

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company
(U 902-E) for Approval of a Settlement Agreement and
Related Amendments to its Power Purchase Agreements
with Otay Mesa Energy Center, LLC and Calpine Energy
Services, L.P.

**APPLICATION OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) FOR
APPROVAL OF A SETTLEMENT AGREEMENT AND RELATED AMENDMENTS TO
ITS POWER PURCHASE AGREEMENTS WITH OTAY MESA ENERGY CENTER,
LLC AND CALPINE ENERGY SERVICES, L.P.**

PUBLIC VERSION
(Redacted Attachments A&B)

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TABLE OF CONTENTS

I. Introduction and Overview of the Application..... 2

II. Background on the OMEC Facility Outages & Subsequent Events 4

III. Descriptions of the Parties’ Existing PPAs and the Agreed-Upon PPA Amendments and Settlement Agreement 5

 a. The Parties’ Settlement Agreement 5

 b. Existing OMEC PPA and PPA Amendment 5

 c. Existing Geysers PPA and PPA Amendment 7

IV. The Calpine Settlement is Reasonable and in the Interest of SDG&E Ratepayers..... 8

 a. SDG&E’s Decision to Enter into the Calpine Settlement is Reasonable Because it Will Benefit Ratepayers 8

 b. The Terms of the Settlement Agreement and Two PPA Amendments are Reasonable and in the Interest of SDG&E’s Ratepayers 9

V. The Commission Should Authorize Rate Recovery by SDG&E of Costs Incurred Under the Calpine Settlement..... 10

VI. SDG&E Respectfully Requests Simultaneous and Expedited Commission Review and Approval of the Settlement Agreement and PPA Amendments 10

VII. An Application is the Appropriate Procedural Vehicle for Requesting Commission Approval of the Calpine Settlement 11

VIII. Statutory And Procedural Requirements 12

 a. Rule 2.1(a) – Legal Name 12

 b. Rule 2.1(b) – Correspondence 12

 c. Rule 2.1(c)..... 13

 d. Rule 2.2 – Articles of Incorporation 14

 e. Rule 3.2 - Authority to Increase Rates..... 14

IX. Request for Confidential Treatment 14

X. Relief Requested..... 15

XI. Conclusion..... 16

TABLE OF AUTHORITIES

STATUTES AND LEGISLATION

Cal. Pub. Util. Code § 451 (2013)13

Cal. Pub. Util. Code § 454 (2013)13

Cal. Pub. Util. Code § 454.5 (2013)13

Cal. Pub. Util. Code § 583 (2013)15

Cal. Pub. Util. Code § 701 (2013)13

CALIFORNIA PUBLIC UTILITIES COMMISSION DECISIONS

D.91-03-053, 1991 Cal. PUC LEXIS 15712

D.92-05-012, 1992 Cal. PUC LEXIS 49311, 12

D.02-08-071, 2002 Cal. PUC LEXIS 5179

D.04-06-011, 2004 Cal. PUC LEXIS 6042, 5

D.06-02-031, 2006 Cal. PUC LEXIS 632, 6

D.06-06-066, 2006 Cal. PUC LEXIS 22215

D.06-09-021, 2006 Cal. PUC LEXIS 3242, 6

D.06-10-019, 2006 Cal. PUC LEXIS 3747

D.09-06-050, 2009 Cal. PUC LEXIS 3077

D.12-01-033, 2012 Cal. PUC LEXIS 13

D.12-11-016, 2012 Cal. PUC LEXIS 5093

D.12-12-002, 2012 Cal. PUC LEXIS 5632, 6

OTHER AUTHORITIES

Commission General Order 66-C15

Commission Resolution E-4342 (July 8, 2010).....3, 7

Commission Rules of Practice and Procedure 1.3(e).....13

Commission Rules of Practice and Procedure 2.11, 12, 13

Commission Rules of Practice and Procedure 2.214

Commission Rules of Practice and Procedure 3.214

Commission Rules of Practice and Procedure 7.1(e)(2).....13

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LLC AND CALPINE ENERGY SERVICES, L.P.**

Pursuant to Rule 2.1 of the California Public Utilities Commission's ("Commission's") Rules of Practice and Procedure, San Diego Gas & Electric Company ("SDG&E") hereby files this Application seeking the Commission's approval of the Settlement Agreement and Mutual Release ("Settlement Agreement")¹ entered into on March 22, 2013 by Otay Mesa Energy Center, LLC ("OMEC"),² Calpine Energy Services, L.P. ("CES")³ and SDG&E, as well as two separate, but contingent amendments to two existing power purchase agreements ("PPAs").⁴

Collectively, the Settlement Agreement and two PPA Amendments are known as the "Calpine Settlement." Throughout this Application, OMEC and CES will be generally referred

¹ This Settlement Agreement was bilaterally-negotiated and entered into by the Parties prior to filing this Application to avoid arbitration or litigation, and therefore, is not subject to Article 12 of the Commission's Rules.

² OMEC is a wholly-owned subsidiary of the Calpine Corporation.

³ CES an affiliate of the Calpine Corporation.

⁴ The Parties agreed to waive the Settlement Agreement term requiring SDG&E to seek Commission approval of the Settlement Agreement and PPA Amendments within 45 days of the documents' execution.

to as “Calpine” unless the context requires otherwise. SDG&E and Calpine will be collectively referred to as “the Parties”.

It is reasonable and in the interest of SDG&E ratepayers for the Commission to approve the Calpine Settlement because it will (1) enable the Parties to resolve an ongoing dispute concerning Force Majeure claims; (2) reduce the likelihood of similar Force Majeure disputes in the future; and (3) optimize SDG&E’s renewables portfolio standard (“RPS”) portfolio without jeopardizing its RPS compliance obligations. SDG&E’s Application is supported by the Confidential Testimony of Mr. Theodore Roberts, SDG&E Origination Manager, as well as Confidential Attachments A and B, and Attachment C.

I. Introduction and Overview of the Application

In this Application, SDG&E seeks the concurrent approval of a Settlement Agreement (provided as Confidential Attachment A) and amendments to two separate PPAs (“PPA Amendments”). First, SDG&E seeks approval of the Parties’ bilaterally-negotiated Settlement Agreement. If approved, the Settlement Agreement would end the ongoing dispute between SDG&E and Calpine over pending Force Majeure claims. The Settlement Agreement will also release the Parties of all claims, known or unknown, arising from the Force Majeure dispute or the installation, maintenance or operation of the steam turbine generator (“Generator”) at the OMEC facility.

Second, SDG&E seeks approval of the First Amendment to the Amended and Restated PPA between SDG&E and OMEC (“OMEC PPA Amendment,” provided as Confidential Attachment B)⁵. If approved, the OMEC PPA Amendment would modify the definition of Force Majeure in the OMEC PPA such that a mechanical breakdown or failure will not qualify as an event of Force Majeure unless it is caused by something that, in and of itself, is considered a Force Majeure event, such as an earthquake or an act of war.

Third, SDG&E seeks approval of the Second Amendment to the renewable Power Purchase and Sale Agreement between SDG&E and CES for the Calpine Geysers Geothermal Facility (“Geysers PPA Amendment,” provided as Attachment C, collectively with the OMEC PPA Amendment, the “PPA Amendments”). If approved, the Geysers PPA Amendment would

⁵ The OMEC PPA was approved by D.04-06-011 (as modified by D.06-02-031, D.06-09-021 and D.12-12-002).

reduce the total capacity delivering to SDG&E for the last year of the PPA (2014) by 105,120 MWh.⁶

SDG&E has filed this Application seeking simultaneous and expeditious Commission approval of both PPA Amendments and the Settlement Agreement. The Settlement Agreement's Condition Precedents include Commission approval of the Settlement Agreement, as well as Commission approval of both PPA Amendments. If approved, the Settlement Agreement and PPA Amendments will take effect on the same day that Commission approval is final and non-appealable.

As described in more detail below, this Application merits prompt and unconditional Commission approval because it is reasonable and in the interest of SDG&E's ratepayers. The Settlement Agreement and the OMEC PPA Amendment allow SDG&E to fully resolve the pending Force Majeure claims and reduce the likelihood of future Force Majeure claims and any associated litigation costs. In addition, SDG&E ratepayers will benefit because the Geysers PPA Amendment allows SDG&E to optimize its RPS portfolio by reducing energy deliveries in 2014 without jeopardizing its RPS compliance obligations. Because the Calpine Settlement does not increase customer costs and risks, and will facilitate future PPA administration, SDG&E requests recovery of SDG&E's costs under the Calpine Settlement through SDG&E's Energy Resource Recovery Account ("ERRA").

Accordingly, SDG&E respectfully requests that the Commission:

- find SDG&E's decision to enter into the Calpine Settlement reasonable;
- find the terms of the Calpine Settlement reasonable and in the interest of SDG&E's ratepayers;
- find that the amendments to the OMEC PPA and the Geysers PPA are consistent with SDG&E's approved 2012 Long Term Procurement Plan ("LTTP") and 2012 RPS Procurement Plan;⁷
- authorize recovery by SDG&E of costs incurred under the Calpine Settlement in ERRA; and

⁶ On March 29, 2010, SDG&E filed Advice Letter 2154-E, seeking Commission approval of the Geysers PPA. On July 8, 2010, the Commission approved the Geysers PPA in Resolution E-4342.

⁷ D.12-01-033 approved SDG&E's proposed 2012 LTTP. The Commission approved SDG&E's 2012 RPS Procurement Plan in D.12-11-016.

- approve the Calpine Settlement expeditiously and concurrently in its entirety, without modifications.

II. Background on the OMEC Facility Outages & Subsequent Events

This Application and the underlying Calpine Settlement result from a dispute between SDG&E and Calpine regarding two extended outages at the OMEC facility due to failure of the Generator.

On September 4, 2010, the Generator at the OMEC facility tripped offline (the “Fall 2010 Outage”). Calpine subsequently provided notice to SDG&E that it believed the Fall 2010 Outage constituted a Force Majeure event as defined in the OMEC PPA and requested its full capacity payment for the facility even though the portion of the OMEC facility related to the Generator output was unavailable (the “2010 Force Majeure Claim”). As allowed by the OMEC PPA, SDG&E made capacity payments to Calpine for the Fall 2010 Outage, but did so under a reservation of rights that preserved SDG&E’s ability to pursue additional information related to the Fall 2010 Outage and to contest the claim of Force Majeure.

On April 10, 2011, the Generator at the OMEC facility again tripped offline (the “Spring 2011 Outage”), and Calpine subsequently provided notice that it believed the Spring 2011 Outage constituted a Force Majeure event as defined in the OMEC PPA. Calpine requested capacity payments as a result (the “2011 Force Majeure Claim”, together with the 2010 Force Majeure Claim, the “Force Majeure Claims”). SDG&E declined to make capacity payments inclusive of the 2011 Force Majeure Claim until Calpine provided further support for its assertion that both the Fall 2010 Outage and the Spring 2011 Outage constituted events of Force Majeure, as defined by the OMEC PPA.

The Parties extensively investigated the Fall 2010 Outage and the Spring 2011 Outage until approximately September 2012. Specifically, the Parties jointly engaged in extensive testing related to the Generator and exchanged substantial information. The Parties arrived at different conclusions following the joint investigation. SDG&E believed that additional information and data was still needed to determine if the Fall 2010 and Spring 2011 Outages constituted Force Majeure events under the OMEC PPA. On the other hand, Calpine continued to maintain that the Fall 2010 and Spring 2011 Outages constituted Force Majeure events under the OMEC PPA. Both Parties’ positions regarding the Fall 2010 and Spring 2011 Outages appeared intractable.

Separate and distinct from the Fall 2010 and Spring 2011 Outages, SDG&E had identified its desire to possibly reduce deliveries pursuant to, or terminate, the Geysers PPA at the end of 2013 as part of SDG&E's efforts to optimize the RPS portfolio included in its RPS Plan. Calpine consented to a reduction in volume for the Geysers contract so long as the Parties also settled the Fall 2010 and Spring 2011 Outages and the Force Majeure Claims. On or around October 2012, the Parties began negotiating a settlement. As a result of the negotiations, the Parties agreed to fully settle and resolve all disputes related to the Force Majeure Claims, the Generator, and the Outages by entering into the Calpine Settlement.

III. Descriptions of the Parties' Existing PPAs and the Agreed-Upon PPA Amendments and Settlement Agreement

a. The Parties' Settlement Agreement

The first component of the Calpine Settlement, the Settlement Agreement, resolves the Parties' ongoing disputes concerning the Fall 2010 and Spring 2011 Outages. First, the Settlement Agreement requires Calpine and SDG&E to enter into the PPA Amendments. Second, under the terms of the Settlement Agreement, the 2010 Force Majeure Claim is deemed paid in full and SDG&E will withdraw its reservation of rights. Third, to resolve the Parties' dispute over the Spring 2011 Outage, SDG&E will pay the withheld capacity payment with interest. Finally, the Settlement Agreement includes a mutual release of claims for both Parties for all known or unknown claims arising from the Force Majeure dispute or the installation, maintenance or operation of the Generator. The Settlement Agreement will not take effect until Commission approval of it and the PPA Amendments is final and non-appealable.

b. Existing OMEC PPA and PPA Amendment

In D.04-06-011, the Commission approved a ten-year PPA between SDG&E and OMEC for the OMEC facility as part of a motion by SDG&E for approval of a number of electric resources that were chosen following a request for proposals. The OMEC facility is a 583 megawatt ("MW") natural gas-fired combined-cycle power plant in southern San Diego County.

While the OMEC PPA has been previously amended and restated, the Amended and Restated PPA did not alter the original PPA's definition of "Force Majeure."⁸

The existing OMEC PPA states that mechanical or equipment breakdowns or failures may not constitute Force Majeure if "the design, construction, operation or maintenance of such machinery or equipment [was done] in a manner that is inconsistent with Good Utility Practice" as defined in the OMEC PPA.⁹

Upon Commission approval of the Calpine Settlement, the definition of Force Majeure will be modified to exclude mechanical breakdowns or failures, unless the breakdown or failure is caused by something that, in and of itself, qualifies as an event of Force Majeure as defined in the PPA. The OMEC PPA will continue to define a Force Majeure event as including, but not limited to, events such as acts of God (such as droughts, floods, earthquakes), war (declared or

⁸ The OMEC PPA was first modified by D.06-02-031, which found the ten-year OMEC PPA between SDG&E and OMEC to be reasonable, then by D.06-09-021, which noted that that the PPA had been modified to include Put and Call Options, which give SDG&E the opportunity to own and operate the plant with a 30-year useful life following the expiration of the ten-year PPA, and later by D.12-12-002, which clarified SDG&E's responsibility for the OMEC facility's GHG compliance obligations.

⁹ "Good Utility Practice" is defined by the OMEC PPA as:

any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility power industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice does not require use of the optimum practice, method, or act, but only requires use of practices, methods, or acts generally accepted in the region covered by the WECC. With respect to the [OMEC] Facility, Good Utility Practice includes, but is not limited to, taking reasonable steps to ensure that: (a) equipment, materials, resources, and supplies, including spare parts, inventories, are available to meet the Facility's needs; (b) sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the facilities and systems properly, efficiently, and in coordination with Buyer and its facilities and systems and are capable of responding to reasonably foreseeable emergency conditions; (c) preventive, routine, and non-routine maintenance and repairs are performed on a basis that complies with all manufacturer recommendations and ensures reliable long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools; (d) appropriate monitoring and testing are performed to ensure equipment is functioning as designed; (e) equipment is not operated (i) in a reckless manner, (ii) in a manner unsafe to workers, the general public, or Seller, Buyer or their facilities and systems, or (iii) contrary to manufacturer's specifications and applicable Law or without regard to defined limitations; and (f) the equipment will function properly under both normal and foreseeable emergency conditions at the Facility and/or on the SDG&E Grid.

undeclared), riots, insurrection, rebellion, acts of the public enemy, acts of terrorism, sabotage, blockades, embargoes, and strikes, lockouts or other labor disputes.

Under the modified definition of Force Majeure, in the event of a future unexpected prolonged outage, Calpine faces the risk of not receiving capacity payments from SDG&E as well as the risk of default under the OMEC PPA if Calpine cannot meet its guaranteed minimum availability. To balance these increased risks to Calpine, the Parties agreed to modify the OMEC facility's default availability requirement in the OMEC PPA Amendment.¹⁰

c. Existing Geysers PPA and PPA Amendment

The Geysers PPA is a renewables PPA with CES, dated February 26, 2010, for Renewable Energy Credits ("RECs") and RPS-eligible energy generated by Calpine Geysers Geothermal Facilities located in Middletown, California, in Sonoma County.¹¹ The Geysers PPA calls for 25 MW of energy delivered to SDG&E in every hour. The term is from March 2, 2010 through December 31, 2014.

SDG&E filed Advice Letter ("AL") 2154-E on March 29, 2010 requesting Commission review and approval of the Geysers PPA. The Commission determined that the price of the Geysers PPA was "competitive with the bids received" in SDG&E's 2009 solicitation offers and the Parties' negotiations had been consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050. As such, SDG&E's request for approval of the Geysers PPA with Calpine was granted by Resolution E-4342 on July 8, 2010.

Consistent with its Commission-approved 2012 RPS Procurement Plan, SDG&E has been actively looking for opportunities to optimize its RPS portfolio to obtain ratepayer value, including making sales from the portfolio and/or reducing volumes of RPS energy. In keeping with this strategy, the Geysers PPA Amendment makes two changes to the Geysers PPA. First, the total capacity delivered to SDG&E in the Geysers PPA will be reduced in every hour from January 1, 2014 through December 31, 2014. Second, CES' obligation to provide resource adequacy ("RA") and load uplift will also be reduced. The other terms of the Geysers PPA, such as the price, remain unchanged. As described below, and in Mr. Roberts' Testimony, the net

¹⁰ The OMEC PPA Amendment also corrects a typographical error in the existing OMEC PPA regarding the statutory basis for the calculation of interest.

¹¹ The units at the Geysers Geothermal Facility began operating between 1971 and 1989, and all units are certified by the California Energy Commission as RPS-eligible facilities.

effect of the Geysers PPA Amendment will be to offset SDG&E's payment to Calpine under the Settlement Agreement by reducing payments made under the Geysers PPA.

IV. The Calpine Settlement is Reasonable and in the Interest of SDG&E Ratepayers

a. SDG&E's Decision to Enter into the Calpine Settlement is Reasonable Because it Will Benefit Ratepayers

SDG&E's decision to enter into the Calpine Settlement is reasonable because SDG&E ratepayers will benefit.

The first benefit of entering into the Calpine Settlement is that Parties' dispute regarding the Fall 2010 and Spring 2011 Outages will be fully resolved and the Parties will release all known or unknown claims arising from the Force Majeure dispute or the installation, maintenance or operation of the Generator. This allows SDG&E and its ratepayers avoid additional investigation and discovery costs related to the Outages, as well as any potential litigation costs arising from unresolved or future claims including, but not limited to, an award of damages to Calpine.

The second benefit of entering into the Calpine Settlement is that SDG&E will avoid future disputes by modifying the definition of Force Majeure in the OMEC PPA. The modified definition of Force Majeure will foreclose the possibility of future claims by Calpine in the event of a mechanical or electric breakdown or failure at the OMEC facility unless it is caused by an independent Force Majeure event, as defined in the OMEC PPA.

The third benefit of entering into the Calpine Settlement is that by reducing the capacity delivered from Geysers to SDG&E under the Geysers PPA in 2014, SDG&E will optimize its RPS portfolio without jeopardizing SDG&E's RPS compliance. In addition, the reduction in volume of RPS energy provided by the Geysers PPA will reduce SDG&E ratepayer costs. This reduction in both volume and costs is consistent with SDG&E's 2012 RPS Procurement Plan.

The fourth benefit of the Calpine Settlement is that it supports SDG&E's Commission-approved LTPP, which provides that SDG&E should purchase medium- and long-term resources, including RA resources. The ten-year OMEC PPA, which provides both local RA capacity and energy, helps SDG&E fulfill this plan.¹² The OMEC PPA Amendment will support SDG&E's LTPP because, as explained above, its proposed Force Majeure modification will reduce the risk of future expenses related to investigating claims of Force Majeure.

¹² In fact, OMEC is currently the largest resource in SDG&E's portfolio.

SDG&E's LTPP also contains an assumption that contracted resources currently in SDG&E's portfolio, such as OMEC, will continue through the end of their term. The Calpine Settlement is consistent with this assumption because it pays Calpine its full capacity payment for the Fall 2010 and Spring 2011 Outages, removing any revenue uncertainties for Calpine that could interfere with its ability to operate the OMEC facility.

SDG&E's Procurement Review Group ("PRG") was briefed on SDG&E's decision to enter into these three interdependent agreements on November 16, 2012, December 14, 2012 and January 18, 2013. The PRG did not voice any objection to SDG&E's plan to execute the agreements.¹³

b. The Terms of the Settlement Agreement and Two PPA Amendments are Reasonable and in the Interest of SDG&E's Ratepayers

The Commission should find that the particular terms of the Settlement Agreement and the PPA Amendments are reasonable and in the interest of SDG&E's ratepayers.

First, as explained in detail in Mr. Roberts' Testimony, the Calpine Settlement financially benefits SDG&E ratepayers. Specifically, the costs that SDG&E's ratepayers will incur under the Calpine Settlement are substantially less than what the ratepayers would have incurred had SDG&E only paid the full capacity payments in response to Calpine's 2010 and 2011 Force Majeure Claims and did not settle. Under the Settlement Agreement, SDG&E will pay Calpine the withheld capacity payments, plus interest, to resolve the Fall 2010 and Spring 2011 Outage disputes. Thanks to the reduced deliveries from the Geysers facility under the Geysers PPA Amendment, SDG&E ratepayers will avoid payments in an amount slightly less than the Outage capacity payment total. While SDG&E will have to pay for RA and replacement system energy to compensate for the reduction in 2014 under the Geysers PPA Amendment, SDG&E estimates that it will be able to purchase the RA and replacement system energy at prices significantly less than the terms of the current Geysers PPA. The net effect will be that SDG&E ratepayers will only pay about half of the amount they otherwise would have paid to Calpine under Calpine's 2010 and 2011 Force Majeure Claims.

Second, SDG&E ratepayers will receive additional benefits under the Calpine Settlement that cannot be quantified. For example, the modified definition will reduce the potential for future controversies over whether a breakdown or equipment failure was caused, in whole or in

¹³ D.02-08-071 established a PRG for each of the three investor-owned utilities and set forth requirements about what types of procurement activities must be reviewed by the respective PRGs.

part, by a design defect or maintenance practices that fell below the normal industry standard. In turn, SDG&E ratepayers will benefit because costs incurred by future investigations, analysis, litigation, and capacity payments associated with possible Force Majeure events will be minimized.

Third, to secure Calpine's agreement to the proposed modification of the Force Majeure definition, SDG&E agreed to keep Calpine whole for the capacity payments it would have been entitled to under the OMEC PPA, had it prevailed on its Force Majeure Claims, with interest.¹⁴ By securing Calpine's cooperation, this payment-in-full under the Settlement Agreement allows SDG&E and its ratepayers avoid costs that would have been incurred if the Parties entered arbitration or litigation proceedings related to the Force Majeure Claims.

V. The Commission Should Authorize Rate Recovery by SDG&E of Costs Incurred Under the Calpine Settlement

SDG&E respectfully requests that the Commission authorize rate recovery by SDG&E of costs incurred under the Calpine Settlement. SDG&E intends to book costs incurred under the Calpine Settlement in its ERRR. SDG&E does not propose to modify its electric rates in this Application.

VI. SDG&E Respectfully Requests Simultaneous and Expedited Commission Review and Approval of the Settlement Agreement and PPA Amendments

SDG&E respectfully requests expedited review by the Commission of this Application.¹⁵ The Settlement and the two PPA Amendments will not take effect until the Commission approval of the Calpine Settlement is final and non-appealable. If this does not occur before the end of 2013, SDG&E ratepayers could lose the added benefit of lower RPS compliance costs in 2014 as provided by the Geysers PPA Amendment. Furthermore, until Commission approval is final, SDG&E and its ratepayers remain vulnerable to capacity payments and litigation costs that might result from additional mechanical breakdowns or failures at the OMEC facility.

SDG&E also respectfully requests that the Commission simultaneously approve the Settlement Agreement and PPA Amendments. The three agreements are intertwined and

¹⁴ For purposes of this settlement calculation, the OMEC facility will be deemed to have been 100% available during the Fall 2010 and Spring 2011 Outages.

¹⁵ In addition, the Settlement Agreement states that if the Commission has not approved the Settlement Agreement and the PPA Amendments in their entirety, without modification, by March 14, 2014, either Party may terminate the Agreement.

interdependent. A Condition Precedent of the Settlement Agreement is that it shall only go into effect if and when the Commission approval of all three agreements is final and non-appealable. If one or more of the Calpine Settlement components is not approved, the entirety of the expected benefits will be lost to ratepayers because the Parties will be forced to commence litigation over Calpine's Force Majeure Claims.

If approved, the reduced deliveries from the Geysers facility outlined by the Geysers PPA Amendment would begin January 1, 2014. The Parties require time to plan for the reduced deliveries. Therefore, SDG&E has outlined a schedule that would allow for a final and non-appealable Commission approval of this Application by December 2013. This proposed schedule takes into account the participation of third parties as provided by the Commission's Rules. However, the Calpine Settlement's benefit to ratepayers and limited scope of the Amendments should result in few issues for parties or Commission Staff to review. If third-party intervention is limited or non-existent, SDG&E requests the procedural schedule to be shortened accordingly.

VII. An Application is the Appropriate Procedural Vehicle for Requesting Commission Approval of the Calpine Settlement

SDG&E believes that the application process is the most appropriate and pragmatic medium through which it should request simultaneous Commission approval of the Calpine Settlement and its three components - a private bilaterally-negotiated Settlement Agreement, an amendment to an RPS PPA, and an amendment to a conventional PPA . Commission approval for these three types of agreements is generally sought through a variety of procedural vehicles (i.e., no filing at all or, in the alternative, an application; an advice letter; a petition for modification, respectfully). However, this particular situation is unique in that SDG&E seeks simultaneously Commission approval of three disparate types of agreements. SDG&E's decision to file an application in this unusual situation is consistent with the past actions of similarly-situated utilities. For example, in D.92-05-012, the Commission granted PG&E's application for concurrent approval of a settlement agreement between PG&E and JRW Associates and a related

amendment to the 30-year PPA between the parties that concerned, in part, a claim of force majeure.¹⁶

VIII. Statutory And Procedural Requirements

In accordance with the Commission's Rules of Practice and Procedure, SDG&E provides the following information:

a. Rule 2.1(a) – Legal Name

SDG&E is a corporation organized and existing under the laws of the State of California. SDG&E is engaged in the business of providing electric service in a portion of Orange County and electric and gas service in San Diego County. SDG&E's principal place of business is 8330 Century Park Court, San Diego, California 92123. SDG&E's attorney in this matter is Emma D. Salustro.

b. Rule 2.1(b) – Correspondence

Correspondence or communications regarding this Application should be addressed to:

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¹⁶ D.92-05-012, 1992 Cal. PUC LEXIS 493. In that situation, a transformer had been damaged. Although PG&E and JRW were unable to resolve whether the damage to the transformer constituted a force majeure event under the terms of the PPA, the two parties resolved the dispute by amending the PPA to reduce PG&E's energy payments by 5% for the entire 30-year term of the PPA. In exchange, JRW agreed to relinquish and abandon its force majeure claim in a Settlement Agreement. The Commission found that these negotiated agreements were "accompanied by price and/or performance concessions that are commensurate in value with the degree of changes in the contract." As such, the Commission found PG&E's decision to enter into the settlement agreement and amend the PPA in this fashion was reasonable and granted PG&E's application and its request to recover all payments made under the settlement agreement and PPA amendment. *See also* D.91-03-053 (granting PG&E's application because it was reasonable for PG&E to agree to resolve an ongoing force majeure dispute with Energy Growth Group by modifying its PPA with Energy Growth Group to extend the delivery deadline by a year but also reducing energy payments by 3%).

with copies to:

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c. Rule 2.1(c)

i. Proposed Category of Proceeding

SDG&E proposed to categorize this Application as a “ratesetting” proceeding within the meaning of Rules 1.3(e) and 7.1(e)(2).

ii. Commission Authority

This Application is filed in accordance with Public Utilities Code Sections 451, 454, 454.5 and 701, the Commission’s Rules of Practice and Procedure and prior Commission decisions, orders and resolutions.

iii. Need for Hearings

SDG&E does not believe that approval of this Application will require hearings. SDG&E has provided ample supporting information, analysis and documentation to the Commission to establish a sufficient record upon which to grant the relief requested.

iv. Issues to be Considered

The following issues should be considered in this proceeding:

- (a) Whether SDG&E’s decision to enter the Settlement Agreement, OMEC PPA Amendment and Geysers PPA Amendment is reasonable and in the interest of SDG&E’s ratepayers and thus, should be approved by the Commission;
- (b) Whether the terms of the Settlement Agreement, OMEC PPA Amendment and Geysers PPA Amendment are reasonable and in the interest of SDG&E’s ratepayers and thus, should be approved by the Commission; and
- (c) Whether SDG&E should be authorized to recover costs incurred pursuant to the Settlement Agreement and the OMEC PPA and Geysers PPA, as amended, in ERRA.

v. *Proposed Schedule*

SDG&E proposes the following schedule for Commission approval:

<u>ACTIVITY</u>	<u>DATE</u>
Application filed	May 17, 2013
Daily Calendar Notice	May 21, 2013
Response/Protests	June 20, 2013
SDG&E's Reply to Response/Protests	July 1, 2013
Prehearing Conference	July 8, 2013
Scoping Memo	July 22, 2013
Concurrent Opening Briefs Filed (if necessary)	August 12, 2013
Reply Briefs Filed (if necessary)	August 19, 2013
Proposed Decision	October 14, 2013
Comments on Proposed Decision	November 4, 2013
Reply Comments on Proposed Decision	November 12, 2013
Commission Approval	November 14, 2013

d. Rule 2.2 – Articles of Incorporation

A copy of SDG&E's Restated Articles of Incorporation as last amended, presently in effect and certified by the California Secretary of State, was filed with the Commission on August 31, 2009 in connection with SDG&E's Application No. 09-08-019, and is incorporated herein by reference.

e. Rule 3.2 - Authority to Increase Rates

SDG&E does not propose to modify its electric rates in this Application. Costs under the Settlement Agreement and procurement costs associated with the Amended PPAs will be forecasted and included in the ERRA subject to true-up and recovery through the ERRA rate.

IX. Request for Confidential Treatment

In support of this Application, SDG&E provides Confidential Attachment A, the Parties' Settlement Agreement and Confidential Attachment B, the OMEC PPA Amendment.

Concurrent with the filing of this Application, SDG&E has filed a separate *Motion for Leave to File Confidential Material Under Seal* (“Motion”) to protect from public disclosure confidential and market sensitive information contained in Attachments A and B. SDG&E has redacted Attachment A, the Parties’ Settlement Agreement, in its entirety because it includes the actual Settlement Agreement bilaterally negotiated by the Parties. SDG&E has also redacted the confidential and market sensitive information in Attachment B, the Otay Mesa PPA Amendment. As explained in more detail in SDG&E’s Motion, in accordance with General Order 66-C, D.06-06-066, Public Utilities Code section 583 and other applicable laws, SDG&E respectfully requests that the Commission preserve the confidentiality of the Settlement Agreement and certain information in the Otay Mesa PPA Amendment.

X. Relief Requested

SDG&E respectfully requests that the Commission issues a decision that:

1. Finds SDG&E’s decision to execute the Settlement Agreement and the PPA Amendments is reasonable;
2. Finds the terms of the Settlement Agreement and PPA Amendments reasonable and in the interest of SDG&E’s ratepayers;
3. Finds that the amendments to the OMEC and Geysers PPAs are consistent with SDG&E’s approved LTPP and 2012 RPS Procurement Plan;
4. Authorizes rate recovery as proposed by SDG&E of costs incurred under the Settlement Agreement and the OMEC and Geysers PPAs, as amended, in ERRAs;
5. Approves the Settlement Agreement and PPA Amendments expeditiously and concurrently in their entirety, without modifications, subject only to the Commission’s review of the prudence of SDG&E’s administration of the Settlement Agreement; and
6. Grants SDG&E such other relief as the Commission finds to be just and reasonable.

XI. Conclusion

WHEREFORE, SAN DIEGO GAS & ELECTRIC COMPANY requests that the Commission grant SDG&E's Application as described herein.

Respectfully submitted this 17th day of May 2013.

By: /s/ Emma D. Salustro
Emma D. Salustro

Attorney for:
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SAN DIEGO GAS & ELECTRIC COMPANY

By: /s/ Matt Burkhart
Matt Burkhart
San Diego Gas & Electric Company
Vice President – Electric & Fuel Procurement

OFFICER VERIFICATION

OFFICER VERIFICATION

Matt Burkhart declares the following:

I am an officer of San Diego Gas & Electric Company and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in the foregoing **APPLICATION OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) FOR APPROVAL OF A SETTLEMENT AGREEMENT AND RELATED AMENDMENTS TO ITS POWER PURCHASE AGREEMENTS WITH OTAY MESA ENERGY CENTER, LLC AND CALPINE ENERGY SERVICES, L.P.** are true to my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 17, 2013 at San Diego, California.

By: _____/s/ Matt Burkhart
Matt Burkhart
San Diego Gas & Electric Company
Vice President – Electric & Fuel Procurement

Attachment A
Confidential in its Entirety

Attachment B

**FIRST AMENDMENT TO AMENDED AND RESTATED
POWER PURCHASE AGREEMENT**

This First Amendment to Amended and Restated Power Purchase Agreement, dated as of March 22, 2013 (the "Amendment"), is made by and between SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation ("Buyer"), and OTAY MESA ENERGY CENTER, LLC, a Delaware limited liability company ("Seller"). Buyer and Seller are each referred to as "Party" and collectively as the "Parties".

RECITALS

A. Buyer and Seller are parties to that certain Amended and Restated Power Purchase Agreement dated May 1, 2007 (the "Agreement").

B. On September 4, 2010, the steam turbine generator ("**Generator**") at the Otay Mesa facility tripped offline (the "**Fall 2010 Outage**").

C. On April 10, 2011, the Generator at the Otay Mesa facility tripped offline (the "**Spring 2011 Outage**," together with the Fall 2010 Outage, the "**Outages**").

D. In accordance with that certain Settlement Agreement and Mutual Release (the "**Settlement Agreement**") entered into as of the 22nd day of March, 2013, by and among Buyer, Seller and Calpine Energy Services, L.P., Buyer and Seller wish to amend the Agreement in certain respects as set forth herein.

NOW, THEREFORE, in consideration of their mutual covenants and for other good and valuable consideration, the Parties agree as follows:

1. Force Majeure. The definition of "Force Majeure" in the Agreement is hereby amended by amending and restating clause (c) in the last sentence of the definition of "Force Majeure" to provide in its entirety as follows:



2. Events of Default: Section 13.1(l) is hereby amended and restated to provide in its entirety as follows:

1. The time-weighted average Available Capacity averages 


3. Available Capacity Calculation. For purposes of determining the Available Capacity under the Agreement for the time periods during the Outages, the Available Capacity shall be deemed to have been 100% of the Contract Capacity for all time periods during each of the Outages.

4. Interest Rate. The definition of “Interest Rate” in the Agreement is hereby amended by deleting the citation to 18 C.F.R. 39.19a(a)(2) therein and replacing it with “18 C.F.R. 35.19a(a)(2)”.

5. Effective Date. This Amendment will be effective upon the date (the “Effective Date”) that all of the conditions precedent set forth in the Settlement Agreement have been satisfied or have been waived by the party or parties benefited thereby.

6. Representations. Each Party represents to the other Party that (a) it has taken all appropriate and necessary internal actions to authorize the execution, delivery and performance of this Amendment, (b) this Amendment has been duly executed by such Party, (c) subject to satisfaction of the conditions precedent referred to in Section 5 of this Amendment, it has obtained all consents, approvals and authorizations necessary for the valid execution, delivery and performance of this Amendment, and (d) subject to satisfaction of the conditions precedent referred to in Section 5 of this Amendment, this Amendment has been duly executed by and constitutes a legal, valid and binding obligation of such party, enforceable against it in accordance with its terms, except as limited by applicable bankruptcy and insolvency laws and the availability of equitable remedies.

7. Effect of Amendment. From and after the Effective Date, all references in the Agreement to the “Agreement” shall mean the Agreement as amended by this Amendment.

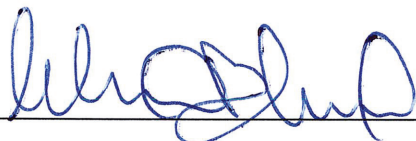
8. No Other Amendment. Except as expressly provided herein, the Agreement is unmodified and continues in full force and effect.

9. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same Amendment.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the day and year first above written.

OTAY MESA ENERGY CENTER, LLC

SAN DIEGO GAS & ELECTRIC COMPANY

By:  RA

Name: Alexandre B. Makler
Title: Vice President and Authorized Signatory

By: 

Name: Michael R. Niggli
Title: President and COO

Attachment C

SECOND AMENDMENT TO POWER PURCHASE AND SALE AGREEMENT

This Second Amendment to Power Purchase and Sale Agreement, dated as of March 22, 2013 (the "Amendment"), is made by and between SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation ("Buyer"), and CALPINE ENERGY SERVICES, L.P., a Delaware limited partnership ("Seller"). Buyer and Seller are each referred to as "Party" and collectively as the "Parties".

RECITALS

A. Buyer and Seller are parties to that certain Power Purchase and Sale Agreement dated February 26, 2010, as amended by that certain First Amendment to the Power Purchase and Sale Agreement, dated as of March 26, 2010 (as amended, the "Agreement").

B. Buyer and Seller wish to amend the Agreement in certain respects as set forth herein.

NOW, THEREFORE, in consideration of their mutual covenants and for other good and valuable consideration, the Parties agree as follows:

1. Contract Energy Quantity. The definition of "Contract Energy Quantity" in the Agreement is hereby amended and restated to provide in its entirety as follows:

1.15 "Contract Energy Quantity" means (i) from the beginning of the Delivery Term through December 31, 2013, 25 MW, and (ii) from January 1, 2014 through the end of the Delivery Term, 13 MW (for a total of [113,880 MWhrs/yr]).

2. RA Capacity; IFM Load Uplift Obligations: In order to conform Seller's obligations with respect to RA Capacity and IFM Load Uplift Obligations under the Agreement to the amendment of "Contract Energy Quantity" as provided above, the phrase "(i) from the beginning of the Delivery Term through December 31, 2013, 25 MW, and (ii) from January 1, 2014 through the end of the Delivery Term, 13 MW (for a total of [113,880 MWhrs/yr])" is hereby substituted for the phrase "25 MW" throughout the Agreement, including, without limitation, on the cover page, in Sections 3.1(a)(i)(B), 3.1(a)(i)(C), 3.1(b)(B), 3.1(b)(C), 3.1(c) [two places], 3.4(b) [two places], 3.4(c) [two places], 3.6(a) [two places] and 3.6(b).

3. Effective Date. This Amendment will be effective upon the date (the "Effective Date") that all of the conditions precedent set forth in that certain Settlement Agreement dated as of March 22, 2013 by and among Buyer, Seller and Otay Mesa Energy Center, LLC have been satisfied or have been waived by the party or parties benefited thereby.

4. Representations. Each Party represents to the other Party that (a) it has taken all appropriate and necessary internal actions to authorize the execution, delivery and performance of this Amendment, (b) this Amendment has been duly executed by such Party, (c) subject to satisfaction of the conditions precedent referred to in Section 3 of this Amendment, it has obtained all consents, approvals and authorizations necessary for the valid execution, delivery and performance of this Amendment, and (d) subject to satisfaction of the conditions precedent referred to in Section 3 of this Amendment, this Amendment has been duly executed by and

constitutes a legal, valid and binding obligation of such party, enforceable against it in accordance with its terms, except as limited by applicable bankruptcy and insolvency laws and the availability of equitable remedies.

5. Effect of Amendment. From and after the Effective Date, all references in the Agreement to the "Agreement" shall mean the Agreement as amended by this Amendment.


6. No Other Amendment. Except as expressly provided herein, the Agreement is unmodified and continues in full force and effect.


7. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same Amendment.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the day and year first above written.

CALPINE ENERGY SERVICES, L.P.

SAN DIEGO GAS & ELECTRIC COMPANY

By:  BA
Name: Alexandre B. Makler
Title: Vice President and Authorized Signatory

By:  MC
Name: Michael R. Niggli
Title: President and COO