

Proceeding No.: A.13-xx-xxx
Exhibit No.: _____
Witness: Theodore Roberts

**PREPARED DIRECT TESTIMONY OF
THEODORE ROBERTS
SAN DIEGO GAS & ELECTRIC COMPANY**

Public Version

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA
May 17, 2013**



**PREPARED DIRECT TESTIMONY OF
THEODORE ROBERTS
ON BEHALF OF SDG&E**

Q1: Please state your name and title.

A1: I am Theodore Roberts, Origination Manager in the Electric & Fuel Procurement Department at San Diego Gas & Electric (“SDG&E”).

Q2: Please describe your current duties at SDG&E.

A2: As Origination Manager, I supervise the originators who negotiate all of SDG&E’s contracts for capacity and electricity that have terms exceeding one year. I also serve as the lead originator on certain contracts. For example, I served as SDG&E’s negotiator on the Settlement Agreement and Mutual Release (“Settlement Agreement”) and related contract amendments that, collectively, make up the Calpine Settlement. Throughout my testimony I will refer to the following Calpine entities involved with the Settlement Agreement as “Calpine” unless the context requires otherwise: Otay Mesa Energy Center, LLC (“OMEC”) and Calpine Energy Services, L.P. (“CES”).

Q3: Briefly describe the background of the Calpine Settlement.

A3: In the Fall of 2010 and Spring of 2011, the OMEC facility suffered two sudden and unexplained failures of its steam turbine generator (“Generator”) that became extended outages of the OMEC facility. At the time of these outages, the Amended and Restated Power Purchase Agreement between SDG&E and OMEC (“OMEC PPA”) included a definition of Force Majeure that specifically excluded any “mechanical or electrical breakdown or failure of any machinery or equipment of a Party due to design, construction, operation or maintenance of such machinery or equipment *in a manner that is inconsistent with Good Utility Practice*” (emphasis added).

The OMEC PPA defines “Good Utility Practice” to be:

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

1 covered by the WECC. With respect to the [OMEC] Facility, Good Utility
2 Practice includes, but is not limited to, taking reasonable steps to ensure that: (a)
3 equipment, materials, resources, and supplies, including spare parts, inventories,
4 are available to meet the Facility's needs; (b) sufficient operating personnel are
5 available at all times and are adequately experienced and trained and licensed as
6 necessary to operate the facilities and systems properly, efficiently, and in
7 coordination with Buyer and its facilities and systems and are capable of
8 responding to reasonably foreseeable emergency conditions; (c) preventive,
9 routine, and non-routine maintenance and repairs are performed on a basis that
10 complies with all manufacturer recommendations and ensures reliable long-term
11 and safe operation, and are performed by knowledgeable, trained, and
12 experienced personnel utilizing proper equipment and tools; (d) appropriate
13 monitoring and testing are performed to ensure equipment is functioning as
14 designed; (e) equipment is not operated (i) in a reckless manner, (ii) in a manner
15 unsafe to workers, the general public, or Seller, Buyer or their facilities and
16 systems, or (iii) contrary to manufacturer's specifications and applicable Law or
17 without regard to defined limitations; and (f) the equipment will function properly
18 under both normal and foreseeable emergency conditions at the Facility and/or on
19 the SDG&E Grid.
20

21 Calpine claimed that the two Generator outages constituted events of Force Majeure under the
22 OMEC PPA. While SDG&E believed that additional information and data was still needed to
23 conclusively determine if the Fall 2010 and Spring 2011 Outages constituted Force Majeure
24 under the OMEC PPA, it paid to Calpine the full capacity payment for the Fall 2010 Outage
25 while reserving its right under the OMEC PPA to later rescind the payment. For the Spring 2011
26 Outage, SDG&E withheld the capacity payment. After several months of investigating, testing
27 and exchanging information, SDG&E and Calpine had not identified the root cause of the
28 Outages or whether they constituted Force Majeure events under the OMEC PPA, so the Parties
29 decided to explore the possibility of settling the Force Majeure Claims. The Parties held several
30 discussions and exchanged draft settlement and amendment documents over the course of about
31 six months, reaching agreement and executing the documents in March 2013.
32

33 Q4: What were the implications of the Force Majeure Claims for Calpine?

34 A4: Because capacity payments are the primary source of revenue for OMEC, any potential
35 reduction in capacity payments is of great concern to OMEC. Under the OMEC PPA, the
36 OMEC facility has an obligation to be available to SDG&E for dispatch. If the facility is
37 unavailable, then SDG&E's capacity payments under the OMEC PPA is subject to reduction or,

1 if the facility is unavailable for a large enough number of hours, the capacity payment from
2 SDG&E can fall to zero. In contrast, under the OMEC PPA, during a Force Majeure event, the
3 OMEC facility is not penalized in its availability or capacity payment, within certain limits.
4 Rather, SDG&E continues to pay capacity payments as though the OMEC facility were fully
5 available during the hours of the Force Majeure event.

6
7 Q5: Please describe the Calpine Settlement.

8 A5: There are three interdependent components of the Calpine Settlement. First, the OMEC
9 PPA Amendment will modify the definition of Force Majeure in the OMEC PPA such that a
10 mechanical breakdown of failure will not qualify as an event of Force Majeure unless it is caused
11 by something that in and of itself is considered Force Majeure, such as an earthquake or an act of
12 war.

13 The second component is the Second Amendment to the renewable Power Purchase and
14 Sale Agreement for the Calpine Geysers Geothermal Facility between SDG&E and CES
15 (“Geysers PPA”). If approved, the Geysers PPA Amendment would reduce the total capacity
16 delivered to SDG&E for the last year (2014) of the Geysers PPA from 25 MW to 13 MW.

17 Finally, the bilaterally-negotiated Settlement Agreement would end the ongoing dispute
18 between SDG&E and Calpine over Calpine’s Force Majeure Claims related to the Fall 2010 and
19 Spring 2011 Outages. The Settlement Agreement will also release the Parties of all claims,
20 known or unknown, arising from the Force Majeure dispute or the installation, maintenance or
21 operation of the Generator at the OMEC facility.

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23 Q6: How will the OMEC PPA Amendment modify the definition of Force Majeure in the
24 OMEC PPA?

25 A6: Clause (c) in the last sentence of the definition of Force Majeure in the current OMEC
26 PPA specifically excludes any “mechanical or electrical breakdown or failure of any machinery
27 or equipment of a Party due to design, construction, operation or maintenance of such machinery
28 or equipment in a manner that is inconsistent with Good Utility Practice”.

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30 Upon Commission approval of the Calpine Settlement, the OMEC PPA Amendment will amend
31 and restate clause (c) in the last sentence of the definition of Force Majeure to read:



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Thus, the modified definition of Force Majeure will 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 undeclared), riots, insurrection, rebellion, acts of the public enemy, acts of terrorism, sabotage, blockades, embargoes, and strikes, lockouts or other labor disputes.

Q7: Why did SDG&E enter into the Calpine Settlement rather than continue to dispute Calpine’s claims of Force Majeure?

A7: Based on its recent experiences investigating the Fall 2010 and Spring 2011 Outages, SDG&E believes that it is extremely expensive and time-intensive to conclusively determine whether Calpine, or the steam turbine generator manufacturer, or any other party in the steam turbine generator supply chain has not followed Good Utility Practice. Even after several months of investigation, SDG&E believed that additional investigation and analysis was still needed to determine whether the Fall 2010 and Spring 2011 Outages constituted events of Force Majeure under the OMEC PPA. If the Parties had moved the dispute to arbitration or litigation, additional time and resources would have been spent and the resolution may not have necessarily turned out in SDG&E’s favor.

When deciding to settle with Calpine, SDG&E weighed these potential costs of pursuing the dispute against the known costs and outcome of the Calpine Settlement. In the end, SDG&E determined that its ratepayers were better off with the Calpine Settlement.

Q8: What will be the total cost to SDG&E ratepayers under the Calpine Settlement?

1 A8: There are four components to the total costs to SDG&E ratepayers under the Calpine
 2 Settlement. First, SDG&E will withdraw its reservation of rights for \$ [REDACTED] in capacity
 3 payments to Calpine for the Fall 2010 Outage, and will pay Calpine \$ [REDACTED] in withheld
 4 capacity payments for the Spring 2011 Outage, plus \$ [REDACTED] in interest for the Spring 2011
 5 outage. Thus, SDG&E's total payments to Calpine concerning the Fall 2010 and Spring 2011
 6 Outages periods will equal \$ [REDACTED].

7
 8 SDG&E's payments will be offset by the second cost component - a reduction in other SDG&E
 9 payments to Calpine. Under the Calpine Settlement, Calpine will reduce the total volume of
 10 RPS energy delivered to SDG&E in 2014 under the existing Geysers PPA. This reduction will
 11 save SDG&E ratepayers \$11,989,152.

12
 13 The total costs of these two cost components are summarized in Table 1.

14
 15 Table 1

SDG&E payment and withdrawal of reservation of rights for 2010 Outage Claim	\$ [REDACTED]
SDG&E release of payment regarding 2011 Outage Claim	\$ [REDACTED]
Accumulated interest at [REDACTED] % per year during 2012 for 2011 Outage Claim	\$ [REDACTED]
Total payment from SDG&E to Calpine	\$ [REDACTED]
SDG&E savings from reduction of Geysers volumes in 2014	-\$11,989,152
Total SDG&E payment to Calpine net of savings from reduced 2014 Geysers volumes	\$ [REDACTED]

1 The third and fourth cost components for SDG&E ratepayers under the Calpine Settlement are
2 the costs for SDG&E to replace the 12 MW of system resource adequacy (“RA”) and system
3 energy to replace the RPS energy that will be lost in the reduction of volume in the Geysers PPA
4 in calendar year 2014. Based on recent transactions for 2014 system RA that SDG&E has either
5 closed or been offered, SDG&E expects to replace the 12 MW of RA for a cost of \$ [REDACTED]
6 [REDACTED].

7
8 Under the Geysers PPA, SDG&E takes delivery of the energy at NP-15 and is paid the NP-15
9 day-ahead index price for the energy by CAISO. Using SDG&E’s forward pricing curve from
10 April 25, 2013, SDG&E expects to pay a total of \$ [REDACTED] to replace the 105,120 MWh of
11 energy.

12
13 As shown in Table 2, the costs of the replacement value of the RA and energy raises the total
14 costs of the Calpine Settlement for SDG&E ratepayers to \$ [REDACTED].

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16 Table 2

Total SDG&E payment to Calpine net of Geysers savings	\$ [REDACTED]
Replacement cost of 12 MW system RA at \$24/kW-yr	\$ [REDACTED]
Replacement cost of energy, NP-15	\$ [REDACTED]
Total cost for SDG&E Ratepayers	\$ [REDACTED]

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18 Q9: Is it fair to say that SDG&E ratepayers will benefit from the Calpine Settlement?

19 A9: Yes. Calpine sought \$ [REDACTED] total in claims from SDG&E under the OMEC PPA.
20 However, under the Calpine Settlement, SDG&E and its ratepayers will only pay a net
21 \$ [REDACTED], which is slight less than half of Calpine’s Force Majeure Claims. In addition, there
22 are unquantifiable benefits built into the Calpine Settlement for SDG&E’s ratepayers.

23
24 Q10: What are the additional SDG&E ratepayer benefits?

25 A10: The dispute between SDG&E and Calpine originated around the definition of Force
26 Majeure in the OMEC PPA. SDG&E’s experience during this controversy has demonstrated that
27 it is difficult and costly to determine whether or not certain types of outages constitute Force

1 Majeure events under the OMEC PPA. This was a major motivating factor for SDG&E when
2 deciding to agree to the Calpine Settlement.

3
4 Once the Calpine Settlement is approved, the definition of Force Majeure in the OMEC PPA will
5 be modified so that any mechanical failure or breakdown does not constitute an event of Force
6 Majeure unless it was caused by an independent event that, in and of itself, qualifies as Force
7 Majeure under the OMEC PPA, such as an earthquake or other calamity. The modified Force
8 Majeure definition should minimize any future disputes in the event that the Generator, or any
9 other equipment at the OMEC facility, suddenly fails. Although intangible, this modified
10 definition provides value to SDG&E ratepayers by minimizing the likelihood of future Force
11 Majeure disputes and, perhaps, future capacity payments by SDG&E to Calpine in the event of
12 an outage.

13
14 Q11: Were there any concessions made to Calpine to compensate it for the modified
15 definition?

16 A11: Yes. The modified definition of Force Majeure places greater risk on Calpine. Under the
17 modified definition of Force Majeure, in the event of a future unexpected prolonged outage,
18 Calpine faces the risk of not receiving capacity payments from SDG&E as well as the risk that
19 Calpine might default under the OMEC PPA for not meeting its guaranteed minimum
20 availability. For that reason, Calpine asked for, and SDG&E agreed to, a modification of the
21 default language in the OMEC PPA. Under the current PPA, Calpine would have been in default
22 if the OMEC plant's availability fell below 80% over a rolling twelve-month period. Under that
23 standard, Calpine had the ability to claim Force Majeure for any equipment breakdown. Under
24 the OMEC PPA Amendment, the Parties have agreed that, in order for Calpine to be in default
25 under the OMEC PPA, the availability of the OMEC facility must fall below [REDACTED]
26 [REDACTED]. This modified standard will apply only to default under the OMEC PPA.
27 SDG&E finds this to be a fair compromise.

28
29 Q12: Why should the Commission approve the Settlement Agreement and the OMEC and
30 Geysers PPA Amendments?

1 A12: The Calpine Settlement is fair and reasonable for SDG&E ratepayers. Under the Calpine
2 Settlement, the net cost to SDG&E ratepayers is roughly half of the total dollars at issue in the
3 dispute. In addition, the Calpine Settlement allows SDG&E and its ratepayers avoid potentially
4 costly arbitration or litigation regarding the current outage dispute, which may not necessarily
5 result in a finding for SDG&E. The OMEC PPA Amendment also results in better terms and
6 conditions for SDG&E ratepayers in the future. For example, the definition of Force Majeure
7 will be modified to eliminate the possibility of SDG&E ratepayers paying for capacity during
8 unexplained or unexplainable breakdowns. Finally, SDG&E ratepayers will reap savings by
9 reducing the volume of RPS energy provided under the Geysers PPA during 2014, without
10 jeopardizing SDG&E's RPS compliance. All in all, SDG&E ratepayers will benefit from the
11 Calpine Settlement.

12
13 Q13: The dispute between the Parties concerns only events at the OMEC facility and the
14 OMEC PPA. Why are the Parties also amending the Geysers PPA as part of the Calpine
15 Settlement?

16 A13: Separate and distinct from the 2010 and 2011 Outages, SDG&E had identified its desire
17 to possibly reduce deliveries pursuant to or terminate the Geysers PPA at the end of 2013 as part
18 of SDG&E's efforts to optimize the RPS portfolio included in its RPS Plan. Calpine consented
19 to a reduction in volume for the Geysers contract so long as the Parties reached a settlement
20 agreement resolving the Force Majeure dispute. In the end, Calpine gave up value in the Geysers
21 PPA in exchange for resolving the Force Majeure dispute.

22
23 Q14: How will reducing deliveries pursuant to the Geysers PPA help SDG&E optimize the
24 RPS portfolio in its 2012 RPS Plan?

25 A14: SDG&E's Commission-approved 2012 RPS Procurement Plan expressly provides that
26 SDG&E will seek to optimize its RPS portfolio by, among other things, making sales or reducing
27 volumes between now and roughly 2016. The Geysers PPA Amendment helps SDG&E meet
28 this goal by reducing deliveries in 2014 without jeopardizing SDG&E's RPS compliance. Thus,
29 SDG&E ratepayers will save money by not paying for energy deliveries from the Geysers
30 facility that are not needed to maintain RPS compliance. In addition, lowering costs in this

1 manner will reduce RPS compliance costs for the benefit of SDG&E ratepayers. This is also
2 consistent with the “least cost best fit” principle that guides RPS procurement.

3
4 Q15: How will the OMEC PPA Amendment’s modified Force Majeure and the Parties’
5 Settlement Agreement help support SDG&E’s Commission-approved LTPP?

6 A15: SDG&E’s LTPP provides that SDG&E should purchase medium- and long-term
7 resources, including RA resources. The current ten-year OMEC PPA, which provides both local
8 RA and capacity, helps SDG&E fulfill this plan. The OMEC PPA Amendment will support
9 SDG&E’s LTPP because its modified Force Majeure definition will reduce the risk of future
10 expenses related to investigating claims of Force Majeure. SDG&E’s LTPP also contains an
11 assumption that contracted resources currently in SDG&E’s portfolio, such as OMEC, will
12 continue through the end of their term. The Settlement Agreement is consistent with this
13 assumption because it pays Calpine its full capacity payment for the 2010 and 2011 Outages,
14 removing any revenue uncertainties for Calpine that could interfere with its ability to operate
15 OMEC.

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17 Q16: Any final words?

18 A16: The Calpine Settlement, composed of the Settlement Agreement, OMEC PPA
19 Amendment and Geysers PPA Amendment, represents a fair outcome to the dispute over the
20 Force Majeure claims and provide substantial benefits to SDG&E ratepayers. The Commission
21 should recognize these benefits and expeditiously and concurrently approve Settlement
22 Agreement, and the OMEC PPA and Geysers PPA Amendments.

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24 Q17: Does this conclude your testimony?

25 A17: Yes.

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THEODORE ROBERTS
STATEMENT OF QUALIFICATIONS

I have been the Origination Manager in the Electric & Fuel Procurement Department at San Diego Gas & Electric Company for the past two years. I joined the department in October 2009 as a Contract Originator. As Origination Manager, I supervise the negotiation of long term transactions for supplies of electricity and capacity to meet SDG&E's resource needs.

Prior to joining E&FP, I was a regulatory attorney for Sempra Energy for 10 years. In that capacity, I represented the Sempra utilities and their unregulated affiliates in a variety of matters before the California Public Utilities Commission and Federal Energy Regulatory Commission, as well as the state commissions regulating utility companies in Arizona, Oregon, Ohio, Illinois, Maryland and other states. My practice focused on licensing of transmission and substation facilities, transmission rates, resource adequacy, competitive procurement, licensing of competitive service providers and retail choice.

I hold a Bachelor of Music degree, magna cum laude, from Ashland University (Ohio), a Juris Doctor, cum laude, from the California Western School of Law, and an MBA from National University.

This is my first time testifying before this Commission. I previously served as a witness before the Arizona Corporation Commission regarding competitive procurement for electricity.