution mitigation efforts, from offering positive environmental externalities (such as Carlsbad's decommissioning of Encina and land reclamation efforts), and from investing in technology that is often more expensive but cleaner. Natural gas generation is here to stay for the foreseeable future, and if the Sierra Club signals that they will oppose these providers no matter what they do, then they discourage the continued improvement of the sector.

In sum, the Sierra Club's petition pits alternative energy against conventional generation in a false zero-sum game. At this time, alternative energy sources and modern, more environmentally friendly natural gas plants are complements to each other, both vital parts of California's, and this nation's, energy portfolio. Conventional generation and alternative generation both have their pros and cons, and their comparative advantages. A realist's view of the situation would be to admit that both are needed for the foreseeable future. We suppose self-described "visionaries" like the Sierra Club serve some purpose. But in 2018, when your lights turn on, your air conditioner is humming, and your phone is charging, bless the pragmatists and good old natural gas.

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[1] Decision Conditionally Approving San Diego Gas & Electric Company's Application for Authority to Enter Into Purchase Power Tolling Agreement with Carlsbad Energy Center LLC, Decision 15-05-051 (California Public Utilities Commission, May 21, 2015) (hereinafter "Carlsbad Approval"), at 2, 3; Richard Nemecek, CEC Gives Final OK for Carlsbad Gas-Fired Repowering, Natural Gas Intelligence, Aug. 3, 2015.

[2] Carlsbad Approval, at 16.

[3] Decision Authorizing Long-Term Procurement for Local Capacity Requirements Due to Permanent Retirement of the San Onofre Nuclear Generations Stations, Decision 14-03-004 (California Public Utilities Commission, March 13, 2014) (hereinafter "San Onofre Decision"), at 23, 134.

[4] San Onofre Decision, at 22-24, 30, 34.

[5] San Onofre Decision, at 25.

[6] San Onofre Decision, at 143.

[7] Carlsbad Approval, at 3.

[8] Carlsbad Approval, at 2.

[9] Petition for Writ of Review, *The Sierra Club v. Public Utilities Commission of the State of California*, (First District Court of Appeal, Dec. 7, 2015) (hereinafter "Sierra Club Petition"), at 26-32, 52.

[10] San Onofre Decision, at 143.

[11] Carlsbad Approval, at 5; San Onofre Decision, at 2.

[12] San Onofre Decision, at 133.

[13] San Onofre Decision, at 134, 140.

[14] San Onofre Decision, at 112.

[15] Carlsbad Approval, at 3.

[16] Carlsbad Approval, at 2.

[17] Carlsbad Approval, at 2.

[18] Sierra Club Petition, at 41-48.

[19] San Onofre Decision, at 134.

[20] Sierra Club Petition, at 41-48; Order Modifying Decision 15-05-051 and Denying Rehearing of the Decision, as Modified, Decision 15-11-024 (California Public Utilities Commission, Nov. 5, 2015) (hereinafter "Rehearing Decision"), at 7.

[21] San Onofre Decision, at 113.

[22] Rehearing Decision, at 6, 8, 9, 29; San Onofre Decision, at 27, 134.

[23] Carlsbad Approval, at 7-8; Rehearing Decision, at 29.

[24] Rehearing Decision, at 7, 29; Pacific Telephone and Telegraph Co. v. Public Utilities Commission, 62 Cal. 2d 634, 647 (1965).

[25] Carlsbad Approval, at 11-12.

[26] Morgan Lee, Coastal Power Plant at Carlsbad Approved, San Diego Union-Tribune, May 21, 2015.

[27] Carlsbad Approval, at 18, 33.

[28] Lee, *supra*.

[29] See Lee, *supra*.

[30] See Lee, *supra*.

[31] Carlsbad Approval, at 12.