

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

Application of San Diego Gas and Electric )  
Company (U902-E) for Approval of Power )  
Purchase Agreement with J-Power, USA )  
Development Company, LTD and )  
Wellhead Power Margarita, LLC for )  
Recovery of Costs and for a Limited )  
Exemption from the Requirements of )  
Public Utilities Code Section 851. )  
\_\_\_\_\_ )

Application 07-05-023  
(Filed May 11, 2007)

**RESPONSE OF LADERA HOPE TO PETITION OF  
SAN DIEGO GAS & ELECTRIC COMPANY (U-902-E)  
FOR MODIFICATION OF D.07-09-010**

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## **1. Introduction**

Pursuant to Rule 2.6 of the California Public Utilities Commission (the “Commission”)’s Rules of Practice and Procedure, Ladera Hope hereby files this Response to San Diego Gas & Electric Company (“SDG&E”)’s Petition for Modification (“PFM”) of the Commission’s decision D.07-09-010. In its decision, the Commission considered and approved two power purchase agreements with independent power producers: (1) the J-Power Pala Peaking Project (the “Pala Project”) and (2) the Wellhead Services Inc. (“Wellhead”) Margarita Peaking Project (the “Margarita Project” or the “Project”). This Response and our objections pertain to the power purchase agreement with Wellhead (the “Wellhead PPA”) and the Margarita Project contemplated by such agreement.

We oppose the Margarita Project because it has not been properly sited, nor has the need for this Project been adequately established. The environmental impacts from the Margarita Project will forever change the character of this community and the quality of life of its residents. Our review of the Project has shown that mitigation of such impacts will be costly and ineffective, which calls into question whether this Project will in fact provide least cost/best fit procurement benefits. In addition, the need for this Project in general, and specifically at this site, has not been adequately established by SDG&E. With this Response, we seek to encourage the Commission to reconsider the procurement authority for this Project. Alternatively, our goal is to discourage the Commission from taking any action or granting any requests that would help to either “fast-track” this Project or make the approval process less public. It is imperative that a power plant sited immediately adjacent to a family community filled with small children be carefully considered and evaluated after the community has had an opportunity for meaningful input, especially when the impacts of such a project will be significant, long-lasting and irrevocable.

## **2. Project Background and Procedural History**

The proposed Margarita Project is to construct and operate a 44-megawatt (“MW”) power generation plant (the “Margarita Power Plant.”). The natural gas-fired simple cycle plant will consist of a single General Electric LM6000 combustion turbine engine. The proposed Project also includes the construction of approximately one and a half miles of new eight-inch natural gas supply line connecting to an SDG&E high pressure supply line located on Crown Valley Parkway, and a water supply line that will tap into the existing Santa Margarita Water District water line along Antonio Parkway.

The Project would be built within a 1.68 acre parcel which is part of the existing SDG&E substation near the intersection of Antonio Parkway and Avendale Boulevard. Exhibit A attached hereto shows the proximity of the Project to the 8,000 homes in Ladera Ranch. Towering over Ladera Ranch with its approximate population of 24,000, the industrial facility with its 50-foot exhaust stack and 34-foot high gas turbine air inlets would be in stark contrast to the homes, schools, parks and retail stores that serve this nationally recognized, master planned, “green” community.

Ladera Hope is a grass-roots, all volunteer organization funded through the support of Ladera Ranch and neighboring communities. To date, Ladera Hope has a membership of more than 3,000 residents and homeowners. The organization sprang to life in late December 2007 when the community first learned about plans to construct a power plant in Ladera Ranch starting in early January 2008 from an e-mail circulated informally among neighbors. The Margarita Project came as a complete surprise to the vast majority of residents of Ladera Ranch, many of whom had just recently purchased their homes with no disclosure of any kind that a power plant was being planned for the community. With the support of the community, Ladera Hope and a group of individual homeowners filed a petition for writ of mandate seeking new environmental review of the Project on January 4, 2008 (the “Action”).

Thereafter, Ladera Hope, Wellhead and SDG&E entered into a Memorandum of Understanding which put the Project on hold for a period of time while Ladera Hope conducted its own review of the Project and the parties considered options to settle the Action. Over approximately a six-week period and with limited resources, expertise and access to information, Ladera Hope, with input from independent consultants, conducted its own environmental review of the Margarita Project. In that short period of time, we discovered a number of environmental impacts which concerned our residents and homeowners, as well as the County of Orange. After being presented with the results of our research and review, the Orange County Board of Supervisors, in a 5-0 vote on May 13, 2008, decided that new environmental review for the Margarita Project is appropriate.<sup>1</sup> Immediately thereafter, Wellhead withdrew its application for the entitlements for the Project

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<sup>1</sup> See Status Conference Statement of Respondents County of Orange, and County of Orange Planning and Development Services Department, dated May 19, 2008 (the “County’s Status Conference Statement”), p. 4 which has been filed with the Commission as Exhibit 6 to SDG&E’s PFM.

challenged by the Action and both SDG&E and Wellhead acknowledged that any and all such entitlements for the Project were null and void as a matter of law.

**3. The Margarita Project has not been properly sited – Locating the Margarita Power Plant at the Margarita Substation will cause significant environmental impacts for the quiet, residential community of Ladera Ranch.**

The Commission approved the Wellhead PPA prior to any determination that the Project would comply with the environmental requirements of the California Environmental Quality Act (“CEQA”). The Commission explained that it did not have to evaluate the application for purposes of CEQA as “the California Energy Commission and local governments would ensure compliance with the environmental requirements of CEQA.”<sup>2</sup> However, the Margarita Project poses significant environmental impact concerns which we would have raised to the Commission when it was considering the original application (A.07-05-023) had the community of Ladera Ranch had reasonable and proper notice and a clear definition of the Margarita Project. Moreover, the County of Orange (which was the local permitting authority for this Project) admitted that the environmental review for this Project was deficient and that further review is necessary.<sup>3</sup>

The CEQA Guidelines define a “significant effect on the environment” as “a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.”<sup>4</sup> The following discussion highlights some of the environmental impact concerns raised by Ladera Hope to the County of Orange, as well as to the South Coast Air Quality Management District (“SCAQMD”) in its areas of jurisdiction. These concerns, which are presented by this Response to the Commission for the first time, were foreseeable when the initial application was filed and should have been presented by SDG&E for consideration by this Commission at that time.<sup>5</sup> These

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<sup>2</sup> D.07-09-010, [date], p. 13.

<sup>3</sup> See the County’s Status Conference Statement, p. 4.

<sup>4</sup> 14 California Code of Regulation §15382.

<sup>5</sup> Rule 2.4 of the Commission’s Rules of Practice and Procedure, which addresses the CEQA compliance requirements for applications, states:

“(a) Applications for authority to undertake any projects that are subject to the California Environmental Quality Act of 1970, Public Resources Code Sections 2100 et seq. (CEQA) and the guidelines for

concerns and related potential environmental impacts remain unresolved to date. We are certain that the proposed Margarita Power Plant represents a threat to the health and welfare of our community and that the operation of this plant will have significant negative impacts on our community.

### **3.1. Land Use – A Power Plant is a non-conforming use within the residential community of Ladera Ranch.**

The Margarita Power Plant represents a significant and aggressive attempt to spot zone the existing planned and properly adopted land use plan and governing documents of the unincorporated area adjacent to the residential community of Ladera Ranch. The proposed site for the Margarita Power Plant consists of approximately 1.68 acres of SDG&E’s Margarita Substation, which comprises 19 acres in total and is zoned for agriculture. The Margarita Substation is situated immediately adjacent to the high-density master-planned residential community of Ladera Ranch (including more than 8,000 single-family attached and detached units as well as five large apartment complexes and at least seven schools within walking distance of the proposed plant and pipeline) to the west, a combination of residential and business uses (restaurants and retail) to the north and dedicated open space (zoned “open space reserve”) to the east and south of the site. There is no heavy industry of any kind in or around the community of Ladera Ranch. There are, however, many residences, schools, playgrounds and sports fields in the immediate vicinity of the Margarita Substation, some as close as 300 feet from the site.

The land use analysis for purposes of CEQA focuses on two main issues: (1) whether the project is consistent with local land use plans, ordinances, and policies (“LORS”); and (2) whether the project is compatible with existing and planned uses (p. 255 SF Reliability Project). This Project fails in both respects. There is no

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implementation of CEQA, California Administrative Code Sections 15000 et seq., shall be consistent with these codes and this rule.

(b) Any application for authority to undertake a project that is not statutorily or categorically exempt from CEQA requirements shall include a Proponent’s Environmental Assessment (PEA). The PEA shall include all information and studies required under the Commission’s Information and Criteria List adopted pursuant to Chapter 1200 of the Statutes of 1977 (Government Code Sections 65940 through 65942), which is published on the Commission’s Internet website.

(c) Any application for authority to undertake a project that is statutorily or categorically exempt from CEQA requirements shall so state, with citation to the relevant authority.”

question that the Margarita Power Plant would introduce a new industrial use into a non-industrial area and would significantly conflict with the existing use for the area. Moreover, we are concerned that permitting the entry of heavy industry into this residential setting would open the door to additional heavy industry, including the very likely possibility of additional peakers, creating cumulative adverse land use impacts in this quiet residential community. There is also a significant concern that the Margarita Power Plant, with its massive size and 50-foot exhaust stack, would not comply with the County of Orange's Zoning Code<sup>6</sup> or the local LORS. Zoning variance issues have not been resolved at the local level and, in our opinion, cannot be resolved consistent with land use planning principles.

**3.2. Noise – The overall noise level of the Margarita Power Plant will be high when compared to the ambient noise levels in the community and individual noise events will be especially audible to many residents.**

Existing ambient nighttime noise levels in the community of Ladera Ranch are typically 32 decibels. That is extremely quiet. According to the Project proponent's own noise expert, the first row of homes, which are located just 675 feet west of the proposed site for the plant, can expect an increase to at least 44 decibels once the plant is running, which is a +12 decibel increase. Ladera Hope's noise expert opined that the noise impacts would be much greater. In a noise report prepared for Ladera Hope, the well-known environmental review firm ESA reported that continuous noise levels from the plant could reach 50 decibels as far as 1,050 feet from the power plant and could reach 45 decibels as far as 1,900 feet from the power plant.<sup>7</sup> Taking into account the variability presented by the two experts' opinions, the increase over ambient would be somewhere in the range of +12 to +18 decibels. Any noise increase of 12 to 15 decibels is considered a substantial impact for the purposes of CEQA.<sup>8</sup> Moreover, the impact will be felt by many residents as

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<sup>6</sup> For example, the exhaust stack for the Margarita Plant would require a zoning variance that would need to be supported by findings to justify the oversized stack in relation to the character of the residential and other structures in the area.

<sup>7</sup> See p. 6 of the Technical Noise Memorandum dated April 30, 2008 (a copy of which is attached hereto as Exhibit B) which was prepared for the benefit of Ladera Hope by Paul Miller, a noise specialist with ESA, a well-established environmental review firm (the "ESA Noise Report").

<sup>8</sup> Section XI of Appendix G of the CEQA Guidelines (Cal. Code Regs., tit. 14 App G) asserts that "a significant effect from noise may exist if a project would result in (a) exposure of persons to or generation of noise levels in excess of standards established in the local General Plan or noise ordinance, or applicable standards of other agencies; (b) substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the

there are more than 225 homes and several large apartment complexes within 1,900 feet of the Project.

In addition, Ladera Hope learned in its review of the Project that the Margarita Power Plant will produce an extremely loud “shotgun” sound each time it fires up, which our expert estimated would be heard at 85 decibels at the nearest residential receptor.<sup>9</sup> Creative mitigation measures were considered by Ladera Hope and the Project proponents in an effort to contend with the noise problems – custom mufflers, enormous sound walls, etc. However, the physical barriers were dismissed as they were too expensive and too offensive to the visual landscape. Wellhead eventually settled on the muffler option to address the shotgun sound at start-up, but Ladera Hope remains extremely concerned that any “design” solution would not achieve the 53 decibels of attenuation required to render the facility’s operations inaudible, especially at night when there are no other competing sounds (industrial or otherwise) and the community is very quiet.

In considering the noise impacts of a project, the CEC evaluates whether the “quality and loudness of [a power plant’s] noise emanations tend to blend with the overall noise regime of a neighborhood.”<sup>10</sup> Clearly, the proposed Margarita Power Plant does not “fit in” with the residential community of Ladera Ranch under this standard. Moreover, the noise impacts will significantly and irrevocably change the character and quality of this residential community.

### **3.3. Visual – The Ladera Power Plant will have a significant impact on the visual resources of the Ladera Ranch community.**

The Ladera Power Plant will be constructed in a densely populated, residential setting. There are no existing industrial uses in Ladera Ranch. Many of the homes in Ladera Ranch have views of the rolling hills which are a part of the open space surrounding the community, especially those residences with views of the northerly and easterly parts of the community. The site for the Margarita Power Plant will directly and dramatically impacts those views. Many homeowners in Ladera Ranch purchased their homes with no knowledge of a proposed power plant and with a representation that the natural beauty of the hills surrounding their neighborhoods

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Project; or (c) substantial temporary or periodic increase in ambient noise levels in the Project vicinity above levels existing without the project.” See also p. 7 of the ESA Noise Report.

<sup>9</sup> See p. 4 of the ESA Noise Report.

<sup>10</sup> See the CEC’s San Francisco Reliability Project Final Staff Assessment (“SF Reliability Project”), p. 293.

would continue to be preserved as open space. The addition of a power plant to the Ladera Ranch community will be in stark contrast to the existing setting and will cause a significant disruption when viewed from many hundreds of residences and neighborhood parks, fields and schools.

Based on these facts, it is evident that the Ladera Power Plant will have a “significant impact” on the Ladera Ranch community as defined by CEQA.<sup>11</sup> Moreover, for the hundreds of homes which have a direct view of the power plant, mitigation options are significantly limited. The existing physical features of the land would provide only limited screening of the plant. In addition, the fuel modification requirements of the Orange County Fire Authority severely restrict the landscaping options in and around the Project site.

### **3.4. Air Quality**

Given the proximity of the Project to the estimated 24,000 residents of Ladera Ranch, and the fact that Wellhead has sought a permit from the SCAQMD for 2,450 annual hours of operation with 225 start-ups a year and no limit on daily operations, Ladera Hope and the community of Ladera Ranch have significant concerns about the air quality impacts of the Project on the our community. The plant would emit more than twenty toxic air contaminants. In addition, our air quality experts have been able to identify a number of deficiencies in the analysis of the air quality impacts of the Project for the purposes of CEQA.<sup>12</sup>

In addition, decisional law regarding environmental clearance for gas-fired peaker plants has changed since the time of the initial filing of Application A.07-05-

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<sup>11</sup> The California Energy Commission (“CEC”), in considering the visual impact of a project proposed for the City of San Francisco, revealed the standard it would use for this aspect of the CEQA analysis:

“A visual resources analysis [includes]...an assessment of compliance with applicable laws, the extent of any alteration to the existing viewshed including blockage of desirable views, creation of a decrease in visual quality, and the introduction of a substantial change to the nighttime or daytime lighting levels. The type of visual change, duration of impact, viewer sensitivity and number of viewers are additional factors relevant to a visual resources analysis.” Ca. Code of Regs., tit. 14 § 15382, Appendix G; See also California Energy Commission, San Francisco Electric Reliability Project, Final Staff Assessment, Application for Certification (04-AFC-1), the City and County of San Francisco, CEC-700-2005-021-FSA, February 2006.

<sup>12</sup> For example, PM2.5 emissions from this plant are calculated to be 76 lbs per day, exceeding the SCAQMD CEQA significance threshold of 55 lbs. per day. In addition, NOx emission from the operation of this facility was calculated at 183 lbs. per day, exceeding the SCAQMD CEQA significance threshold of 55 lbs per day.

034 with this Commission.<sup>13</sup> SDG&E's RFM does not take into consideration the court mandate for additional environmental review for projects, such as the proposed Margarita Power Plant, that will emit fine particulate matter above the level allowed by environmental law. It follows that the proposed Margarita Project cannot meet environmental requirements until the SCAQMD determines a course of action and until further environmental review is complete and acceptable.

### **3.5. Hazardous Materials**

Wellhead's application with the County of Orange, as lead agency for CEQA, and the SCAQMD, as a responsible agency, included an 18,000-gallon tank of aqueous ammonia. This highly toxic material is used by LM6000 gas-fired power plants to help reduce emissions from the plant. Large quantities of aqueous ammonia will be stored at the Project site. Risk of accidental leakage of ammonia either on-site or during transport to the site is of great concern to the residents of Ladera Ranch.

### **3.6. The Commission and local permitting authorities must understand the actual size and scope of this Project in order to properly evaluate the Project and its impacts.**

#### **3.6.1. The Project includes the installation of a high pressure natural gas line in a densely populated residential and retail area.**

Although no natural gas will be stored on site, the Project will involve the transportation of large amounts of this fuel, with an accompanying risk of fire and explosion, by means of a pipeline to be installed in a two public thoroughfares, Antonio and Crown Valley Parkways. These roadways run through a densely populated area which means that this high pressure natural gas line would run in very close proximity to many Ladera Ranch neighborhoods and seven local schools.

#### **3.6.2. SDG&E likely intends to double the size of the Margarita Power Plant to 99 MW.**

In its October 2006 Request for Offer seeking new local capacity at the Margarita substation site, SDG&E requested bids for a 99 MW facility in Ladera Ranch which would be designed, permitted and operated to provide a minimum of

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<sup>13</sup> See Decision on Ruling on Respondent's Motion for Summary Adjudication, Natural Resources Defense Council, Inc., et al. v. South Coast Air Quality Management District (as Respondent), Inland Energy, Mojave Desert Air Quality, Antelope Valley Air Quality Management District, as real parties in interest (filed July 28, 2008).

4,000 hours.<sup>14</sup> Subsequently, in January 2008, SDG&E prepared and filed with this Commission an Environmental Impact Report/Environmental Impact Study in connection with its Sunrise Powerlink Project where, once again the Margarita Project was shown as being a 99 MW facility. Finally, in a document/information request, Ladera Hope asked SDG&E for an explanation regarding the doubling of the size of the Margarita Project and the response was “until there is a settlement agreement [in this action] restricting expansion, the 99 MW peaker capacity at Margarita shown in the draft EIR/EIS is still correct.”

A cleverly crafted development application which bifurcates the applicant’s intended intensity of development cannot circumvent the clear mandate of CEQA. CEQA requires that SDG&E’s expansion plans for the facility be disclosed during the permitting process so that future development that is likely to result from the Project may be considered by permitting authorities. By presenting information on only one 44MW plant, this Commission and local permitting authorities are prevented from considering the likely and intended impact of their decisions in relation to future development of the entire 16.8 acres owned by SDG&E.

#### **4. The Margarita Project is not needed for SDG&E’s local resource adequacy.**

SDG&E asserts that the need for the Margarita Project remains unchanged.<sup>15</sup> We disagree with this assessment. Additionally, SDG&E is seeking in its PFM “an express recognition that the Wellhead Margarita Project is important for reliability in SDG&E’s service territory and it should therefore qualify for expedited interconnection treatment under the California Independent System Operator’s generator interconnection procedures.”<sup>16</sup> We object to this request and urge the Commission to not make such finding.

As set forth more fully below, we take issue with the assertion that a peaker facility is needed at all, and specifically at the Margarita site, in order to meet projected needs within SDG&E’s service territory. As such, we urge the Commission to reconsider its procurement authority for this Project.<sup>17</sup> In addition, even if there

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<sup>14</sup> See SDG&E’s “Request for Offers for New Local Capacity” dated October 17, 2006, pp. 5 and 7 (which was filed with this Commission as Exhibit 1 to Application A.-07-05-023).

<sup>15</sup> PFM, p. 13.

<sup>16</sup> PFM, p. 14. See also PFM, p. 16.

<sup>17</sup> This statement assumes SDG&E has procurement authority for this Project in the first place, which we believe it in fact does not (as more fully set forth in Section 4.1 of this Response).

is a need for additional local generating capacity somewhere within the SDG&E service territory, such need is not specific to this site and certainly is not urgent. We request that the Commission not make any findings, such as the one requested in this PFM, which could be interpreted to mean that generation capacity specifically in Ladera Ranch is important for energy reliability in the SDG&E service territory and/or that such alleged need is so urgent that this Project should be “fast-tracked”. We are concerned that SDG&E will use such findings to persuade local authorities to approve this Project, and others like it, on an expedited basis without the proper level of community involvement and governmental review.

#### **4.1. Procurement authority for this Project was overridden by Commission’s subsequent decision (D.07-12-052).**

In May of 2007, SDG&E filed an application for approval by this Commission of the Pala and Margarita Projects which together would provide approximately 130 MW of power. On September 7, 2007, in D.07-09-010, the Commission approved SDG&E’s application. Three months later, on December 20, 2007, the Commission issued its decision approving SDG&E’s 2006 Long Term Procurement Plan (D.07-12-052) wherein the Commission concluded that “SDG&E has a need of 530 MW of new resources in its local area (including the 130 MW already approved by this Commission) *if its Sunrise Powerlink application is denied* [emphasis added].”<sup>18</sup> To date, SDG&E’s application for the Sunrise Powerlink has been neither denied nor approved by the Commission. Without a final determination on the Sunrise Powerlink, SDG&E does not have authority to procure any of the 530 MW of new resources, even the 130 MW. Since construction of the Margarita Power Plant has not commenced and given that this Project will present such significant CEQA concerns, we urge the Commission to reconsider its approval of the Wellhead PPA.

#### **4.2. Even if Commission’s approval of 130 MW stands, subsequent projects obviate the need for the Margarita Project.**

Even if one were to take the position that the 130 MW has been previously approved by this Commission and such procurement authority stands even after the Commission’s decision D.07-12-052, there have been a number of developments which undercut the need for the additional 44 MW of power from the Margarita site. Specifically, on December 14, 2007, the California Energy Commission (“CEC”) approved a 40 MW upgrade to the 550 MW Palomar Energy Project in Escondido (San Diego County). In addition, on June 16, 2008 SDG&E submitted its application

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<sup>18</sup> D.07-12-052, p. 292.

for approval by the Commission of plans to build and operate a 46.5 MW peaker plant in Miramar (A.08-06-017) (“MEF II”). The MEF II project is currently under review by the Commission, and is expected to be online by summer 2009. With the 90.5 MW provided by these two projects, as well as the 96-MW of peaking capacity which will be available once the Pala Project is completed, SDG&E will have generating capacity well in excess of the 130 MW authorized by the Commission.

#### **4.3. CAISO should account for the 233 MW additional local generating capacity offered by Otay Mesa and Palomar Energy combined cycle plants.**

Another option for adding local generating capacity would be for the CAISO to recognize for the purposes of calculating local capacity that the 562 MW Otay Mesa and the 542 MW Palomar Energy combined cycle plants are designed to allow continued operation of the gas turbines even if a steam turbine failure occurs. If CAISO were include the capability afforded by these facilities into its calculations, SDG&E’s local generation capacity would immediately increase by 233 MW, which far exceeds the 44 MW output of Margarita.<sup>19</sup>

#### **4.4. The CPUC/CEC Energy Action Plan directs SDG&E to prioritize energy efficiency, demand response and renewable energy to meet its local generation requirements; Peaking gas turbines and other types of fossil fuel generation should be relied upon only as a last resort.**

We urge the Commission to reconsider its procurement authority for this site because the construction of additional peaker facilities is not consistent with the Commission’s mandate that investor-owned utilities (“IOUs”) follow the preferred resources loading order as set forth in the Energy Action Plan (“EAP”) developed by the CEC and this Commission. When the Commission approved the Wellhead PPA in May 2007, the Commission expressed its concern that “adding gas fired resources such as these peakers could crowd out resources higher in the load order set forth in the EAP...Only once an IOU has exhausted all attempts to fill a net short position with preferred loading order resources should it look to traditional fossil generation to meet remaining needs.”<sup>20</sup> Specifically, IOUs were directed by the Commission to procure resources in the order of energy efficiency, demand response, renewable,

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<sup>19</sup> A memorandum dated May 10, 2008 by Bill Powers, P.E. (the “Powers Memo”) was prepared for the benefit of Ladera Hope and further explains this alternative to additional gas turbine peakers. Please refer to the Powers Memo, p. 4, which is attached hereto as Exhibit C.

<sup>20</sup> D.07-09-010, p. 7.

distributed generation and, finally, clean fossil-fuel.<sup>21</sup> The Margarita Power Plant represents a commitment by the utility to an outdated energy strategy that depends on fossil fuels. In fact, in its decision approving the IOUs' LTPPs in December 2007 (seven months after the approval of the Wellhead PPA), the Commission noted that SDG&E's LTPP was "deficient and spotty" in terms of its efforts to fill net short positions with preferred resources as contemplated by the EAP.<sup>22</sup>

There are a variety of renewable and energy efficiency savings alternatives which can be used to satisfy or offset the 530 MW of local generation capacity sought by SDG&E, any one of which would obviate the need for the 44 MW which would be supplied by the Margarita Plant.

One option is demand response ("DR") programs. The San Diego area is already experiencing the benefits of the more rigorous DR programs required by this Commission as evidenced by CAISO's "2009 Local Capacity Technical Analysis – Report and Study Results Update for San Diego Area" which was just released on September 30, 2008. According to the Report, 91 MW were added by CAISO to the total available resources in the SDG&E service territory as a direct result of the success of the utility's demand response programs.<sup>23</sup> This increase alone is sufficient to replace the 44 MW of power which SDG&E anticipated would come from the Margarita Project.

Additionally, it appears likely that digital smart meters will be installed at all customer sites throughout the SDG&E service territory by 2011. The three-year pilot program conducted in California to evaluate the efficacy of these power saving devices demonstrated a 13 percent reduction in demand during peak hours. However, SDG&E assumes only a five percent savings for the purposes of its forecasts and analysis. If SDG&E were to assume a seven percent savings, that would eliminate the need for 60 to 80 MW of local generation.<sup>24</sup>

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<sup>21</sup> D.07-12-052, p. 270.

<sup>22</sup> D.07-12-052, p. 291. See also D.08-09-045, p. 1.

<sup>23</sup> California ISO's "2009 Local Capacity Technical Analysis – Report and Study Results Update for San Diego Area", updated September 30, 2008, p. 7.

<sup>24</sup> Powers Memo, p. 7.

**5. SDG&E should be required to seriously consider potential new sites with other independent power producers.**

Given the significant environmental impacts the Margarita Power Plant would have on the community of Ladera Ranch, and the fact that this Project is not needed to address immediate local generation requirements (if at all), we urge the Commission to require SDG&E to seriously consider potential new locations, as well as projects with other independent power producers. SDG&E's RFM informs the Commission that Wellhead is evaluating alternative locations for the Project in San Diego and Orange County. At the same time, though, Wellhead is reserving its right to renew permitting at the Margarita Substation site.<sup>25</sup> While we are encouraged that other sites are being considered since the Margarita Substation is clearly not an appropriate site for this Project, we are concerned that SDG&E is not also evaluating other potential locations, including non-SDG&E owned sites, with other potential developers.

In the RFO process for this Project, a number of other bidders were identified and at least two of those bidders offered to build the plant on non-SDG&E owned, third party sites.<sup>26</sup> At this point, it seems prudent that SDG&E reconsider those other bids. Even better, SDG&E should be required to restart the bidding process since nearly two years have elapsed since the pricing was determined for this Project. With the dramatic decline in the real estate market since 2006, SDG&E is likely to elicit a strong response of competitive offers, especially for third party sites. In this way, too, the Commission could be assured that this project remains the best fit/least cost procurement option.

**6. SDG&E's request to notify the Commission of the final location and on-line date for the Project by an advice letter filing should be disapproved.**

SDG&E has proposed that notice of the final location and on-line date for the Project be provided to the Commission as part of a future compliance advice letter filing, requiring no additional action by the Commission.<sup>27</sup> We object to this request. The location of the Project and the environmental (CEQA) impacts it poses to neighboring communities is extremely relevant and critical to this Commission's decision making process and determination whether to approve a Project. In

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<sup>25</sup> PFM. P. 12.

<sup>26</sup> A.07-05-023, Direct Testimony of Mike McClenahan, San Diego Gas & Electric Company, p. 9.

<sup>27</sup> PFM, p. 13.

addition, the location will have an impact on the Commission's cost analysis for the Project. Finally, the approval process for this Project should be as open and encouraging of public/ratepayer participation as possible. Once project proponents have made a final determination for the location of this Project, ratepayers should be afforded the opportunity to evaluate such location and voice any objections to the Commission. An advice letter filing would not be consistent with these goals.

## 7. Conclusion

SDG&E has not demonstrated that "the Wellhead project continues to prudently meet demonstrated need at reasonable costs" (SDG&E's proposed new "Finding of Fact No. 20" in the PFM).<sup>28</sup> Further, SDG&E's assertion that "the Wellhead Margarita project is important for reliability in SDG&E's service territory" is not supportable (SDG&E's proposed new "Finding of Fact No. 8" in the PFM).<sup>29</sup> The Margarita Project has not been properly sited, presents significant environmental concerns for the community of Ladera Ranch, and is not needed for SDG&E's local resource adequacy.

For all of the foregoing reasons, Ladera Hope respectfully requests that this Commission modify D.07-09-010 to revoke the procurement authority for the 44 MW represented by this Project. Alternatively, Ladera Hope respectfully requests that the Commission revoke SDG&E and Wellhead's authority to pursue the Project at the Margarita Substation site. Accordingly, we respectfully request that the Commission reject any and all proposed modifications to D.07-09-010 which support a project at this site (including SDG&E's proposed new Finding of Fact 8 and 20). Further, we implore the Commission to not make any findings or decisions or take any actions with regard to the PFM or otherwise which will expedite the review and approval of this Project or hamper public participation. Ladera Hope respectfully requests that the Commission not permit SDG&E and Wellhead to use the advice letter filing procedure to notify the Commission (and ratepayers) of the final location and on-line date for the Project. Finally, pursuant to Rule 1.4 of the

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<sup>28</sup> SDG&E's proposed new "Finding of Fact No. 20" states: "Unanticipated delays associated with permitting have caused the need to amend the contracts with Wellhead. The new on-line date is expected to be July 1, 2010. Nevertheless, the Wellhead project continues to be the least cost, best fit proposal that fully meets the current location, delivery and creditworthiness requirements of SDG&E. Thus, the Wellhead project continues to prudently meet demonstrated need at reasonable costs." PFM, p. 17.

<sup>29</sup> SDG&E's proposed new "Finding of Fact No. 8" states: "Delay in approval of peaking generation could result in shortfalls as early as 2008. In particular, the Wellhead Margarita project is important for reliability in SDG&E's service territory and it should therefore qualify for expedited interconnection treatment under the California Independent System Operator (CAISO)'s generator interconnection procedures." PFM, p. 16.

Commission's Rules of Practice and Procedure, Ladera Hope requests permission to become a party to this proceeding so that the concerns of the community of Ladera Ranch may be considered by this Commission.

DATED this 4<sup>th</sup> day of October, 2008, at Ladera Ranch, California.

Respectfully submitted,

Ladera Hope

By: \_\_\_\_\_  
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EXHIBIT A

MAP OF PROPOSED SITE LOCATION FOR PROJECT

EXHIBIT B

ESA TECHNICAL NOISE MEMORANDUM

EXHIBIT C

POWERS ENGINEERING MEMORANDUM

