

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of San Diego Gas &
Electric Company (U 902 E) for
Approval Pursuant to Public Utilities
Code Section 851 to Lease/Transfer
Capability Rights to Citizens Energy
Corporation

A.09-10-010
(Filed October 9, 2009)

**OPENING BRIEF
OF THE DIVISION OF RATEPAYER ADVOCATES**

I. INTRODUCTION

Pursuant to Rule 13.11 of the Commission Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA") files this Opening Brief ("Op. Br.") in response to the San Diego Gas and Electric Co.'s ("SDG&E") Application stated above. DRA recommends the following.

First, the Commission should expressly hold that its approval is based on the unique public benefits presented by the Citizens Energy Corp.'s ("Citizens") participation in the Sunrise Powerlink Transmission Project ("Sunrise"). Further, the decision should state that it is not precedential or intended to apply to any issues in another current or future proceeding.

Second, SDG&E is requesting pre-approval of a future lease, which is contingent on if and when Citizens exercises its option to lease. DRA recommends that because of this uncertainty, the Commission should *inter alia* direct SDG&E to file an advice letter pursuant to General Order 96-B for approval of the Lease of Transfer Capability when it is formed and fully executed. At the time of filing, SDG&E should serve a copy of its advice letter on DRA.

II. BACKGROUND

A. The Application

Under Section 851¹ and on October 9, 2009, SDG&E applied for Commission approval to lease to Citizens for a term of 30 years half of its transfer capability rights pertaining to the Imperial Valley section of Sunrise known as “the Border-East Line.” Sunrise consists of five separate segments or geographical “links”:

(1) the 500 kV Link 1 (which includes the approximate 30 mile “Border- East Line” located in Imperial County that is the subject of the lease to Citizens and 21 miles of transmission line in San Diego County (located primarily on Bureau of Land Management lands); (2) the San Diego 500 kV Link 2 (located primarily on United States Forest Service lands); (3) the Suncrest Substation Link 3; (4) the San Diego County 230 Overhead kV Link 4; and (5) the San Diego County 230 kV Underground.²

It is estimated that the Border-East Line will deliver renewable electric energy from the Imperial Valley at an estimated value of more than \$117 million per year.³ On December 18, 2008 in Commission Decision (“D.”) 08-12-058, SDG&E was approved to develop Sunrise.

On November 13, 2009, DRA filed a response to the Application. UCAN protested the Application and served data requests on DRA, SDG&E, and Citizens. Subsequently, the Parties agreed that an evidentiary hearing was not needed.

B. Citizens Participation in Sunrise

The lessee, Citizens, is a tax-exempt, non-profit corporation headquartered in Boston, Massachusetts, and a FERC-jurisdictional public utility.⁴ In 1985, Citizens began its electricity industry operations by buying power from utilities with surplus generating

¹ Unless otherwise stated, the term “Section” means a statutory provision of the California Public Utilities Code.

² Appl., Ex. CEC-2, W. Mayben Decl. at 7.

³ Appl. at 7.

⁴ *Id.* at 8.

capacity, reselling the excess power to other utilities, and using the profits to help low-income families pay their electricity bills.⁵

Citizens is partnering with SDG&E to develop Sunrise, a large-scale 500 kV high-voltage transmission project in Southern California. This would improve electric grid operation and enable access to one of the largest sources of renewable power in the United States — thousands of megawatts of geothermal, solar, and wind resources from the Salton Sea region and Imperial County.⁶

On May 11, 2009, Citizens entered into the “Development and Coordination Agreement (“DCA”), which provides it with an option to lease for a 30-year term one-half of SDG&E’s interests in the transfer capability of the Border-East Line.⁷ If Citizens exercises the option, it must invest approximately \$83 million as prepaid rent for the leasehold interest. This would entitle Citizens to revenues from its share of the transfer capability in the Border-East Line,⁸ which according to SDG&E could amount to “tens of millions of dollars.”⁹

According section 4.2.2 of the DCA, the period for Citizens’s lease option is defined as follows:

If Citizens fails to exercise its Option by the earlier of (i) no later than 90 days prior to the Target Closing Date and (ii) the 10th anniversary of the Effective Date, such unexercised Option shall expire.¹⁰

⁵ See <http://www.citizensenergy.com/english/pages/21/electricity-transmission> (Citizens URL, “Electricity”)

⁶ *Id.*

⁷ Appl. at 9.

⁸ *Id.* at 10. By comparison, Sunrise is a 120-mile, \$1.9 billion power line that could deliver as much as 1,000 megawatts of clean energy. *Id.* at 3.

⁹ Appl., Attach. 2, Citizens’s Pet. for Decl. Ord. at 59.

¹⁰ Appl., Ex. CEC-2, W. Mayben Decl., Attach. A, DCA at 8-9.

SDG&E's transfer capability in the Border-East Line will be conveyed to Citizens once Citizens has exercised and perfected its Option. At its own expense, SDG&E will develop, design, permit, engineer, procure, and construct all of Sunrise, including the Border-East Line.¹¹

C. Low Income Energy Programs

According to the DCA, Citizens agrees to pay annually 50 percent of its profits attributable to assets located in Imperial County to programs assisting low income families living in Imperial County.¹²

D. Related FERC Filings by Citizens and SDG&E

1. Citizens

Concurrently with the Application, Citizens filed a FERC Petition for Declaratory Order, which requests approval for two rate treatments of its Border-East Line lease, as follows:

- Authority to recover its prudently incurred transmission-related development and construction costs in the Border-East Line, if the Project is canceled or abandoned as a result of factors beyond Citizens' control; and
- Approval to recover operating costs and capital requirements in the Border-East Line under a formula rate that will subsequently be filed at FERC.¹³

Citizens will also request FERC approval to determine capital requirements based on a return on rate base incorporating a hypothetical capital structure and to calculate an

¹¹ See e.g., Ex. CEC-2 at para.26, p. 13.

¹² Ex. CEC-2, Attach. A, DCA, Sch. 2.2, sec. B (4) at p. Sch.2.2-4.

¹³ Appl. at 15 (FERC approval of the formula rate would allow Citizens to recover operating expenses on an actual incurred basis and capital requirements on a fixed basis levelized for 30 years.).

appropriate rate of return capped at the “SDG&E Representative Rate” based on a proxy return on equity.¹⁴

2. SDG&E’s Related Current and Past FERC Filings

SDG&E will file a FERC Petition for Declaratory Order to exclude from its transmission rates any capital costs pertaining to the 30-year Citizens lease. At the end of the lease, SDG&E will have on its books no capital costs associated with the Citizens lease, because Citizens’s portion of the Border-East Line would have been fully depreciated.¹⁵

Previously, on December 1, 2006, in FERC Docket No. ER07-284-000, SDG&E applied under section 205 of the Federal Power Act to implement a new Transmission Owner formula rate mechanism (TO3). After several parties intervened, including DRA, SDG&E made an offer of settlement on March 28, 2007, which FERC approved in a published letter order dated May 18, 2007 and an unpublished letter order dated July 11, 2007 (hereafter referred to as “the 2007 Settlement”).

According to that Settlement and in exchange for other contractual benefits, SDG&E agreed not to file for any transmission incentives related to Sunrise, including but not limited to those identified in Order No. 679 and other pertinent FERC authorities (e.g., 100% recovery of abandoned plant costs).¹⁶ On the other hand, this does not preclude Citizens from applying to FERC for transmission incentives.¹⁷ DRA does not object to Citizens’s FERC application because of the unique public benefits resulting from its participation in Sunrise, but would have a problem with any other Sunrise participant seeking such incentives.

¹⁴ Appl. at 15.

¹⁵ *Id.*

¹⁶ Appl., Attach. 2, Citizens’s Pet. for Decl. Ord. at 56 (*citing* 119 FERC ¶ 61,169, as source for the FERC May 18, 2007 published letter order approving the SDG&E Settlement).

¹⁷ *See supra* note 13 (description of Citizens’s FERC applications).

E. Citizens and the California Independent System Operator (“CAISO”)

In accordance with D.08-12-058, Citizens will transfer to CAISO its operational control over its transfer capability and leasehold in the Border-East Line, and become a Participating Transmission Owner under the CAISO tariff. Ultimately, the entire transfer capability of Sunrise — both SDG&E’s and Citizens’s — will be under CAISO’s operational control and available to CAISO customers.¹⁸

III. ARGUMENTS AND AUTHORITIES IN SUPPORT OF DRA’S RECOMMENDATIONS

A. DRA Concurrs that the Public Benefits Derived from Citizens’s Participation in Sunrise Justifies Commission Approval of the Application.

Citizens’s participation in Sunrise is a unique event. Citizens will contribute half of its profits resulting from its leasing of the Border-East Line to assisting low income consumers living in the Imperial Valley. This could amount to tens of millions of dollars over the life of Sunrise.¹⁹ DRA does not know of any other investor in the electrical industry such as Citizens, whose corporate goal is to engage in business ventures that generate revenues for the funding of social and charitable assistance programs for the elderly and the poor. DRA supports Citizens’s role in Sunrise as benefitting the public and thus warranting Commission approval of the Application.

Second, Citizens’ participation in Sunrise promises level rates for 30 years and protection against possible capital cost increases for ratepayers serviced by Citizens’s portion of Border-East Line. Assuming FERC would approve Citizens’s ratemaking requests as described above, this rate stability further merits DRA’s support for the Application.²⁰

¹⁸ *Id.* at 21-22.

¹⁹ *See* Appl., Ex. CEC-2, Attach. A, DCA Sch. 2.2, sec. B (4) and Appl., Attach 2, Citizens Pet. for Decl. Ord. at 59.

²⁰ Citizens’s proposed FERC formula rate methodology would recover operating expenses on an actual incurred basis, and capital requirements would be determined on a fixed basis levelized for 30 years. *See* (continued on next page)

Third, Citizens's level rates would avoid the "front end loading" of cost recovery caused by a mismatch of project benefits and costs. Otherwise, consumers would have to pay substantially more in the early years of Sunrise's operation and less in later years as Sunrise is depreciated and its rate base declines.²¹ This is another public benefit that earns DRA's support for the Application.

B. DRA Agrees that It Is Important to Bring Citizens into the Development of Sunrise but Disagrees that this Case Generally Justifies Involving Other and Diverse Participating Interests in other Projects.

SDG&E claims the following regarding Citizens's participation in Sunrise:

It is important to bring such diverse participating interests not only into the development of Sunrise, but also into other feasible projects that result in benefits for the CAISO customers and the development of new transmission.²²

DRA is concerned that in other "feasible projects" related to Sunrise, SDG&E may involve other participating interests that would apply for FERC transmission incentives, and thus SDG&E may evade, either directly or indirectly, its promise made in the 2007 Settlement not to seek and obtain such incentives. These concerns do not arise in this Application, because of the nature of Citizens's participation in Sunrise.

Therefore, the Commission should expressly state that its approval in this case is essentially based on the unique public benefits of bringing Citizens into Sunrise. The Commission should warn SDG&E that if any other participating interest were to apply for transmission incentives, this would raise questions whether SDG&E is circumventing the 2007 Settlement.

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Appl, Attach. 2, Citizens Pet. at 34 n. 31.

²¹ See Appl., Ex. CEC-3, D. Helsby Decl. at para. 27, p. 13.

²² Appl., Attach. 2, Citizens's Pet. for Decl. Order at 59.

C. Because Citizens Has Yet to Exercise its Lease Option, the Commission Should Require SDG&E to File an Advice Letter.

According to DCA section 4.2.3, the lease of Transfer Capability must be executed by Citizens and SDG&E as follows:

The lease of Transfer Capability pursuant to the exercised Option shall occur as soon as reasonably practical after exercise of the Option but no later than the Target Closing Date. SDG&E and Citizens shall execute, acknowledge and deliver any and all documents reasonably necessary to lease such Transfer Capability.

Because of the DCA section stated above, the Commission should require that SDG&E file an executed copy of the Lease of Transfer Capability (including any amendments or supplements thereto) with the Commission's Energy Division pursuant to General Order (GO) 96-B, sections 3.9 and 6.1. This should occur no later than 30 days after such Lease is fully executed. DRA should also receive a copy of SDG&E's filing with the Energy Division.

Second, the Commission should require SDG&E to file an advice letter to obtain Commission approval of the Lease of Transfer Capability at least six months before the expected in-service date of Border-Ease Line. SDG&E should provide DRA with a copy of its advice letter concurrent with its filing. According to Rules 3.6 and 7.5.3 of General Order ("GO") 96-B, the advice letter would become effective pending disposition by the Commission's Energy Division. SDG&E should use this same advice letter procedure to obtain approval for any subsequent modifications to the Lease.

In D.08-11-032, the Commission has used procedures similar to those stated above. In that case, a utility applied for pre-approval of contract for long-term capacity on a yet-to-be-constructed pipeline.²³ Analogously, SDG&E in this application is

²³ See *PG&E*, D. 08-11-032, Ord. Para. 3(i)-(ii), 2008 Cal. PUC LEXIS 427, at *174 (dated Nov. 6, 2008) (application filed for authority to contract for long-term capacity on proposed future constructed Ruby Pipeline).

requesting pre-approval to lease an interest in a future development and construction of the Border-East Line.

The recommended procedures stated above would ensure that the Commission's approval will be linked with an actual Lease of Transfer Capability. For example, if for some reason the Lease is not finalized, these procedures would inform the Commission to cancel its authorization.

IV. CONCLUSION

The Application shows it is reasonable, consistent with the law, and in the public interest to bring Citizens into the Sunrise Project. The Commission, however, should expressly state that its approval of the Application is not precedential and is essentially based on the unique public benefits of Citizen's participation in Sunrise. To uphold the 2007 Settlement, the Commission should prohibit SDG&E and/or any other participants in Sunrise from seeking and obtaining transmission incentives pertaining to Sunrise

In addition, because the Commission's approval in this matter is contingent on a future event — Citizens exercising and perfecting its lease option by investing \$83 million in Sunrise — the Commission *inter alia* should require that SDG&E file an advice letter for Commission approval of the Lease of Transfer Capability, when the Lease is fully executed.

Respectfully submitted,

/s/ CLEVELAND W. LEE

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June 18, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **OPENING BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES** to the official service list in **A0910010** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **June 18, 2010** at San Francisco, California.

/s/ CHARLENE D. LUNDY

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