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

In the Matter of the Application of San Diego Gas & )  
Electric Company (U 902 E) for Approval Pursuant )  
To Public Utilities Code Section 851 to Lease Transfer ) A.09-10-010  
Capability Rights to Citizens Energy Corporation. ) (Filed on October 9, 2009)  
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**OPENING BRIEF OF UTILITY CONSUMERS' ACTION NETWORK (UCAN)**

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## **I. EXECUTIVE SUMMARY**

### ***A. Description of the Application***

On October 9, 2009, SDG&E filed an application with the Commission for approval, under Section 851 of the Public Utilities Code, to lease one-half of SDG&E's transfer capacity along the Border-East portion of its Sunrise Powerlink Transmission Project ("Sunrise") to Citizens Energy Corporation ("Citizens"), pursuant to the Development and Coordination Agreement signed by SDG&E and Citizens on May 11, 2009 ("DCA"). The DCA provides Citizens with an option to lease 50% of the transfer capacity along the Border-East portion of Sunrise. The term of the lease will be for 30 years. Citizens would prepay its lease payments of \$83 million to SDG&E at the time that Sunrise enters commercial operation. Citizens would then collect in FERC-regulated rates an estimated \$10.8-13.5 million per year under a 30-year levelized capital cost recovery method. Citizens stands to gain \$52 million in after-tax profits from its lease of the transfer capacity<sup>1</sup>, and intends to distribute half of the after-tax profits to low-income residents in Imperial County<sup>2</sup>. The proposed distribution to Imperial County residents "arose in negotiations between Citizens and IID" even though IID is not a party in this case, and did not involve "any substantive negotiation between [Citizens] and SDG&E."<sup>3</sup>

### ***B. Why SDG&E's Application Should be Rejected***

UCAN submits that SDG&E should not be allowed to lease one-half of the transfer capacity along the Border-East portion of the line to Citizens. This is because, in a proceeding

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1 Citizens-3, Attachment A to Citizens response to UCAN's first set of data requests to Citizens, DR 1-1, sum of "After Tax Income" column results for years 1-30. Citizens also concedes the accuracy of the \$52 million figure in Citizens-1, testimony of John Wilson, pp. 3:15-4:1.

2 Citizens, Attachment A to Citizens response to UCAN DR1-1, sum of "After Tax Income" column and "Low Income Assistance" column results for years 1-30.

3 Citizens-3, Citizens' response to UCAN's first set of data requests to Citizens, 1-5.

under Pub. Util. Code § 851, the Commission should not approve a proposed transfer if it is not proven to be in the public interest. In the instant case, the DCA is not demonstrably in the public interest for two reasons. First, the DCA does not provide any tangible benefits to SDG&E ratepayers. Citizens promises to give half of its after-tax profits to low-income residents of Imperial County, which is admirable, but Citizens will provide no assistance to SDG&E ratepayers. The rate stability proffered by the applicants as a benefit to SDG&E ratepayers is too speculative to be the basis of a finding of public interest.

Second, because of the DCA, SDG&E ratepayers will have to pay an estimated \$5 million or more to Citizens for its supposed “development” costs. UCAN has determined that none of these costs are directly related to the development or construction of Sunrise. Combined with the other costs that Citizens will be able to recover through its FERC-allowed rates, SDG&E ratepayers may end paying as much as \$22 million more under the DCA than they would if it had not been executed.

As it delves more deeply into this proposed lease arrangement, the Commission will find that the application presented by SDG&E and Citizens amounts to a financial transaction that leverages current FERC transmission incentives in order to secure reimbursement for Citizens of its costs incurred in its support of the Sunrise transmission project. In effect, SDG&E is bestowing a reward upon Citizens for its backing of this controversial transmission project by burying up to \$22 million in higher costs in a fairly complex leasing arrangement. SDG&E ratepayers will end up footing the bill for SDG&E’s largesse to its ally.

## **II. ANALYSIS OF THE LAW**

Public Utilities Code § 851 says that a utility may not sell, lease, assign, mortgage, or otherwise dispose or encumber any part of its property necessary or useful in the performance of

its duties to the public without first securing an order from the Commission authorizing it to do so. The statute itself does not explain what the Commission should consider in deciding whether to authorize a transfer under Section 851, but the state's highest court and subsequent Commission decisions have provided the guiding principles. In Hanlon v. Eshleman, the California Supreme Court said that "the commission's power is to be exercised for the protection of the rights of the public interested in the service, and to that end alone."<sup>4</sup> Two Commission decisions illustrate the same principle. In D.00-07-010, the Commission approved Southern California Edison's application to lease communication facility sites and communication equipment placements to Pacific Bell Mobile Services. In its decision, the Commission said that,

Joint use of utility facilities has obvious economic and environmental benefits. The public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers. Also, revenues generated by the Agreements will flow to and benefit ratepayers under the sharing arrangement approved in D.99-09-070. The Agreements will allow improved service to Pacific's customers. Since Pacific is a public utility, the welfare of its customers also enters into our consideration of this application.<sup>5</sup>

Again, in D.02-09-024, when the Commission approved Pacific Gas & Electric's lease of land to the City and County of San Francisco, the Commission affirmed this principle. It said that in a transfer proceeding under Pub. Util. Code § 851, the utility must prove the transfer is beneficial to ratepayers and the public generally.<sup>6</sup>

These cases taken together indicate that, when the Commission considers the public benefits of a financial transaction by a utility, ratepayer interests are of utmost concern. Notably, in D.00-07-010, one of the reasons why the Commission approved the lease of SCE's facilities to a telecommunications company was because the revenues of the lease would benefit SCE ratepayers. Moreover, the Commission has clearly established that a utility must prove benefits

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4 169 Cal. 200, 202 (1915).

5 D.00-07-010 at 6-7.

6 D.02-09-024 at 3.

to ratepayers for approval of a transfer of that utility's property (e.g., D.02-09-024). UCAN submits that in order for the Commission to approve the application, it must make a finding that the DCA is beneficial to *SDG&E ratepayers*. As will be discussed below, the DCA is not beneficial to SDG&E ratepayers, and therefore the Commission cannot legally approve SDG&E's application to lease transfer capacity rights to Citizens.

UCAN also submits that the Commission should not consider the DCA's benefits to Imperial County residents when the Commission decides whether to approve the application. The rule from Hanlon is controlling, i.e. that the Commission should only consider the rights of the public interested in that utility's service.<sup>7</sup> Because Imperial County is not within the CAISO-controlled grid area, Imperial County residents will not pay any of the revenue requirements under the DCA, and will not receive electricity loads from Sunrise. So, Imperial County residents are not part of the public interested in SDG&E's service. Accordingly, the Commission cannot consider the DCA's impact on Imperial County residents when it decides whether to approve SDG&E's application.

### **III. THE DCA PROVIDES NO BENEFITS TO SDG&E RATEPAYERS**

#### ***A. The Alleged Benefit of a Fixed Rate of Return is Speculative***

Applicants' singular quantifiable benefit to SDG&E customers is the alleged rate stability that results from Citizens' 30-year levelized capital cost recovery method. SDG&E witness James Avery says in his testimony that Citizens' rates will not be subject to change after Citizens closes its levelized debt financing, but cautions that SDG&E may seek a higher rate of return after its Settlement Agreement expires in 2013.<sup>8</sup>

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<sup>7</sup> 169 Cal. 202.

<sup>8</sup> SDG&E-1, testimony of James Avery, p. JPA 25:6-10.

In contrast, UCAN witness David Marcus explains that for the DCA costs to turn into a benefit for SDG&E ratepayers, one of two events would have to happen: (1) future ROEs would have to rise significantly above the 11.35% ROE that will be in effect under the current SDG&E TO3 Settlement in 2012; or (2) future debt costs would have to rise significantly above the debt level used in the DCA's representative rate model.<sup>9</sup>

### **1. Return on Equity**

Because one of the key factual issues in this case is the likelihood that SDG&E's ROE would exceed 11.35% during Sunrise's financial lifespan, UCAN focused its discovery on this issue. In doing so, UCAN sought to determine the bases upon which the finder of fact could conclude that ROEs are expected to rise in the future. In response to discovery, SDG&E conceded that it did not expect future ROEs to rise: "For extended financial planning projections past 2013, SDG&E uses the currently approved ROE as a proxy for the most reasonable estimate of what might happen after 2013."<sup>10</sup> Thus, the applicant in this proceeding concurs with UCAN's assessment that an 11.35% ROE is reasonable over the long term.

UCAN's conclusion is based upon more than SDG&E's opinion. UCAN witness David Marcus points out that others have estimated that future ROEs will be *lower* than they are currently. First, the Social Security Administration estimates 6-6.5% real ROEs over the long term for stocks, which corresponds to about 8.5-9% adjusted for inflation of 2.5% per year.<sup>11</sup> Second, Jeremy Siegel at the Wharton School argues that while the historical real rate of return on stocks has been 6.5-7%, the twenty-first century rate will be lower. Actual stock market aggregate ROEs for 1929-2009 were only 8.8% per year, adjusted for inflation, and from 1933-

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<sup>9</sup> UCAN-1, testimony of David Marcus, p. 19.

<sup>10</sup> SDG&E-4, SDG&E's response to UCAN'S first set of data requests to SDG&E, 1-10.

<sup>11</sup> <http://www.ssab.gov/Publications/Financing/estimated%20rate%20of%20return.pdf>.

2009 (starting at the bottom of the Great Depression), the stock market aggregate ROEs were still only 11.1%.<sup>12</sup> Having reviewed these forecasts, Mr. Marcus explains:

To believe that locking in an 11.35% ROE for 30 years is a good thing for ratepayers, one needs to believe that either the 21<sup>st</sup> century will be better for stocks than the last century and far better than is generally predicted, or one needs to believe that FERC will be granting ROEs for the next 30 years to electric utilities that are well above actual ROEs achieved in the broader stock market. Neither SDG&E nor Citizens has provided any evidence for either proposition.

In addition to the evidence from the Social Security Administration and Professor Siegel, Mr. Marcus cites evidence from recent FERC decisions to demonstrate that long-term ROEs will not rise above 11.35%. In the most recently litigated FERC ROE of which Mr. Marcus is aware, *Pioneer Transmission, LLC*<sup>13</sup> FERC awarded a base ROE of 10.54% for a proposed \$1 billion, 240 mile, 765 kV project to facilitate deliveries of renewable energy. In that same case, FERC also awarded to the applicant an additional incentive ROE of 50 basis point for membership in an RTO. Mr. Marcus thinks it is reasonable to conclude that FERC would apply the same incentive to SDG&E. Therefore, Mr. Marcus says, it is reasonable to expect that if the SDG&E ROE were being litigated today, then FERC would grant the utility an ROE of 11.04% per year, which is lower than the 11.35% rate currently in effect. Subsequent to Mr. Marcus's testimony, FERC issued a decision in an SCE transmission case setting a base ROE of 9.54% per year,<sup>14</sup> a full percent lower than the ROE in the decision cited by Mr. Marcus. That 2010 base ROE corresponds to 10.04% per year with a 50 point adder for RTO membership,<sup>15</sup> well below the 11.35% SDG&E is currently receiving.

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12 <http://observationsandnotes.blogspot.com/2009/03/average-annual-stock-market-return.html>.

13 126 FERC ¶ 61,281 (2009).

14 FERC, 4/15/10, ER08-375 decision, p. 3, paragraph 1 (available online at <http://www.ferc.gov/whats-new/comm-meet/2010/041510/E-2.pdf>). This 9.54% base ROE is also referenced in UCAN DR 2-19 to Citizens, and Citizens response to the data request cited the ER08-375 decision as well.

15 Although Citizens denies that it or SDG&E will seek incentive adders for Sunrise (Citizens-4, Citizens' response to UCAN's second set of data requests to Citizens, 2-15), which if true means that only the FERC base ROE is relevant.

In the Rebuttal Testimony of John W. Wilson on behalf of Citizens Energy Corporation, Mr. Wilson disagrees with Mr. Marcus' contention that utility ROEs will not rise. Mr. Wilson assumes that ROEs may rise for SDG&E in the future because of the risk of substantially higher future money costs.<sup>16</sup> He says that less than 30 years ago, after a period of severe federal deficit spending in the late 1970s and early 1980s, utilities like SDG&E sought ROEs of up to 18%, and the CPUC approved ROEs of 15-16% for all of the utilities in California. Mr. Wilson says that, because there is currently a large federal deficit like there was in the 1970s and 1980s,

It cannot be reasonably denied that the risk of substantially higher future money costs is now a significant financial concern and risk. In that regard, the potential benefit to California ratepayers of Citizens' locked-in rate of return allowance for the next 30 years, as opposed to SDG&E's variable ROE as money costs rise (or fall) is substantial.<sup>17</sup>

Based on his assertion, UCAN sent data requests to Citizens to determine the factual basis upon which Mr. Wilson concludes that utility ROEs will rise to the record high levels that resulted from deficit spending in the late 1970s and 1980s. Mr. Wilson admits in his responses that "exact repetition is unlikely."<sup>18</sup> Mr. Wilson appears to believe that high Federal deficits automatically lead to high inflation rates, and that high inflation rates automatically lead to high interest rates, which in turn lead to high ROEs.<sup>19</sup> He provides no evidence that this double chain of causation existed in the past, let alone that it will exist in the future.

When asked for evidence that "we are currently in one of the lowest SDG&E ROE periods in more than half a century," Mr. Wilson's reply contained no numbers at all, only a claim that "California utilities" were granted higher ROEs "in the 1980s."<sup>20</sup> Even if Mr.

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<sup>16</sup> Citizens-1, testimony of John Wilson, p. 20:5-6.

<sup>17</sup> Citizens-1, testimony of John Wilson, p. 20:17-21:4.

<sup>18</sup> Citizens-4, Citizen's response to UCAN's second set of data requests to Citizens to Citizens, 2-17.

<sup>19</sup> Citizens-4, Citizens' response to UCAN's second set of data requests to Citizens, 2-16a. Mr. Wilson further admits that he uses the term "money costs" to apply indiscriminately to "all money costs, including both short and long term interest rates, as well as the cost of equity capital." Citizens-4, Citizens' response to UCAN's first set of data requests, 2-15. He provides no evidence to suggest that all such money costs move in tandem.

<sup>20</sup> Citizens-4, Citizens' response to UCAN's second set of data requests to Citizens, 2-14b.

Wilson's response applies to SDG&E, and is true, the fact that SDG&E received higher ROEs in the 1980s than its current 11.35% per year would not be evidence that 11.35% is "one of the lowest SDG&E ROE[s] ... in more than half a century." In fact, a review of Commission decisions available online shows that 11.35% is actually higher than the Commission-approved ROE for SDG&E in every year since 1999.<sup>21</sup>

As for Mr. Wilson's claim that "there is no doubt that deficit spending in the late 1970s and early 1980's brought about" very high ROEs "in the 1980s," actual Federal deficits in the late 1970s and early 1980s totaled \$642 billion in the seven years 1977-83, inclusive, or \$91 billion/year.<sup>22</sup> A decade later, 1987-93, deficits totaled \$1493 billion, or \$213 billion per year, more than twice as much.<sup>23</sup> So if Mr. Wilson deserved any credence, ROEs should have been higher in the 1990s than in the 1980s. Of course they weren't. Thus the nexus between deficit spending and ROEs is not as compelling as Mr. Wilson suggests.

Moreover, in the same set of data requests, UCAN asked Mr. Wilson whether he believed that other economists agreed with his assertion that the utility ROEs are expected to rise, and if so, to identify any of those economists.<sup>24</sup> Mr. Wilson was unable to identify any economists who expect utility ROEs to rise in the near future. The fact that Mr. Wilson cannot find one economist who agrees with his prediction seriously undermines the value of his testimony. Mr. Wilson's testimony is also weakened by a material misstatement he makes in his rebuttal testimony. He says that Professor Siegel's book, which UCAN witness David Marcus relies on, is from 1994

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<sup>21</sup> See, inter alia, D. 07-12-049 (11.1%/year in 2008), D.02-11-027 (10.9%/year in 2003), and D-99-06-057 (10.6%/year). In 2005-06 SDG&E's ROE's were 10.37%/year and 10.7%/year, respectively.

<sup>22</sup> Citizens-4, attachment to Citizen's response to UCAN's second set of data requests to Citizens to Citizens, 2-16b.

<sup>23</sup> Ibid. Adjusting for economic growth does not change the results, although it reduces their magnitude: 1977-83 total GDP was \$19,138 billion and deficits were \$642 billion, or 3.35% of GDP. 1987-93 total GDP was 39,554 billion, and deficits were \$1493 billion, or 3.77% of GDP. So the period Wilson points to with alarm, the late 1970s and early 1980s, had lower deficits than the period a decade later measured either in absolute dollars or as a percentage of GDP.

<sup>24</sup> Ibid.

and is therefore inaccurate.<sup>25</sup> Although the book Stocks for the Long Run was first published in 1994, the fourth edition was published in 2007. Thus, contrary to Mr. Wilson's assertion, the reference is timely and accurate.

Accordingly, the Commission should reject Mr. Wilson's faulty and undocumented claim of causality between high deficits and high ROEs, and his implicit claim that the high deficits of 2008-10<sup>26</sup> will inevitably lead to much higher ROEs in the future than 11.35%. Instead, the Commission should accept Mr. Marcus' arguments, supported by credible evidence, that future ROEs will not rise above their current levels, or at least not enough to create benefits from the DCA.<sup>27</sup>

Admittedly, Citizens' self-serving expert testimony may turn out to be correct; truly no one can be certain of where ROE levels will go. SDG&E has said as much: "Predicting what the market conditions might be in 2013 and what FERC may approve [for ROEs] for the years after 2013 would therefore involve significant speculation regarding such factors, including new factors."<sup>28</sup> However, the Commission is legally obligated to make a finding that the public interest WILL be served by this lease, not that there is a 50:50 possibility. Absent compelling evidence that future ROEs will be *significantly higher* for SDG&E than they are currently, which SDG&E and Citizens have failed to produce, there is no reason for the Commission to conclude that the rate stability that results from Citizens' 30-year levelized capital cost recovery method is a benefit to SDG&E ratepayers. The rate may be stable, but it is higher than what SDG&E ratepayers would pay in the absence of the DCA. If, indeed, stability carried an

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25 Citizens-1, testimony of John Wilson, p. 22: 3-7.

26 Ibid.

27 Given the base ROE of 9.54% adopted by the Commission in its ER08-375 decision, future ROE's could rise above that level and still be below the 11.35% SDG&E is currently receiving. Citizens admits that it would take an assumed future SDG&E ROE of 12.57 percent per year for every year after the expiration of the TO3 settlement to make SDG&E's Table MAC-4 show ratepayer indifference between SDG&E or Citizens ownership of the Border-East line. Citizens-4, Citizens' response to UCAN's second set of data requests to Citizens, 2-38b.

28 SDG&E-4, SDG&E's response to UCAN's first set of data requests to SDG&E, 1-10.

intrinsic benefit, then it would compel the Commission to establish rates based upon some portion of locked-in ROE for transmission projects. But it doesn't and probably shouldn't. Thus rate stability, in itself, cannot be viewed as a tangible ratepayer benefit.

## **2. Debt**

As with ROEs, fixing debt costs under the DCA is a benefit to SDG&E ratepayers only if SDG&E's future debt costs are more than the debt rate used in the DCA's Representative Rate model. SDG&E uses a debt cost of 5.62% in its ratepayer impact testimony,<sup>29</sup> while the DCA uses an example debt cost of 6% per year,<sup>30</sup> and Citizens estimates its future debt costs as 6% per year.<sup>31</sup> UCAN witness Mr. Marcus points out that, "If actual bond costs are not going to increase, then levelizing capital recovery of debt costs does not provide a benefit to ratepayers."<sup>32</sup>

Presently neither SDG&E nor Citizens has provided any testimony regarding future trends in debt costs, and Citizens' rebuttal witness "has made no assumptions or calculations pertaining to SDG&E's future embedded cost of debt,"<sup>33</sup> which renders him unable to determine how much SDG&E's cost of debt would have to rise to offset the extra cost of the DCA calculated in SDG&E's table MAC-4.<sup>34</sup>

It is important to note that Citizens "does not have an estimate of bond interest rates."<sup>35</sup> When asked specifically what it expected bond interest rates to be at the time Citizens exercises its option to participate in the Sunrise project, Citizens admitted it "has made no estimate" and defended its use of 5.48 percent in calculating its charges to ratepayers under the DCA because

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29 SDG&E-2, testimony of Michael Calabrese, Table MAC-2, p. MAC-8.

30 DCA, Schedule 2.2-3, paragraph 3.2.2.2.

31 Citizens-3, Citizens response to UCAN's first set of data requests to Citizens, 1-10.

32 UCAN-1, testimony of David Marcus, p. 22.

33 Citizens-4, Citizens' response to UCAN's second set of data requests to Citizens, 2-38c.

34 Ibid.

35 Citizens-3, Citizens' response to UCAN's first set of data requests, 1-10.

the [Moody's] index has tended to remain in the 5½ % range.”<sup>36</sup> So for purposes of calculating DCA rates, Citizens is conveniently prepared to assume bond rates won't go up<sup>37</sup> (if they did go up, that would increase the allowable DCA rate),<sup>38</sup> but it contradicts this assumption by asking the Commission to approve the DCA based on expectations of higher bond rates in the future.

Absent persuasive evidence that future SDG&E interest costs will be higher than current levels, and quantification showing the net expected value to ratepayers of avoiding those higher interest costs,<sup>39</sup> the Commission should give no weight to SDG&E's claim that fixing interest rates for thirty years is a benefit.

***B. Other Transmission Projects are not Dependent upon the Approval of the Application***

SDG&E argues that there are other benefits from the DCA that offset the increased costs that it will impose on SDG&E ratepayers, namely that it is in the public interest to include Citizens in transmission projects. SDG&E witness James Avery says in his testimony that “Citizens has expressed an interest in additional resources within the Imperial Valley. Citizens has expressed an interest in facilitating the development of new transmission resources beyond the Border-East Line.”<sup>40</sup> To demonstrate that Citizens is actively involved in developing transmission projects in the Imperial Valley, SDG&E cites Citizens' involvement in: (1) the March 16, 2006 MOA for the since-abandoned Green Path Project-Southwest, a proposed line intended to provide for deliveries of renewable energy from the Imperial Valley to San Diego;<sup>41</sup> (2) the since-abandoned Green Path North Project, a proposed line intended to provide for

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36 Citizens-4, Citizens' response to UCAN's second set of data requests to Citizens, 2-25.

37 Citizens-4, Citizens' response to UCAN's second set of data requests to Citizens, 2-26.

38 Citizens-4, Citizens' responses to UCAN's second set of data requests to Citizens, 2-23a and 2-24.

39 After taking into account higher DCA costs that will also result from higher bond rates.

40 SDG&E-1, testimony of James Avery, pp. JPA 20-22.

41 SDG&E-1, testimony of James Avery, p. JPA-20:22-23.

renewable energy deliveries into Southern California;<sup>42</sup> and (3) the newly-proposed Imperial Valley Renewables Transmission Project (“IVRTP”), which would interconnect the transmission systems of major utilities in Arizona and California with new 500 kV transmission lines.<sup>43</sup>

SDG&E’s contention that Citizens is involved in the development of transmission facilities in Imperial County is invalid for two reasons: (1) SDG&E has not shown that Citizens’ backing of non-Sunrise developments is contingent upon approval of the DCA; and (2) SDG&E has not shown that other transmission developments are aided by Citizens efforts.<sup>44</sup>

Most telling is the fact that the three projects that SDG&E claims involve Citizens have either been abandoned or will not increase transmission capacity in the Imperial Valley. First, the Green Path Southwest Project was a project of the Imperial Irrigation District that involved both a 500 kV substation (San Felipe) that is no longer planned by anyone and a route through Anza-Borrego State Park that has since been explicitly rejected by the Commission. Citizens has admitted this in its responses to UCAN’s data requests.<sup>45</sup>

Second, the Green Path North Project was proposed jointly by the Imperial Irrigation District and Los Angeles Department of Water and Power, Citizens was merely part of the discussions surrounding it. Either way, IID and LADWP abandoned the project because its route went through several environmentally sensitive areas.<sup>46</sup> This fact doesn’t appear to be contested by applicants.

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42 SDG&E-1, testimony of James Avery, p. JPA-21:21-22.

43 SDG&E-1, testimony of James Avery, p. JPA-22:4-11.

45 As for the Sunrise line itself, Citizens’ witness admits that he expects Sunrise would have been approved by the CPUC whether or not Citizens had ever been involved with it (Citizens, response to UCAN DR2-10) and will be built whether or not the DCA is approved and whether or not Citizens is involved. (Citizens-4, Citizens’ response to UCAN’s second set of data requests to Citizens, 2-7a).

45 Citizens-4, Citizens’ response to UCAN’s second set of data requests to Citizens, 2-44.

46 Louis Sahagun, *L.A. DWP Drops Plan to Build 85-Mile Power Transmission Line across the Desert*, L.A. Times, March 11, 2010, available at <http://articles.latimes.com/2010/mar/11/local/la-me-power11-2010mar11>. See also, Phil Willon, *L.A. May Drop Plans for Controversial Transmission Line*, L.A. Times, September 22, 2009, available at <http://articles.latimes.com/2009/sep/22/local/me-green-path22>.

Third, the IVRTP is in its preliminary stages and there are no guarantees that it will increase power flows into Southern California. Citizens has only entered into a Memorandum of Understanding with the Western Area Power Association indicating that both parties will investigate the feasibility of the IVRTP. Moreover, the CAISO has already identified a line similar to the one Citizens has proposed (from IV Substation to Devers substation, in its September 15, 2009 white paper on achieving 33% renewables for California).<sup>47</sup>

To summarize, the applicants have provided no evidence to support their contention that leasing transfer capacity along the Border-East portion of the Sunrise Powerlink to Citizens will affect transmission development in the Imperial Valley (and then benefit ratepayers or the public interest).<sup>48</sup> If the Commission does not approve SDG&E's application, there will be no impact on other transmission projects in the Imperial Valley because Citizens is not heavily involved in any existing transmission projects in the area.

#### **IV. THE DCA IMPOSES AN ADDITIONAL \$5 MILLION ON SDG&E RATEPAYERS**

##### ***A. Citizens' "Development" Costs***

Another reason why the Commission should not approve SDG&E's application is because Citizens will seek to include in its FERC-approved rates all "prudently incurred pre-commercial operation costs" associated with its involvement in the Sunrise Powerlink.<sup>49</sup> It is unclear exactly how much these costs will be, but UCAN submits they will amount to at least \$5

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<sup>47</sup> <http://www.caiso.com/242a/242ae729af70.pdf>, pp.38-40.

<sup>48</sup> Citizens-4, Citizens responses to UCAN's second set of data requests, 2-50a (rebuttal witness Mayben possesses no evidence of any "transmission project that will be substantially less likely to be developed if the DCA is rejected in this proceeding") and UCAN DR2-50b (rebuttal witness Mayben possesses no evidence of any "transmission project that will be substantially more likely to be developed if the DCA is approved in this proceeding")

<sup>49</sup> DCA, Schedule 2.2-4, paragraph 3.3.

million. They were already \$2.99 million as of November 30, 2009.<sup>50</sup> UCAN has arrived at this figure after analyzing two key pieces of evidence: (1) a letter from Citizens to SDG&E in which Citizens estimates that its development costs will be at least \$5 million “at the time the project is completed and goes commercial;”<sup>51</sup> and (2) a line item for \$2.8-5 million of “development and other costs” in SDG&E’s evaluation of costs under the DCA.<sup>52</sup>

UCAN has attempted to learn more about the amount and the nexus of the development costs to Sunrise through the discovery process. The following facts appear to be uncontroverted: First, Citizens has stated that it will try to recover pursuant to the DCA 100 percent of its Green Path Southwest Project development costs dating back to 2005.<sup>53</sup> As of November 2007, Citizens had already spent \$1.6 million on Green Path Southwest consultant costs that it now expects to recover under the DCA,<sup>54</sup> in addition to unknown internal costs that it will likewise try to recover under the DCA.<sup>55</sup> The product of these \$1.6 million in expenditures was a four-page MOA and two-page supplement which never led to any definitive agreement.<sup>56</sup> Notably, with regard to this MOA, Citizens’ expert witness was not even aware that the Sunrise project that he was working on with IID was intended to include a 500 kV substation at San Felipe near the Anza-Borrego State Park.<sup>57</sup>

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50 Citizens-3, Citizens’ responses to UCAN’s first set of data requests to Citizens, 1-2, Attachment B, “Recoverable under DCA” column. Note that despite having already spent over \$3 million (see Citizens-4, Citizens’ responses to UCAN’s second set of data requests to Citizens, 2-43 and 2-49c for amounts spent in 2010 by just two consultants), Citizens persists in trying to claim that its current estimate of its ultimate total development costs may be as low as \$2.8 million. Citizens-4, Citizens’ response to UCAN’s second set of data requests to Citizens, 2-52a.

51 SDG&E-4, SDG&E’s response to UCAN’S first set of data requests to SDG&E, 1-12, Attachment (letter on 10/05/09 from Citizens’ COO Peter Smith to SDG&E).

52 SDG&E-2, testimony of Michael Calabrese, p. MAC-5, Table MAC-1.

53 Citizens-3, Citizens response to UCAN’s first set of data requests Citizens, 1-2a, 1-2c, and 1-2f.

54 Citizens-3, Citizens response to UCAN’s first set of data requests to Citizens, 1-2, Attachment B.

55 Citizens-3, Citizens response to UCAN’s first set of data requests to Citizens, 1-2, Attachment B, first footnote.

56 SDGE, A.06-08-10, Ex. SD-5 (8/4/06), Appendix I-2.

57 Citizens-4, Citizens’ response to UCAN’s second set of data requests to Citizens, 2-46: “It is Mr. Mayben’s recollection that ... the San Felipe substation ... never came before the CPUC for approval.” For discussion of the San Felipe substation as part of the CPUC-rejected Northern Route that was originally SDG&E’s preferred Sunrise route, see D.08-12-058, pp. 94, 97, 202, and 204.

Second, Citizens has recently incurred over three-quarters of a million dollars in costs for consultants alone in the first ten months of 2009.<sup>58</sup> Because the Commission approved the Sunrise Powerlink in 2008, in D.08-12-058, none of these 2009 costs are related to the development or construction of Sunrise. Third, looking forward, Citizens estimates \$2 million in future costs that it will attempt to recover under the DCA.<sup>59</sup>

Because the Sunrise Powerlink has already been approved, and SDG&E intends to build it with or without Citizens' involvement, none of these costs are related to the construction or development of Sunrise. Although UCAN is not exactly sure what Citizens' "prudently incurred pre-commercial operation costs" will be, UCAN is confident that Citizens will try to include, at a minimum, the three costs described above. In assessing this application, the Commission should assume that Citizens will try to recover these costs at FERC, with little likelihood that FERC will conduct a prudence review and reject them.

### ***B. SDG&E Ratepayers May Pay up to \$22 Million More under the DCA***

In addition to the \$5 million or more in development costs that Citizens can recover under the DCA, Citizens can also recover its annual A&G overhead costs, which are estimated to be a half-million dollars per year, as well as its debt financing fees. These cost increases will be offset by a reduction in SDG&E's debt service costs due to the expected \$83 million payment from Citizens to SDG&E. Moreover, there will be a different weighted average cost of capital ("WACC") under the SDG&E representative rate model with the DCA in effect (8.23% per year

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58 Citizens-3, Citizen's response to UCAN's first set of data requests to Citizens, 1-2, Attachment B.

59 Id., and SDG&E-4, SDG&E's response to UCAN'S first set of data requests to SDG&E, 1-2 Attachment (a letter from Citizens estimating \$5 million in recoverable costs by the time the Sunrise Powerlink goes commercial. The difference between costs the \$2.99 million of costs through November 2009 (Citizens-3, Citizen's response to UCAN's first set of data requests to Citizens, 1-2, Attachment B) and expected future cumulative costs is \$2.01 million.

according to SDG&E testimony)<sup>60</sup> than would occur under current SDG&E rates without the DCA (8.67% per year).<sup>61</sup> SDG&E witness Michael Calabrese has quantified the impact on revenue requirements for each of the situations described above, and determined that both result in higher costs on SDG&E ratepayers. In the low case, or “snap shot” estimate, Mr. Calabrese determined the overall impact of the DCA on ratepayers would be an increased cost of \$77 thousand per year, or \$2.3 million over 30 years.<sup>62</sup> The overall impact of the DCA on ratepayers in SDG&E’s high case, Mr. Calabrese determined, would be an increased cost of \$734 thousand per year, or \$22 million over 30 years.<sup>63</sup>

In the low case estimate, Mr. Calabrese concluded that the ratepayer benefits of a lower cost of capital under the DCA would offset the increased capital costs due to Citizen’s financing costs and development costs, resulting in a capital-related revenue requirement of reduction of \$179 thousand per year with the DCA.<sup>64</sup> On the expense side, Mr. Calabrese concluded that, even in the low case, the increased revenue requirements for Citizens’ A&G overhead costs would outweigh the minor savings in SDG&E debt service costs, leading to a net increase in expenses with the DCA of \$256 thousand per year.<sup>65</sup> This is why the overall impact of the DCA on ratepayers in the low case is \$77 thousand per year, or \$2.3 million over 30 years.

In the high case estimate, Mr. Calabrese concluded that the ratepayer benefits of a lower cost of capital under the DCA would not be enough to offset the increased capital costs due to Citizens’ financing costs and development costs, resulting in a capital-related revenue

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60 SDG&E-2, testimony of Michael Calabrese, pp. MAC-9:18-21 and MAC-13:1-10.

61 SDG&E-2, testimony of Michael Calabrese, pp. MAC-9:11-17 and MAC-13:20-21.

62 SDG&E-2, testimony of Michael Calabrese, p. MAC-12, Table MAC-3, “Total Revenue Requirement on All Costs” line.

63 SDG&E-2, testimony of Michael Calabrese, p. MAC-15, Table MAC-4, “Total Revenue Requirement on All Costs” line.

64 SDG&E-2, testimony of Michael Calabrese, p. MAC-12, Table MAC-3, “Subtotal Capital Related Revenue Requirement” line.

65 SDG&E-2, testimony of Michael Calabrese, p. MAC-12, Table MAC-3, “Subtotal Expense Related Costs” line

requirement increase of \$82 thousand per year with the DCA.<sup>66</sup> On the expense side, Mr. Calabrese concluded that the increased revenue requirements for Citizens' A&G overhead costs would far outweigh the minor savings in SDG&E debt service costs, leading to a net increase in expenses with the DCA of \$652 thousand per year.<sup>67</sup> This is why the overall impact of the DCA on ratepayers in the high case is \$734 thousand per year, or \$22 million over 30 years.

UCAN witness David Marcus thinks, of the two cost estimates that Mr. Calabrese has provided, that the high case is much more likely.<sup>68</sup> His conclusion is based on the development costs Citizens itself expects to have incurred at the time Sunrise goes commercial,<sup>69</sup> not a lower value shown nowhere else. The low case estimate represents costs through 2009,<sup>70</sup> and appears to include costs for consultants only.<sup>71</sup> It has already been superseded.<sup>72</sup> Citizens estimates another \$2 million in consultant costs by the time Sunrise goes operational,<sup>73</sup> plus there are still unknown additional internal costs that Citizens will be able to recover.<sup>74</sup> Moreover, Mr. Marcus thinks that the low case is unrealistic in regards to Citizens future A&G overhead costs. The lower number

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66 SDG&E-2, testimony of Michael Calabrese, p. MAC-15, Table MAC-4, "Subtotal Capital Related Revenue Requirement" line.

67 SDG&E-2, testimony of Michael Calabrese, p. MAC-15, Table MAC-4, "Subtotal Expense Related Costs" line

68 UCAN-1, testimony of David Marcus, p. 11.

69 SDG&E-4, SDG&E's response to UCAN's first set of data requests to SDG&E, 1-12, Attachment (letter on 10/05/09 from Citizens' COO Peter Smith to SDG&E).

70 Id.

71 Compare SDG&E-4, SDG&E's response to UCAN's first set of data requests to SDG&E, 1-12, Attachment (letter on 10/05/09 from Citizens' COO Peter Smith to SDG&E), with Citizens-3, Citizens response to UCAN's first set of data requests to Citizens, 1-2, Attachment B. Both Citizens documents have similar numbers for development costs to date, and the latter explicitly states that it represents only consultant costs and not Citizens' internal costs.

72 Compare SDG&E-4, SDG&E's response to UCAN's first set of data requests SDG&E, 1-12, Attachment (letter on 10/05/09 from Citizens' COO Peter Smith to SDG&E), with Citizens-3, Citizens response to UCAN's first set of data requests to Citizens, 1-2, Attachment B. The latter document shows an additional \$199 thousand in costs from September \$199 thousand in costs from September through November 2009.

73 Citizens, 10/05/09 letter to SDG&E included as an attachment to SDG&E-4, SDG&E's response to UCAN's first set of data requests to SDG&E, 1-12. At least \$50,000 of those costs were already incurred for the rebuttal testimony of witness Wilson in this case. Citizens-4, Citizens' response to UCAN's second set of data requests to Citizens, 2-43. Rebuttal witness Mayben expects to charge Citizens another \$367,400 in 2010-13. Citizens-4, Citizen's response to UCAN's second set of data requests to Citizens, 2-49c.

74 Citizens-3, Citizen's response to UCAN's first set of data requests to Citizens, 1-2, Attachment B.

assumes A&G costs will be spread across other projects that do not yet exist<sup>75</sup>, while the higher number is the one that Citizens “will use...in its FERC filing, which is consistent with the assumptions that it has already shared with FERC staff.”<sup>76</sup> The high case, on the other hand, is realistic in regards to both future A&G overhead costs and pre-commercial development costs<sup>77</sup> since Citizens has told SDG&E that it will “use an estimate of \$5,000,000 for its FERC filing of what its total development costs will be at the time the project is completed and goes commercial” and will “use the upper end of the range [of annual post-commercial A&G costs] in its FERC filing, which is consistent with the assumptions it has already shared with the FERC Staff.”<sup>78</sup>

Even the high case may be understated, since it does not account for the increases in future inflation rates that Citizens claims are possible. Citizens admits that when it calculated the costs to SDG&E ratepayers of scenarios with increased future “money costs,” it did not adjust the inflation rates used to estimate Citizens’ expenses under the DCA.<sup>79</sup> Thus, in evaluating the impact of the DCA on SDG&E ratepayers, the Commission should use the high case estimate of \$22 million over 30 years.

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75 Peter F. Smith, COO of Citizens, letter of 10/5/09 to James P. Avery of SDG&E, provided as an attachment to SDG&E-4, SDG&E’s response to UCAN’s first set of data requests to SDG&E, 1-12: “The ultimate amount [of A&G costs] will depend upon whether the CAISO-related portion of these costs can be spread over more than one project. Citizens will continue to use the upper end of the range in its FERC filing...” Note that Citizens attempted to contradict its own COO’s letter, claiming in rebuttal testimony that it was **not** planning to spread its costs over more than one project. Mayben rebuttal testimony, pp. 15:12-16:3. Witness Mayben’s disavowal of his own COO’s explicit language (“costs can be spread over more than one project”) should be considered by the Commission with regard to how much weight to give his testimony. Citizens also contradicts its COO’s letter to SDG&E in data responses. See Citizens-4, Citizens’ response to UCAN’s second set of data requests to Citizens, 2-48, response (i).  
76 SDG&E-4, SDG&E’s response to UCAN’s first set of data requests, 1-12, Attachment (letter on 10/05/09 from Citizens’ COO Peter Smith to SDG&E).

77 UCAN-1, testimony of David Marcus, p. 12.

78 Peter F. Smith, COO of Citizens, letter of 10/5/09 to James P. Avery of SDG&E, provided as an attachment to SDG&E-4, SDG&E’s response to UCAN’s first set of data requests to SDG&E, DR 1-12.

79 Citizens-3, Citizens’ response to UCAN’s first set of data requests to Citizens, DR 1-33.

#### IV. CONCLUSION

In this brief, UCAN has demonstrated why the Commission should not approve SDG&E's application to lease transfer rights along the Border-East portion of the Sunrise Powerlink to Citizens. In order for the Commission to approve a transfer under Pub. Util. Code §851, the Commission must consider the impact of the transfer on the public interest, and, in particular, the utility's ratepayers. SDG&E's lease to Citizens pursuant to the DCA does not benefit SDG&E ratepayers. Citizens' fixed rate of return will not benefit SDG&E ratepayers unless SDG&E's ROE rises above its current 11.35%, which UCAN witness David Marcus has determined is unlikely to happen.

The more likely result is that SDG&E ratepayers will have to pay more under the DCA than they would have if the DCA had not been executed, because Citizens will seek to recover its alleged "development" costs, future A&G overhead costs, and debt financing costs. Further, although SDG&E and Citizens claim that the DCA will benefit SDG&E ratepayers and the public because it will lead to more transmission developments in the Imperial Valley involving Citizens, UCAN has demonstrated that this is simply untrue. No transmission projects in the Imperial Valley will be affected if the Commission does not approve SDG&E's application.

Indeed, the application presented by SDG&E and Citizens actually reveals a financial transaction that leverages current FERC transmission incentives in order to secure reimbursement for Citizens of its costs incurred in its support of the Sunrise transmission project. SDG&E is able to reward Citizens for its support of this controversial transmission project by burying up to \$22 million in higher costs in a fairly complex leasing arrangement. On the surface, the lease arrangement appears benign. Yet, when UCAN dug into the scheme, it found compelling evidence that not only did SDG&E ratepayers not benefit but were more likely to be

the ultimate losers in the deal. For the reasons discussed above, the Commission should reject this application as proposed.

Respectfully submitted,  
/s/

Dated: June 18, 2010

Michael Shames, Esq.  
Ryan Hanley  
On behalf of UCAN

**PROOF OF SERVICE**

I, Laura Impastato, declare: I am employed in the City and County of San Diego, California. I am over the age of 18 years and am not a party to this action. On June 18, 2010, I served the Opening Brief of UCAN on the parties in this proceeding by supervising the electronic service of the document on all parties on the attached service list pursuant to the ALJ's instructions.

/s/

Laura Impastato

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