

**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 on October 9, 2009)

OPENING BRIEF OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)

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Pursuant to Rule 13.11 of the California Public Utilities Commission's ("Commission's") Rules of Practice and Procedure and the briefing schedule adopted by Administrative Law Judge ("ALJ") Myra Prestidge, San Diego Gas & Electric Company ("SDG&E") respectfully submits this Opening Brief in support of its Application for approval under Public Utilities Code Section 851 ("Section 851") to lease transfer capability rights to Citizens Energy Corporation ("Citizens") pursuant to the Development and Coordination Agreement ("DCA") between SDG&E and Citizens, dated May 11, 2009.¹

I. SUMMARY OF RECOMMENDATIONS

The main element of the DCA is an option to lease a 50 percent portion of the transfer capability on that portion of the Sunrise Powerlink Transmission Project ("Sunrise") located in Imperial County ("Border-East Line").² The DCA also contains the principal terms of the future lease (assuming the option is exercised) between SDG&E and Citizens, including a thirty year term and Citizens' obligation to make a pre-paid rent

¹ SDGE-5 DCA (Attachment 1 to SDG&E's Section 851 Application).

² See SDGE-5 at DCA Section 4.2 and map at Schedule 1.1 (Attachment 1 to SDG&E's Section 851 Application).

payment to lease the transfer capability.³ The pre-paid rent term is equal to “50% of the actual cost incurred by SDG&E to develop, design, permit, engineer and construct the Border-East Line”⁴ Currently, this pre-paid rent amount is estimated to be approximately \$83 million.⁵ Finally, the DCA provides that it is contingent upon approvals required by the Commission and the Federal Energy Regulatory Commission (“FERC”).⁶

With respect to FERC, the DCA provides that Citizens will file with FERC a transmission service tariff for recovery of its costs associated with its transfer capability in the Border-East Line and that such transfer capability will be provided to California Independent System Operator (“CAISO”) customers “at rates, terms and conditions deemed just and reasonable and not unduly discriminatory by FERC pursuant to Section 205 of the Federal Power Act.”⁷ As explained in further detail below, Citizens has already obtained FERC approval of its ratemaking methodology and is prepared to obtain Section 205 verification of the reasonableness of its CAISO customer rates through a transmission rate formula that will be populated through informational rate filings made at FERC with actual costs as they are known.

With respect to CPUC approval, Section 851 is the relevant statute and provides that no public utility “shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of . . . property necessary or useful in the performance of its duties to the public, . . . without first having secured from the commission an order

³ SDGE-5 DCA at Sections 2.1, 2.2, 4.2.4 and Schedule 2.2 (Attachment 1 to SDG&E’s Section 851 Application).

⁴ SDGE-5 DCA at Section 4.2.4 (Attachment 1 to SDG&E’s Section 851 Application).

⁵ SDGE-2 at MAC-3, lines 9 – 11 (testimony of Michael Calabrese).

⁶ SDGE-5 DCA at Section 4.3 (Attachment 1 to SDG&E’s Section 851 Application).

⁷ SDGE-5 DCA Schedule 2.2, Section 3.1 (Attachment 1 to SDG&E’s Section 851 Application).

authorizing it to do so.”⁸ Historically, the Commission has considered the “public interest” as its “guiding post” in evaluating Section 851 applications.⁹ The minimum standard has been whether “the transaction being proposed in a particular application is ‘not adverse to the public interest.’”¹⁰ That said, Commission Section 851 decisions also reflect encouragement of agreements which serve the public interest.¹¹ These decisions hold that 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.”¹² Accordingly, although the Commission’s Section 851 review may encompass rate impacts, it is not limited to such a review and encompasses a broader range of public interest effects.

Here, the record evidence¹³ demonstrates that the DCA meets the “not adverse to the public interest” standard. Based on a balanced consideration of key terms and effects, the record evidence also shows that the DCA will serve the public interest by making productive use of utility property without interfering with utility operations or service. As discussed in greater detail below, the factors weighing in favor of the DCA’s overall productive impact include the following:

- Prepaid Rent to SDG&E: The prepaid rent owed by Citizens to SDG&E for the transfer capability (currently estimated to be \$83 million) is the

⁸ P.U. Code Section 851

⁹ D.09-07-035 at p. 13.

¹⁰ *Id.*

¹¹ *See e.g.*, D.09-04-013 at p. 6.

¹² *Id.* (quoting D.02-01-058).

¹³ In addition to arguing in favor of Section 851 approval, this Opening Brief requests that SDG&E’s evidence be moved into the record of this proceeding as follows: James Avery (SDGE-1), testimony of Michael Calabrese (SDGE-2), testimony of Randall Rose (SDGE-3), SDG&E’s response to the Utility Consumers Action Network’s (“UCAN’s”) first set of data requests to SDG&E (SDGE-4), and SDG&E’s Section 851 Application, including its Attachments (SDGE-5). Citizens’ evidence will be to Citizens-1 (testimony of John Wilson), Citizens-2 (testimony of William Mayben), Citizens-3 (Citizens’ response to UCAN’s first set of data requests to Citizens), and Citizens-4 (Citizens’ response to UCAN’s second set of data requests to Citizens).

proportionate share of the actual cost incurred by SDG&E to develop, design, permit, engineer and construct the Border-East Line through the Imperial Valley.

- Benefits to Imperial County: The DCA represents a unique opportunity for SDG&E to work with a non-profit whose commercial subsidiaries support a wide array of social and charitable programs in the United States and abroad. Consistent with its business philosophy, Citizens has agreed to spend fifty percent of its DCA-related profits, after taxes, to fund programs serving low income families in Imperial County– in which the Boarder-East Line is located and one of the poorest counties in California.
- Benefits to Transmission Development: Citizens, as a non-utility financial participant in electric transmission, is a new competitor in an industry that is traditionally absent of competition. The DCA, therefore, is consistent with the value recognized by the Commission of bringing new entrants into transmission development. Moreover, Citizens has expressed an interest in facilitating the development of new transmission resources beyond the Border-East Line. For example, as described in greater detail below, Citizens intends to study the feasibility of a project that could enhance the transfer capacity between Arizona and California by up to several thousand megawatts and would provide renewable developers with greater opportunities to reach both the California and Arizona transmission grids. Approval of the DCA will serve as a catalyst and encourage Citizens and other new entrants to further engage in these types of projects.

- Benefits to Rate Stability: Pursuant to the DCA, the capital cost recovery rate that Citizens will be able to charge will not be subject to change.¹⁴ In other words, Citizens would be providing long-term rate stability to the extent that capital market costs ever increased significantly during the 30 years of Citizens' participation by locking in all 100 percent of its required financing over 30 years as opposed to a traditional investor-owned utility's financing that would have half of its costs subjected to swings in the equity markets.

The productive uses reflected above will be achieved without interfering with SDG&E's operations or affecting service to its customers. As set forth in greater detail below, the most significant DCA terms relevant to non-interference with utility operations and service are as follows:

- Cap on Capital Cost Rate: SDG&E was concerned that Citizens could obtain a FERC-approved rate much greater than the rate SDG&E would charge in the absence of the DCA. However, it is also possible that FERC would approve a rate much lower than the rate SDG&E would charge. With this in mind, the DCA includes a model designed to generate what is called a "SDG&E Representative Rate," which approximates the capital cost recovery rate SDG&E would charge for Citizens' interest, including some of Citizens' incremental development costs. Under this approach, even if FERC were to approve a capital cost recovery rate greater than the rate SDG&E would charge, Citizens would only be able to charge the

¹⁴ As explained in more detail below, the DCA includes a model designed to generate a cap on Citizens' capital cost recovery rate. The DCA provides that this capital cost recovery rate, which is the largest cost component in the rate that Citizens will be able to charge, will remain fixed for the 30-year term of the lease and other costs (including O&M costs) will vary from year to year based on actual costs.

SDG&E Representative Rate. If FERC approves a rate lower than the SDG&E Representative Rate, the lower FERC rate will apply.

- Development and Construction: The DCA does not affect SDG&E's responsibility for the development, design, permitting, engineering, procurement and construction of Sunrise, including the Border-East Line.
- Operations and Maintenance, Capital Improvements, and Interconnection: The DCA provides that SDG&E shall be responsible for all operations and maintenance services. SDG&E shall charge Citizens the actual costs incurred for the operations and maintenance associated with Citizens' proportionate share of Sunrise, plus applicable overheads.
- Transfer of Operational Control to CAISO: The DCA requires that Citizens become a Participating Transmission Owner ("PTO") under the CAISO tariff and that for so long as SDG&E is part of the CAISO, Citizens shall transfer operational control of its transfer capability to the CAISO.
- 33% RPS Commitment Is Unaffected: The Border-East Line will not interfere with SDG&E's commitment made to the Commissioners in the Sunrise proceeding to meet its 33 percent RPS commitment.
- Assurances Concerning Ratemaking and Accounting Principles: Via SDG&E's FERC Petition for Declaratory Order and the supporting affidavit of R. Craig Gentes ("SDG&E's FERC Petition"), SDG&E sought approval of a proposed accounting and ratemaking treatment ensuring that it would not be permitted to "double recover" both from Citizens and from CAISO customers the capital costs for the Border-East Line that is the subject of the DCA.

Based on all these positive public interest impacts and facts demonstrating that SDG&E's operations and service are unaffected, Section 851 approval of the DCA is justified.

II. BACKGROUND

A. Sunrise

On December 18, 2008, in D.08-12-058, the Commission granted SDG&E's application for a Certificate of Public Convenience and Necessity to construct Sunrise. In its Decision approving the project, the Commission determined that Sunrise will generate net benefits, primarily reliability related, and the delivery of renewable generation in the Imperial Valley of California, of over \$117 million per year to CAISO customers.¹⁵ "As approved, Sunrise is comprised of a new electric transmission line of approximately 120 miles between the existing Imperial Valley and Sycamore Canyon Substations, a proposed new Suncrest Substation, and other system modifications in order to reliably operate the new line."¹⁶ Sunrise is comprised of three separate segments or "links" according to geographical location, including the Imperial County 500 kV Link (Border-East Line) that traverses approximately 30 miles.¹⁷

B. Citizens

Citizens is a non-profit corporation exempt from federal taxes under Section 501(c)(4) of the Internal Revenue Code, with its principal headquarters located in Boston, Massachusetts.¹⁸ Thus, "unlike most private corporations that are in business to earn profits so that they can pay dividends and build equity funded asset value through retained

¹⁵ On July 9, 2009, in D.09-07-024, the CPUC issued its Order Modifying D.08-12-058 and Denying Rehearing of Decision, As Modified.

¹⁶ SDGE-1 at JPA-3, lines 13-16 (testimony of James Avery).

¹⁷ SDGE-1 at JPA-3, lines 19-24 (testimony of James Avery).

¹⁸ SDGE-5 at p. 8 (SDG&E's Section 851 Application, verified by Citizens' Chief Operating Office, Peter Smith, as to facts related to Citizens).

earnings for the benefit of their stockholders, Citizens' business purpose is to earn profits to support its various programs."¹⁹ Here, Citizens will utilize a limited liability company, which will be a subsidiary of Citizens Business Enterprises, to effectuate the ultimate lease transaction with SDG&E, including Citizens agreement to share 50 percent of any profits it earns over its costs to support low income assistance programs in the Imperial Valley, where the Border-East Line is located.²⁰ "The other half of Citizens' profits will be used to support Citizens' other social programs throughout California and the rest of the nation, including Citizens' energy oil heat program, which helps hundreds of thousands of the neediest households in 23 states from volatile heating oil prices."²¹

C. History Leading To The DCA²²

To facilitate cooperative development and shared ownership of Sunrise in the Imperial Valley, on March 16, 2006, SDG&E, the Imperial Irrigation District ("IID") and Citizens executed a Memorandum of Agreement ("MOA"). Subsequently, in the summer of 2006, CAISO initiated the CAISO South Regional Transmission Plan - 2006 ("CSRTP") to study three projects, including Sunrise. The CSRTP's objective was "to assess the need and value of these three projects while accounting for their interactions and interdependencies."²³ The CSRTP described SDG&E, Citizens and IID as "Project Sponsors."²⁴ The CSRTP concluded its assessment in late July and presented its findings in a report to the CAISO Board of Governors ("Board") on July 28, 2006. At its August 3,

¹⁹ Citizens-1 at p. 4, lines 8-12 (testimony of John Wilson).

²⁰ SDGE-5 at p. 8 (SDG&E's Section 851 Application, verified by Citizens' Chief Operating Officer, Peter Smith, as to facts related to Citizens); Citizens-1 at p. 4, lines 12-15 (testimony of John Wilson).

²¹ Citizens-1 at p. 4, line 18 to p. 5, line 2 (testimony of John Wilson).

²² SDGE-1 at JPA 4, line 1 to JPA-6, line 21.

²³ See SDGE-1 at JPA 4, line 8-10 (quoting CSRTP-2006, Findings and Recommendations on the Tehachapi Transmission Project, January 24, 2007 at page 3 [<http://www.caiso.com/1b6b/1b6bb5f07ad2.pdf>]).

²⁴ *Id.* (quoting CSRTP-2006, Presentation to the STEP Meeting, May 5, 2006 at page 5 [<http://www.caiso.com/17f0/17f0ca0029100.pdf>]).

2006 meeting, the Board unanimously approved Sunrise. In approving the Project, the Board specifically determined that Sunrise is:

. . . a necessary and cost effective upgrade to the CAISO Controlled Grid that will also facilitate compliance with California renewable energy purchase requirements. . . .”²⁵

Indeed, the Board approval went so far as to “direct” SDG&E and Citizens to develop the project:

[The CAISO] . . . directs San Diego Gas and Electric Company and Citizens Energy (Project Sponsors) to proceed with the permitting and construction of the transmission project by the summer of 2010”²⁶

IID ultimately terminated its interest in co-development of Sunrise under the MOA in November 2007 because the disagreements over routing were not resolvable. SDG&E is still amenable to co-development of Sunrise with IID, but that avenue presently appears no longer feasible. Because SDG&E remained committed to continue negotiating with Citizens as one of the key preliminary partners, on May 11, 2009, SDG&E and Citizens signed the DCA.

III. THE DCA SERVES THE PUBLIC INTEREST

As noted above, the Commission’s minimum Section 851 test is whether the agreement in question is adverse to the public interest. Here, as shown below, the opposite is true in that the DCA serves the public interest by making productive use of utility property without interfering with the utility’s operation or service to customers. Accordingly, Section 851 approval of the DCA is warranted.

²⁵ *Id.* (quoting General Session Minutes Board of Governor Meeting, August 3, 2006 at page 5 [http://www.caiso.com/pubinfo/BOG/minutes/docs/060803_final_boggen_minutes.pdf]).

²⁶ *Id.*

A. The DCA Serves The Public Interest By Making Productive Use Of Utility Property

The DCA facilitates productive use of utility property via is specific terms which lead to positive impacts in Imperial Valley and throughout California. The following is a summary of these terms and impacts:

1. Prepaid Rent To SDG&E²⁷

The prepaid rent owed by Citizens to SDG&E for the transfer capability (currently estimated to be \$83 million) is equal to the proportionate share of the actual cost incurred by SDG&E to develop, design, permit, engineer and construct the Border-East Line through the Imperial Valley. The rent will be paid in a lump sum at the closing of the transaction after Citizens exercises its option. The parties will attach a schedule to the lease allocating the prepaid rent over the lease term and will report the rent as accruing for tax purposes quarterly in arrears according to the schedule. They will treat the prepayment to the extent it exceeds the rent that has accrued as a loan by Citizens to SDG&E that bears interest at a rate equal to 110 percent of the “applicable federal rate” as required by Section 467 of the U.S. Tax Code.

2. Benefits To Imperial County²⁸

Citizens has agreed to spend 50 percent of its profits, after taxes, to fund programs serving low income families in Imperial County– in which the Boarder-East Line is located and one of the poorest counties in California. By enhancing the development potential of renewable projects (discussed in more detail below) in this area of California, the DCA will improve both the employment opportunities and the tax base in Imperial County.

²⁷ See SDGE-1 at JPA-9, lines 5-17 (testimony of James Avery); SDGE-5 at DCA Article IV, Section 4.2.4 and Schedule 2.2, Section 6 (Attachment 1 to SDG&E’s Section 851 Application); SDGE-3 (testimony of Randall Rose).

²⁸ See SDGE-1 at JPA 23, lines 1-15; SDGE-5 at DCA, Schedule 2.2, Section 4 (Attachment 1 to SDG&E’s Section 851 Application).

Citizens has gone further to publicly commit that its participation in the Border-East Line will not affect property tax proceeds paid to Imperial County.

3. Benefits To Transmission Development²⁹

Citizens is not a public utility with an obligation to serve and, as such, is significantly different from a traditional utility, both in structure and in its exposure to regulatory risk. Citizens, as a non-utility financial participant in electric transmission, is a new competitor in an industry that is traditionally absent of competition. As evidenced by a June 25, 2009 letter that the CPUC filed in a Startrans, IO, LLC proceeding in Docket No. ER08-413-002, the CPUC recognizes the value of bringing new entrants into transmission development.³⁰

The value of Citizens' participation goes beyond the Border-East Line portion of Sunrise. SDG&E's interest has been primarily focused on the reliability benefits to the San Diego region and for gaining access to the renewable resources that are stranded within the Imperial Valley region. As described by Citizens in its Petition for Declaratory Order and supporting affidavits filed at FERC and in the testimony of Citizens' witness, William Mayben, Citizens has expressed an interest in helping to unlock additional resources within the Imperial Valley.³¹ Citizens has also expressed an interest in facilitating the development of new transmission resources beyond the Border-East Line.

For example, Citizens has been a partner in discussions around the Green Path North project and, as noted above, entered into a Memorandum of Understanding in July of 2009 with the Western Area Power Administration ("WAPA") ("Citizens-WAPA

²⁹ See SDGE-1 at JPA-20, line 20 to JPA-22, line 22.

³⁰ The CPUC's June 25, 2009 letter can be found at:
<http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12083655>

³¹ SDGE-5 Citizens Petition for Declaratory Order to Authorize Rate Treatments for the Sunrise Powerlink Project, dated October 9, 2009 (Attachment 2 to SDG&E's Section 851 Application).

MOU”), with WAPA acting under its new American Recovery and Reinvestment Act of 2009 (“Recovery Act”), Public Law No. 111-5. The Recovery Act directs WAPA to facilitate the delivery of renewable resources. As described by Citizens in its FERC filings, is currently studying the technical feasibility of the transmission assets comprising Citizens’ Imperial Valley Renewables Transmission Project (“IVRTP”).³² The proposed IVRTP would interconnect the transmission systems of major utilities in Arizona and California with new 500 kV transmission lines. This project could enhance the transfer capacity between Arizona and California by up to several thousand megawatts and would provide renewable developers with greater opportunities to reach both the California and Arizona transmission grids. Citizens’ FERC filings describe Citizens’ efforts under its Citizens-WAPA MOU to develop the IVRTP which have already triggered a broader discussion among WAPA, Citizens, SDG&E, IID, and other regional utilities examining the feasibility of pursuing the IVRTP in conjunction with extensive transmission additions in western Arizona which would even further strengthen the transmission system needed to deliver renewable resources in southern California and the desert southwest. While these discussions are in their early stages, it is expected that WAPA, Citizens, SDG&E and other utility participants will be undertaking extensive economic studies in the fall of 2010 of the financial feasibility of the IVRTP along with other similar projects to attract development of renewable resources in the desert region. Citizens has been a leader in spearheading the discussion which have led to these developments so far..³³

³² See also Citizens-2 at pp. 18-19 (testimony of William Mayben).

³³ Citizens-2 at p. 16, line 25 to p. 22, line 9 (testimony of William Mayben).

4. Benefits To Rate Stability³⁴

Rate stability for the Citizens' entitlement in the Border-East Line for 30 years offers substantial value to customers. As discussed in detail below, Citizens' capital cost recovery rate will not be subject to change after it closes its levelized debt financing necessary to fund the lease over the term of the agreement (compared to SDG&E's capital cost recovery rate for which SDG&E can seek a higher rate of return after its FERC TO3 Settlement Agreement expires in 2013). In other words, Citizens would be providing long-term rate stability to the extent that capital market costs ever increased significantly during the 30 years of Citizens' participation by locking in all 100 percent of its required financing over 30 years as opposed to a traditional investor-owned utility's financing that would have half of its costs subjected to swings in the equity markets. While the capital cost component will be capped during the lease term, at the end of this lease the capital costs for the portion of the Border-East Line will be fully depreciated and customers will have the benefit of 28 years remaining useful life for this facility.

B. The DCA Does Not Interfere With The Utility's Operation Or Affect Service To Utility Customers

There are a number of key features of the DCA which ensure that while it facilitates productive use of utility property, it will not interfere with SDG&E's operation or service to customers. Those specific features are as follows:

1. Cap On Capital Cost Rate³⁵

One of SDG&E's main goals in negotiating the DCA was to ensure that ratepayers would be protected from rates above that which SDG&E would charge without Citizens' involvement, keeping in mind that such involvement could come at an incremental cost.

³⁴ See SDGE-1 at JPA-26, lines 5-18 (testimony of James Avery); SDGE-2 at MAC-12, lines 3-10 (testimony of Michael Calabrese); Citizens-1 at p. 22, line 8 to p. 29, line 9 (testimony of John Wilson).

³⁵ See SDGE-1 at JPA-9, line 18 to JPA-12, line 16 and JPA-24, line 21 to JPA-26, line 4 (testimony of James Avery); SDGE-2 (testimony of Michael Calabrese).

Specifically, SDG&E was concerned that Citizens could obtain a FERC-approved rate much greater than the rate SDG&E would charge in the absence of the DCA, to the detriment of ratepayers. However, it is also possible that FERC would approve a rate much lower than the rate SDG&E would charge, to the benefit of ratepayers. With this in mind and because the largest cost component in the rate that Citizens will be able to charge is the capital cost, the DCA includes a model designed to generate what is called a “SDG&E Representative Rate,” which approximates the capital cost recovery rate SDG&E would charge for Citizens’ interest including some of Citizens’ incremental development costs. Under this approach, even if FERC were to approve a capital cost recovery rate greater than the rate SDG&E would charge, Citizens would only be able to charge the SDG&E Representative Rate. On the other hand, if FERC were to approve a capital cost recovery rate that was, for example, 50 percent less than the SDG&E Representative Rate, Citizens could not charge the higher SDG&E Representative Rate.

As described in greater detail in the testimony of SDG&E witness Michael Calabrese, the SDG&E Representative Rate constitutes a ceiling or cap on the capital cost rate Citizens may charge. Because this SDG&E Representative Rate is determined based on actual costs incurred by SDG&E and Citizens, it is impossible to predict with 100 percent certainty what the SDG&E Representative Rate will be at the time Citizens actually exercises its option under the DCA. Nevertheless, these costs can be estimated and in an effort to provide an illustrative comparative analysis of annual levelized revenue requirements that include both incremental capital and expense related costs that arise as a result of the DCA, Mr. Calabrese’s testimony includes a comparison of a current snap shot case for SDG&E and a current snap shot case and high case for Citizens. The SDG&E snap shot case was prepared from the perspective that Citizens would not exercise its

option under the DCA and therefore not participate in the Border-East Line. Conversely, the Citizens snap shot case and high case were prepared from the perspective that Citizens would exercise its option under the DCA and participate in the Border-East Line. The annual levelized revenue requirements for this comparative analysis are produced from the SDG&E Representative Rate Model (“Model”) referenced in the DCA, with modifications made to the capital structure depending on the case.

Ultimately, Mr. Calabrese’s testimony shows that the annual discounted and levelized revenue requirement under the snap shot case is slightly higher for Citizens by \$77 thousand or 0.6 percent when compared to that of SDG&E. The annual discounted and levelized revenue requirements under the high case is \$734 thousand or 5.8 percent higher for Citizens when compared to SDG&E. Before any actual costs can be collected, however, Citizens will have to file its proposed tariff with FERC in a Section 205 rate proceeding where all affected parties will have an opportunity to examine their justness and reasonableness. It should also be noted that Citizens’ costs will be recovered from all California electric consumers who receive transmission service from load serving entities which are participants in the CAISO, through the CAISO’s Transmission Access Charge. Moreover, the absolute amounts of any rate differences are *de minimis* given the relative magnitude of the overall dollars at stake (Citizens’ participation will be only to the extent of approximately \$83 million out of a total Sunrise cost of approximately \$1.9 billion). Finally, it should be noted that the differences of between 0.6 percent and 5.8 percent in the present value of rates are being calculated in the context of 30 year forecasts and are easily within the margin of forecasting error.

2. Limited Option Term³⁶

Citizens may exercise its option by delivering written notice to SDG&E no later than 90 days prior to the targeted commercial operation date of Sunrise. If Citizens fails to exercise its option within the defined period prior to the targeted commercial operation date, such unexercised option will expire.

3. Development And Construction³⁷

The DCA does not affect SDG&E's responsibility for the development, design, permitting, engineering, procurement and construction of Sunrise, including the Border-East Line. SDG&E will bear all costs for development and construction of the Border-East Line and will not convey the transfer capability to Citizens until such time as Citizens has exercised and closed its option, as described above.

4. Operations And Maintenance, Capital Improvements, And Interconnection³⁸

The DCA provides that SDG&E shall be responsible for operations and maintenance services. SDG&E shall charge Citizens the actual costs incurred for the operations and maintenance associated with Citizens' proportionate share of Sunrise, plus applicable overheads. To the extent of their proportionate share of transfer capability, SDG&E and Citizens will share pro rata any increases in the transfer capability on Sunrise resulting from changes to the configuration of adjoining systems or upgrades to adjoining systems. Subject to the CAISO tariff and rules governing interconnection, as between SDG&E and Citizens, SDG&E will be the interconnection agent for Sunrise.

³⁶ SDGE-5 at DCA Article IV, Section 4.2 (Attachment 1 to SDG&E's Section 851 Application).

³⁷ SDGE-5 at DCA Article III, Section 3.1 (Attachment 1 to SDG&E's Section 851 Application).

³⁸ SDGE-5 at DCA Schedule 2.2, Section 5 (Attachment 1 to SDG&E's Section 851 Application).

5. Transfer Of Operational control To CAISO³⁹

As noted above, the DCA requires that Citizens become a PTO under the CAISO tariff and turn over to the CAISO operational control of its transfer capability, as SDG&E will do with its transfer capability. If SDG&E ceases its participation in the CAISO, Citizens will transfer to SDG&E (or whatever entity has operational control over SDG&E's transmission system) operational control over Citizens' transfer capability. Citizens shall obtain and maintain status as a PTO for so long as SDG&E is a part of CAISO. This provision assures the benefits to SDG&E's customers of ownership in the Border –East Line will always flow to these customers.

6. Internal Revenue Code §467⁴⁰

An exception to the general income tax rules is provided for lease transactions by Internal Revenue Code Section 467 (“IRC §467”). Where a lease agreement calls for prepaid rent, the parties must recognize the expenses and revenues from the transaction in a reciprocal manner during the life of the lease agreement. As more fully described in the testimony of SDG&E witness Randall Rose, SDG&E and Citizens agreed to structure the transaction as an IRC §467 lease in conformity to IRS rules regarding prepaid rent in order to obtain more certainty regarding the tax treatment that both parties desired.

7. Termination And Reinstatement⁴¹

SDG&E has the right to terminate the DCA and be under no obligation to pursue additional development activities if:

- (a) any of the applications for the regulatory approvals are denied, or are approved with conditions that are unacceptable to SDG&E or otherwise materially inconsistent with Sunrise;

³⁹ SDGE-5 at DCA Schedule 2.2, Section 2 (Attachment 1 to SDG&E's Section 851 Application); *see also* SDGE-1 at JPA-14, line 19 to JPA-15, line 15 (testimony of James Avery).

⁴⁰ SDGE-5 at DCA Schedule 2.2, Section 6 (Attachment 1 to SDG&E's Section 851 Application); SDGE-3 (testimony of Randall Rose).

⁴¹ SDGE-5 at DCA Article VIII, Section 8.1 (Attachment 1 to SDG&E's Section 851 Application).

- (b) the receipt of any regulatory approvals is delayed such that SDG&E will not be able to reasonably complete construction activities until 12 months after the targeted commercial operation date;
- (c) FERC issues a final and binding order that would preclude SDG&E from recovering, in SDG&E's reasonable estimation, a return of and on any portion of its investment; or
- (d) it is no longer reasonably feasible for SDG&E to continue development, design, permitting, engineering, procurement and construction activities for Sunrise.

If within five years of the effective date SDG&E resumes development of Sunrise, then this termination will no longer be effective and the option will be automatically reinstated.

8. Right Of First Refusal⁴²

SDG&E has a right of first refusal in any proposed sale of Citizens' leasehold interest in the Border-East Line.

9. 33% RPS Commitment Is Unaffected⁴³

The Border-East Line will not interfere with SDG&E's commitment made to the Commissioners in the Sunrise proceeding to meet its 33 percent RPS commitment. Moreover, whether Citizens leases a portion of the line has no effect on the CAISO's duty to provide non-discriminatory access to Sunrise. Sunrise will provide the avenue for delivery of resources from the renewable-rich Imperial Valley region and is essential to meeting SDG&E's voluntary commitment to 33 percent renewables.

10. Assurances Concerning Ratemaking And Accounting Principles

SDG&E filed with FERC a Petition for Declaratory Order and the supporting affidavit of R. Craig Gentes ("SDG&E's FERC Petition"), which was appended to the testimony of James Avery (SDGE-1) as Appendix 2. The purpose of this filing was to

⁴² SDGE-5 at DCA Article XII, Section 12.2.2 (Attachment 1 to SDG&E's Section 851 Application).

⁴³ SDGE-1 at JPA-24, lines 10-20 (testimony of James Avery).

obtain approval of proposed accounting and ratemaking treatment for the Border-East Line so that during the term of the DCA, SDG&E would not seek to recover in its transmission rates any capital costs that are the subject of the lease. Further, as noted above, at the conclusion of the lease, SDG&E will not have on its books any capital costs associated with the Citizens transaction because it will have fully depreciated that portion of the Border-East Line that was the subject of the lease. Accordingly, SDG&E's FERC Petition sought to provide assurances to the Commission and to CAISO customers that SDG&E will not be permitted to "double recover" both from Citizens and from CAISO customers the capital, O&M and A&G costs for the Border-East Line that is the subject of the DCA. On December 17, 2009, in *San Diego Gas & Electric Company*, Order on Petition for Declaratory Order, 129 FERC ¶ 61,233 (2009) ("Order"), FERC stated its support for this principle of "no double recovery," although it accomplished the requested outcome not by adopting SDG&E's proposed accounting and ratemaking treatments but instead by directing SDG&E to utilize other accounting mechanisms. SDG&E's intention is to follow the directions provided by FERC in its Order so that it will recover from charges to Citizens and not to CAISO customers the capital, O&M and A&G costs for the Border-East Line that is the subject of the DCA. By application of the FERC-directed accounting and rate treatment for these costs, there will not exist any opportunity for SDG&E to "double recover" these costs both from Citizens and from CAISO customers.

IV. FERC WILL ULTIMATELY DETERMINE THE REASONABLENESS OF THE RATES CITIZENS CAN CHARGE TO CAISO CUSTOMERS

As noted above, Citizens recently obtained FERC approval of its ratemaking methodology for the DCA. Specifically, on December 17, 2009, by Declaratory Order, FERC approved Citizens' request to (1) determine capital requirements based on a return on rate base incorporating a hypothetical capital structure and (2) recover capital costs on a

fixed levelized basis over the thirty year period of the lease.⁴⁴ FERC also granted approval for Citizens to recover operating costs and capital requirements in the Border-East Line under a formula rate that will subsequently be filed in a Federal Powers Act, Section 205 filing.⁴⁵ Thus, the ultimate rate Citizens will charge CAISO customers is that which is deemed just and reasonable and not unduly discriminatory by FERC.

The Utility Consumers' Action Network ("UCAN"), the only protestor in this proceeding⁴⁶, has based its main objection to approval of the DCA on a concern that the DCA will lead to an increase in rates for SDG&E's customers (a subset of the CAISO customers that will be charged by Citizens). As noted above, there is a possibility that the DCA will cause an incremental increase in CAISO customer rates over those that would be charged if Citizens was not involved, but that risk is mitigated by several factors, including, but not limited to, the capped nature of the rates Citizens will be able to charge, the benefits of rate stability associated with the DCA and the real possibility that Citizens' rates will be lower than the rates that would be charged by SDG&E without Citizens' involvement. However, regardless of the possible disparity in rates, the reasonableness of Citizens' rates (including the reasonableness of Citizens' incremental development and operational costs) will ultimately be determined in a future Section 205 rate proceeding before FERC.

Clearly, UCAN is free to intervene in Citizens Section 205 rate proceeding, but even if it does not, FERC will determine a reasonable rate and, as noted above, if the rate is higher than the SDG&E Representative Rate, the SDG&E Representative Rate will prevail. Accordingly, UCAN's limited protest is insufficient because it fails to consider all

⁴⁴ 129 FERC ¶61, 242 (Docket No. EL10-3-000), paragraphs 22 and 23.

⁴⁵ *Id.* at paragraph 25.

⁴⁶ The other party in this proceeding, the Division of Ratepayer Advocates ("DRA") filed a response generally supportive of the Application.

the relevant factors. If UCAN had taken a more balanced approach to considering the DCA, it would have concluded that the DCA serves the public by making productive use of the Border-East Line without interference with SDG&E's operations or service. This is not to say that the Commission's authority to conduct a public interest review under Section 851 does not encompass rate impacts, but rather that, in this case, since FERC will determine a reasonable rate for the relevant CAISO customers (some of whom are SDG&E customers) the analysis should not turn on or be limited to rate impacts and should encompass all the productive use and non-interference factors discussed above, all of which lean in favor of the DCA.

V. MOTION TO RECEIVE SDG&E'S EVIDENCE INTO THE RECORD

SDG&E hereby moves that the following evidentiary Exhibits in support of its Section 851 Application be received into the record of this proceeding:

SDGE-1: Direct Testimony of James Avery

SDGE-2: Direct Testimony of Michael Calabrese

SDGE-3: Direct Testimony of Randall Rose

SDGE-4: SDG&E Responses to First Set of UCAN's Data Requests

SDGE-5: SDG&E verified Section 851 Application, including Attachment 1 (DCA), Attachment 2 (Citizens' FERC Petition, dated October 9, 2009) and Attachment 3 (SDG&E financial documents).

In conjunction with the filing of this brief, properly marked copies of each of the foregoing Exhibits will be served on the parties and the Assigned Commissioner and ALJ.

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true and correct copy of the foregoing **OPENING BRIEF OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)** to each party named in the official service for this proceeding (A.09-10-010). Those parties without an email address were served by placing copies in properly addressed and sealed envelopes and depositing such envelopes in the United States Mail with first-class postage prepaid. Hard copies will also be sent to the Assigned Commissioner and Administrative Law Judge.

Dated at San Diego, California, this 18th day of June, 2010.

/s/ Lisa Fucci-Ortiz
Lisa Fucci-Ortiz



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