BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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 CITIZENS ENERGY CORPORATION REGARDING APPLICATION OF SAN DIEGO GAS & ELECTRIC FOR APPROVAL PURSUANT TO PUBLIC UTILITIES CODE SECTION 851 TO LEASE CERTAIN TRANSFER CAPABILITY RIGHTS

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SUMMARY OF RECOMMENDATIONS (Rule 13.11)

The Commission should approve the proposed transaction under Public Utilities Code Section 851 ("Section 851"), thereby authorizing San Diego Gas & Electric Company to lease transfer capability rights along the Imperial Valley section (known as the Border-East Line) of its Sunrise Powerlink Transmission Project to Citizens Energy Corporation, pursuant to the Development and Coordination Agreement by and between SDG&E and Citizens ("DCA"), based on the following:

1. Citizens' involvement is reasonable, consistent with the law, and in the public interest.

    - Citizens will charge no more to finance and own the Border-East line than SDG&E would charge.

        i. The SDG&E Representative Rate constitutes a ceiling or cap on the capital cost rate Citizens may charge.[1/]

        ii. The absolute amounts of any rate differences are *de minimis* given the relative magnitude of the overall dollars at stake and are more than offset by the public benefits accruing.

    - Citizens' participation in Sunrise promises level rates for 30 years.

    - Citizens' level rates would avoid the "front end loading" of cost recovery from the mismatch of project benefits and costs.

        i. Otherwise, consumers would have to pay substantially more in the early years of the Sunrise operation and less in later years

    - Citizens' participation in Sunrise is a unique event.

1/ 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.

i. 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.

ii. This could amount to tens of millions of dollars over the life of Sunrise.

iii. No other investor exists in the electrical industry such as Citizens, whose corporate mission is to engage in business ventures that generate revenues for the funding of social and charitable assistance programs for the elderly and the poor.

- Facilitating Citizens' participation in the Sunrise Powerlink Project signals the entry of a new investor into the California transmission industry.

- Citizens' participation in the Sunrise Powerlink Project enhances the value of the project in general.

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Citizens Energy Corporation ("Citizens")[2/] pursuant to Rule 13.11 of the California Public Utilities Commission's ("CPUC's") Rules of Practice and Procedure and the briefing schedule adopted by Administrative Law Judge ("ALJ") Myra Prestidge[3/] respectfully submits this Opening Brief in support of the Application of San Diego Gas & Electric Company ("SDG&E") in this proceeding. This Opening Brief discusses the fundamental issue at hand in this proceeding – That is, whether the proposed transaction as detailed in the Application of SDG&E should be approved under Public Utilities Code Section

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2/ Citizens was formally made a party to this proceeding at the January 11, 2010 prehearing conference.

3/ ALJ Prestidge's ruling on the briefing schedule was conveyed in a March 19, 2010 e-mail correspondence to the parties in this proceeding (and confirmed by a subsequent e-mail correspondence to the parties, dated May 21, 2010).

851 because it is in the public interest. Citizens supports SDG&E's position that the overall transaction warrants Section 851 approval.[4]

I. INTRODUCTION

A. The Application

SDG&E on October 9, 2009, pursuant to Section 851 of the of the California Public Utilities Code and the Rules of Practice and Procedure of the CPUC, applied for approval to lease to Citizens for a term of 30 years half of its transfer capability rights pertaining to the 500 kV Imperial Valley section of the Sunrise Powerlink Project (known as "the Border-East Line" (one of five separate segments/links of the Sunrise Powerlink Project)).

In its December 18, 2008 Order approving the Sunrise Powerlink Project (Decision 08-12-058), the CPUC determined that the project, primarily intended to facilitate delivery of renewable generation in the Imperial Valley to San Diego, will generate net benefits of over $117 million per year for consumers within the CAISO control area that will be paying for the costs of

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[4] This Opening Brief, in addition to supporting San Diego Gas &Electric Company's application, requests that Citizens' evidence be moved into the record of this proceeding as follows: Ex. Citizens-1 (Rebuttal Testimony of John Wilson) Ex. Citizens-2 (Rebuttal Testimony of William Mayben), Ex. Citizens-3 (Citizens' Response to UCAN's First Set of Data Requests to Citizens), and Ex. Citizens-4 (Citizens' Response to UCAN's Second Set of Data Requests to Citizens). SDG&E is concurrently moving for the admission of its evidence through its opening brief, as follows: Ex. SDGE-1 (Testimony of James Avery), Ex. SDGE-2 (Testimony of Michael Calabrese), Ex. SDGE-3 (Testimony of Randall Rose, Ex. SDGE-4 (SDG&E's Response to UCAN's First Set of Data Requests to SDG&E), and Ex. SDGE-5 (SDG&E's Section 851 Application, including its Attachments).

the line.[5/] (SDGE Application, Ex. SDGE-5 at p. 7). In granting SDG&E's request for a Certificate of Public Convenience and Necessity, the CPUC determined that the Sunrise Powerlink Project ("Sunrise") will allow California utilities to meet the 33% Renewable Portfolio Standard ("RPS") goal by 2020[6/] at a lower cost than other alternatives which were evaluated.

SDGE's Application in this proceeding has generated a single protest by the Utility Consumers' Action Network ("UCAN") and is generally supported by the Division of Ratepayer Advocates ("SDG&E has shown that it is reasonable, consistent with the law, and in the public interest to bring Citizens into the Sunrise Project" (*see* Response of the Division of Ratepayer Advocates, filed October 9, 2009)). The fundamental issue at hand for the CPUC is whether the proposed transaction between SDG&E and Citizens should be approved under Public Utilities Code Section 851 because it is in the public interest. Citizens supports SDG&E's position that the overall transaction, considering both the potential rate impacts and benefits, is in the public interest and warrants Section 851 approval.

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

6/ Governor Schwarzenegger has set the RPS target to be 33% by 2020. *See* Executive Order S-14-08 (available at http://gov.ca.gov/executive-order/11072/).

California lawmakers are currently developing legislation to meet Governor Schwarzenegger's target of 33% by 2020. The California Public Utilities Commission and California Energy Commission have endorsed this change and it is a key greenhouse gas reduction strategy in the California Air Resources Board's Assembly Bill (AB) 32 Scoping Plan (*See* http://www.cpuc.ca.gov/PUC/energy/Renewables/hot/33implementation.htm).

B. Citizens Participation in Sunrise

Citizens is a non-profit Massachusetts corporation exempt from federal taxes under Section 501(c)(4) of the Internal Revenue Code, with its principal headquarters located in Boston, Massachusetts. Citizens is a FERC-jurisdictional public utility (*Citizens Energy Corp*., 35 FERC ¶ 61,198 (1986)), whose successful commercial subsidiaries support a wide array of social and charitable programs in the United States and abroad. Founded in Boston by Joseph P. Kennedy II in 1979, Citizens began its involvement in the energy industry with oil-trading ventures in Latin America and Africa. It used revenues from these commercial enterprises to channel millions of dollars into charitable programs in the U.S. and abroad. Citizens also has businesses involving crude oil trading, exploration, and production; marketing electric power and natural gas; mail-order service of pharmaceuticals; and environmental business consulting. (*see* Citizens' FERC Petition for Declaratory Order [Attachment to SDG&E's Section 851 Application], Ex. SDGE-5).

In 1985, Citizens began its electricity industry operations by buying power from utilities with surplus generating capacity, reselling the excess power to other utilities, and using the profits to help low-income families pay their electricity bills. In 1988, Citizens became the nation's first independent electric power marketer, acquiring, exchanging and marketing electric power under contracts extending from several months to several decades.

Unlike some other independent transmission financier/owners in California, Citizens does not purchase existing assets. (Mayben, Ex. Citizens-2 at p. 21). As explained by Mr. Mayben in his rebuttal testimony in this proceeding (Mayben, Ex. Citizens-2 at p. 21), Citizens' transmission business model is built upon developing a relationship with existing participating transmission owners ("PTOs") and joining in new transmission projects being considered for development where the sponsoring PTO determines that Citizens participation will be of benefit to them in the development and operation of the project, and in the public interest.

It was under this guiding philosophy that Citizens became involved in the Sunrise Powerlink Project. Its involvement commenced with exploratory discussions with the Imperial Irrigation District ("IID") and SDG&E in 2005, which led to a March 2006 Memorandum of Understanding among Citizens, IID and SDG&E; and the culmination of the Green Path Southwest Project.[7/] (Mayben, Ex. Citizens-2 at pp. 8-9). IID subsequently withdrew from participation in the project, but Citizens continued to pursue a relationship with SDG&E as a partner in developing a portion of the Sunrise Powerlink Project.[8/] (Mayben, Ex. Citizens-2 at p. 10).

7/ The original relationship which involved the Imperial Irrigation District and was called the Green Path Southwest project, and denoted the Imperial Valley portion of the Sunrise Powerlink Project (which, as explained herein, is now called the "Border-East Line" segment).

8/ As explained in the rebuttal testimony of Mr. Mayben in this proceeding (Mayben, Ex. Citizens-2 at p. 10):

The CAISO Board of Governors unanimously approved Sunrise as a necessary and cost effective upgrade to the CAISO Controlled Grid on August 3, 2006 and went so far as to "direct" SDG&E and Citizens to develop the project. Specifically, the CAISO Board determined that Sunrise is (*see* Mayben, Ex. Citizens-2 at p. 8-9):

> . . . a necessary and cost effective upgrade to the CAISO Controlled Grid that will also facilitate compliance with California renewable energy purchase requirements and 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 . . . [9/].

The CAISO Board's approval of Citizens' participation set the stage for complex negotiations among the parties. The final details of the relationship between Citizens and SDG&E were formalized on May 11, 2009 by a Development and Coordination Agreement (the "DCA"), which provides for Citizens' engagement in the development of the Border-East Line segment of Sunrise.[10/]

> At some point in the summer of 2007, the IID Board of Directors withdrew their management from further negotiation of the DCA and authorized a "Due Diligence" study of the draft DCA by an independent team of consultants. After sporadic renegotiations of the DCA, on November 15, 2007, the IID Board sent a notice to SDG&E and Citizens of their intention to remove IID from the project.

9/ *See* General Session Minutes Board of Governor Meeting, August 3, 2006 (http://www.caiso.com/1847/1847bb8a57f70.pdf)

10/ As explained in the testimony of James P. Avery (Avery, Ex. SDGE- 1 at JPA-6), the two-way negotiations between Citizens and SDG&E continued in 2008, but were protracted for various reasons. Specifically, there was uncertainty as to what the form of the final Certificate of Public Convenience and Necessity

The DCA provides Citizens with an option to finance fifty percent of the cost of the Border-East Line. In so doing, Citizens will obtain a long-term entitlement through a leasehold interest to the transfer capability of the Border-East Line.[11/] Citizens will file a transmission owner tariff with the Federal Energy Regulatory Commission ("FERC") for its entitlement interest in the facilities and will become a CAISO participating transmission owner ("PTO"). Citizens' entitlement to the transfer capability in the Border-East Line segment of Sunrise shall be provided for the benefit of and made available to CAISO eligible customers at just and reasonable rates and terms.[12/] (*see* Ex. SDGE-5 at DCA Schedule 2.2, Section 2 (Attachment 1 to SDG&E's Section 851 Application); *see also* Avery, Ex.SDGE-1 at JPA-14).

Citizens, as is frequently its custom, has pledged to spend a significant portion of its project-related profits on low income consumer support in the geographic area (Imperial County) where its capital investment in facilities is being made. All of the Border-East Line of the Sunrise Powerlink Project,

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might take, and any final agreement would have to take this decision into account. (*See* Mayben, Ex. Citizens-2 at p. 10).

11/ For tax purposes, the transaction will take place in the context of a Section 467 lease under the Internal Revenue Code, between SDG&E and a wholly-owned subsidiary of Citizens Energy Corporation. Title to the facilities will remain in SDG&E and the transfer capability will revert to SDG&E upon expiration of the lease term.

12/ Citizens intends to securitize the financing of its participation cost with a pledge of the revenues it will receive from the CAISO. This approach is similar to the manner in which Trans-Elect, LLC recovered the costs of its entitlement in Path 15 which is owned by the Western Area Power Administration. Trans-Elect placed all of the capacity related to its entitlement to a portion of the Path 15 Project under the operational control of the CAISO, as will Citizens with its entitlement to the Sunrise Powerlink Project.

which Citizens is funding, is located in Imperial County. As discussed above, IID was, at one time, planning to be a financing participant in the Sunrise Powerlink Project, but ultimately dropped out of the project. Citizens and SDG&E continued as the project sponsors, and IID continued to favor development of the Border-East Line, in part because of Citizens' pledge to commit profits to low income support in Imperial County. (Wilson, Ex. Citizens-1 at p. 30; CIT-UCAN 001, Ex. Citizens-3 at Q.7). Citizens has a long history of investing in infrastructure projects at various locations in the United States and spending a portion of its profits to support various programs in the areas where its projects are located. As thoroughly explained by Dr. Wilson in his rebuttal testimony, Citizens' involvement in and its commitment to the Sunrise Powerlink Project is no different. (Wilson, Ex. Citizens-1 at p. 30).

If Citizens exercises the option under the DCA, it must invest an amount currently estimated to be 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. Section 4.2.2 of the DCA: "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."

Fifty percent of the transfer capability in the Border-East Line will be conveyed by SDG&E to Citizens once Citizens has exercised and perfected its Option. SDG&E will develop, design, permit, engineer, procure, and construct all of Sunrise, including the Border-East Line at its own expense. Under the DCA, Citizens has agreed to pay annually 50 percent of its profits attributable to Citizens' assets located in Imperial County to low income assistance programs benefiting residents of Imperial County.

The most recent Citizens analysis of its expected (a) revenues, (b) before-tax profits, (c) after tax profits, and (d) distributions to low-income residents of Imperial County, by year, resulting from the DCA and Citizens acquisition of rights in the Sunrise transmission line is attached hereto (Ex. Citizens-3, CIT-UCAN-002: Q1-53, Attachment A:"Capital Cost Income Analysis_Citizens' Response To UCAN Data Request No. 1.xls"). The distributions are substantial – an estimated $1M per year for 30 years.

In accordance with the DCA, Citizens will transfer to CAISO the operational control over its transfer capability in the Border-East Line, and become a PTO under the CAISO tariff.[13/] Ultimately, the entire transfer capability of Sunrise – both SDG&E's and Citizens' – will be under CAISO's operational control and available to CAISO customers.

C. FERC Has Approved Citizens' Rate Methodology

On December 17, 2009, by Declaratory Order (*Citizens Energy Corporation*, 129 FERC ¶ 61,242 (2009)), FERC granted Citizens' request for authorization to recover 100 percent of all prudently incurred development and

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13/ *See* Ex. SDGE-5 (DCA Schedule 2.2, Section 3.1 (Attachment 1 to SDG&E's Section 851 Application)).

construction costs in the event Sunrise is abandoned as a result of factors beyond Citizens' control. It also approved a capital cost recovery methodology, which includes: (i) a hypothetical capital structure of 50 percent debt and 50 percent equity; (ii) the ability to recover capital cost requirements by using a 30-year levelized rate approach; and (iii) a proxy rate of return on equity based on SDG&E's current return on equity of 11.35 percent. Citizens' FERC-approved approach for capital cost recovery will lock-in the fixed return levels for both debt and equity components for the full 30-year term of Citizens' participation in Sunrise.[14/]

As asserted by Dr. Wilson in his rebuttal testimony (Wilson, Ex. Citizens-1 at p. 6), Citizens has fully explained and justified its proposed financing, as well as its proposed ratemaking capital structure and its obligations under the DCA with respect to profits. Citizens' approved rate methodology meets Citizens' altruistic, philanthropic corporate purpose and is consistent with FERC's regulatory and accounting policies. (Wilson, Ex. Citizens-1 at p. 6). Ultimately, Citizens' will have to provide FERC with a full justification of all of its costs, including development costs, in a conventional

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[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.

Section 205 proceeding.[15/] At that time, any interested party, including UCAN and, indeed, the CPUC, will have a full opportunity to examine, intervene and protest the costs that Citizens proposes to recover.[16/] FERC's Declaratory Order specifically determined (*Citizens Energy Corporation,* 129 FERC ¶ 61,242 at P26):

> Citizens' future section 205 filing must provide the full particulars of its proposed accounting on all aspects of the capital contribution to the Project and entitlement to a portion of the Project's transfer capabilities, together with narrative explanations describing the basis for the lease accounting for book purposes.

Mr. Mayben through his rebuttal testimony in this proceeding (Mayben, Ex. Citizens-2 at pp. 4-11) has catalogued various details about Citizens'

15/ FERC regulates Citizens' cost recovery methodology, including its use of an imputed capital structure and a rate of return. FERC applies this now long-standing rate-making policy to all not-for-profit entities, such as California municipalities, which, like Citizens, have turned their transmission facilities over to the California Independent System Operator ("CAISO") (*See City of Vernon, California,* 109 FERC ¶ 63,057 at P 110-119 (2004), aff'd, 111 FERC ¶ 61,092 (2005)). FERC also applies this policy to many for-profit utilities which it regulates in connection with the construction of new transmission (*See, e.g., Trans-Elect NTD Path 15*, 109 FERC ¶ 61,249, at P 26-29 (2004); *Potomac-Appalachian Transmission Highline, LLC*, 122 FERC ¶ 61,188, at P 55 (2008); *Tallgrass Transmission*, 125 FERC ¶ 61,248 at P 68 (2008); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 119 (2009)).

16/ Dr. Wilson explains (Wilson, Ex. Citizens-1 at pp. 14-15) that it is not unusual for intervenors, including the CPUC to challenge transmission cost recovery on a detailed basis in such a proceeding. For example, in FERC Docket ER09-187-000 the CPUC protested Southern California Edison Company's revisions to its Transmission Owner Tariff. CPUC argued that although SCE's filing will result in a small rate decrease for retail customers, SCE's proposal still results in unnecessarily high, and therefore, unjust and unreasonable rates for its customers. In that proceeding, CPUC argued that SCE requested a much higher return than is necessary to attract capital in today's investment environment, used a problematic proxy group, and relied on a Return on Equity midpoint of only two data points, which ignores the relevance of other data.

activities to date, many of which will be the basis for Citizens' future rate recovery through a section 205 filing with FERC.

II. THE PUBLIC BENEFITS DERIVED FROM CITIZENS' PARTICIPATION IN SUNRISE JUSTIFIES COMMISSION APPROVAL OF SDG&E'S APPLICATION

A. Citizens Will Charge No More to Finance and Own the Border-East Line than SDG&E Would Charge

Citizens and SDG&E put forth significant efforts 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. During the course of negotiations of the DCA, the parties recognized 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. They also recognized that FERC could 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. The model is designed to contractually limit Citizens' FERC-authorized rates to no more than SDG&E's Representative Rate Model (Wilson, Ex. Citizens-1 at pp. 10-11, 12, 29). Thus, even if FERC were to approve a capital cost recovery rate greater than the rate SDG&E would charge, Citizens will only 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% less than the SDG&E Representative Rate, Citizens will not charge the higher SDG&E Representative Rate.

In his testimony, SDG&E witness Michael Calabrese explains that the SDG&E Representative Rate constitutes a ceiling or cap on the capital cost rate Citizens may charge. (Calabrese, Ex. SDGE-2). It is impossible to predict with 100% certainty what the SDG&E Representative Rate will be at the time Citizens actually exercises its option under the DCA because the Representative Rate is determined based on actual costs incurred by SDG&E and Citizens. 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 (as referenced in the DCA), with modifications made to the capital structure depending on the case.[17/] 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) and are more than offset by the public benefits accruing, as described in this brief.

B. Citizens' Participation In Sunrise Promises Level Rates For 30 Years

Citizens will charge a formula rate that: (1) recovers actual operating expenses; and (2) recovers capital requirements on a levelized fixed basis for 30 years; wherein the capital requirements recovery will be no higher than the rate that SDG&E would charge for Citizens' interest in the Sunrise Powerlink Project, absent Citizens' participation[18/]. Citizens will use an after the fact true-up mechanism for operating costs such that the revenue requirements

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17/ Mr. Calabrese's testimony shows that the annual discounted and levelized revenue requirement under the snap shot case is slightly higher for Citizens by $77,000 or 0.6% when compared to that of SDG&E. The annual discounted and levelized revenue requirements under the high case is $734,000 or 5.8% higher for Citizens when compared to SDG&E. Before any actual costs can be collected, however, Citizens will make a FERC rate filing pursuant to Section 205 of the Federal Power Act, whereupon all affected parties (including UCAN and the CPUC) will have an opportunity to examine the justness and reasonableness of Citizens' proposed rates.

18/ As explained in Exhibit Citizens-3 (CIT-UCAN-001: Q10), Citizens' proposed methodology is for the actual bond interest rate for Citizens' permanent long term financing to be used in its capital cost recovery rate for the thirty year term. Citizens' does not have an estimate of bond interest rates, but for analysis purposes, Citizens is using an assumed bond interest rate of 6.00%. It is Citizens' belief that this assumed 6.00% rate is a reasonable proxy for this purpose, as it is representative of what the bond interest cost would be at the present time.

will reflect actual operating costs. Citizens capital requirements cost recovery will be at a fixed levelized rate for the thirty year term of the lease arrangement with SDG&E for Citizens' participation in the Sunrise Powerlink Project, and this provide a significant benefit to rate-payers.

Citizens' FERC-approved hypothetical capital structure approximates the SDG&E capital structure. The cost of debt will be Citizens' cost of debt in obtaining the permanent financing for the project. For cost of equity, Citizens will use SDG&E's currently authorized cost of equity of 11.35% as a proxy for Citizens' cost of equity.

The thirty-year lease term and capital cost recovery period is tied to Citizens' financing of the Project and the corresponding term of the Development and Coordination Agreement by and between Citizens and SDG&E. In its financial planning, Citizens determined that long term debt financing for its portion of the Sunrise Powerlink Project was highly desirable as it would enable Citizens to lock-in its major project cost component on a fixed levelized basis. This, in turn, will protect consumers against growing inflationary and money cost risks over time and permit Citizens to manage its project investment on a levelized basis so as to provide a stream of net revenues to support its charitable programs, including low income assistance programs in the Imperial Valley, on a relatively steady basis.

A thirty-year fixed cost debt financing arrangement is optimal as it will enable low cost borrowing on a levelized repayment basis over a conventional long term maturity period acceptable to utility debt investors. In fact, as explained in the rebuttal testimony of Dr. Wilson (Wilson, Ex. Citizens-1 at p.18), a substantially longer repayment period may not be feasible at all under prevailing financial circumstances, and, if it was, it would be more costly. For example, the levelized annual payment to retire $1,000,000 of debt at a 6.5% interest rate over thirty years is $76,900. Assuming that comparable financing would be available for a fifty-eight year term at an interest rate of 7.5% (which is highly unlikely), the corresponding annual payment for fifty-eight years would be $76,200 (at 8.5% the annual payment for fifty-eight years would be $85,800). Thus, a thirty year financing period is the optimal, lowest cost choice for Citizens and for consumers, who will receive full project benefits for the remaining twenty-eight years at zero additional financing costs.

Mike Calabrese of SDG&E correctly observed in his testimony:

> "While the capital cost recovery of the rates that Citizens will charge will be fixed for the term of 30 years (see Section III), the rates that SDG&E will charge will be subject to change. This has the potential to provide a significant advantage to customers if SDG&E's cost of equity were to increase. At this juncture, while SDG&E is not prepared to forecast what might be approved in the way of ROE in the future, it is safe to say that SDG&E's cost of equity will change based on the future of equity markets. If this were to occur, then the current snap shot case for SDG&E would likely increase above that of Citizens providing substantial benefits to customers over the 30 year contract period."

(Calabrese, Ex. SDGE-2 at MAC-12)

C. Citizens' Level Rates Would Avoid the "Front End Loading" of Cost Recovery

from the Mismatch of Project Benefits and Costs

There is a significant consumer advantage attributable to Citizens' levelized rate approach over the thirty year period of its project participation. In contrast to conventional utility ratemaking, which is "front end loaded" for newer plant additions (i.e., revenue requirements are greater in the early years of a project's life as rate base gradually depreciates), Citizens annual revenue requirements will be levelized *(i.e.,* equal) over the 30-year period. For example, in Mr. Calabreses' "High" scenario (Calabrese, Ex. SDGE-2 at MAC-12 through MAC-16), ratepayer charges are significantly lower during the first seven years with Citizens' participation. It is only because of lower assumed costs for SDG&E in the later years of the projection that the end result suggests a net ratepayer cost.

Dr. Wilson explains in his rebuttal testimony why this is important. (Wilson, Ex. Citizens-1 at p. 26). According to Dr. Wilson, in any long term projection, it is the early year results that are most reliable. The distant forecasts (30, 40, 50 years into the future) "are scarcely worth the air they ride on." There is little doubt (especially in this case, under any of the models considered) that ratepayers will benefit very substantially in the early years of Citizens' participation.

D. Citizens' Participation in Sunrise is a Unique Event

Citizens has agreed to contribute half of its profits resulting from its leasing of the Border-East Line to energy efficiency programs which will be developed to assist low income consumers living in the Imperial Valley. This could amount to tens of millions of dollars over the life of Sunrise.

No other investor exists in the electric industry like Citizens, whose corporate mission is to engage in business ventures that generate revenues for the funding of social and charitable assistance programs for the elderly and the poor. Indeed, Citizens' participation in the Sunrise Powerlink Project enhances the value (and prominence) of the project in general. Citizens' long involvement in the project – first with IID through the Greenpath Project–Southwest (which now represents the Border-East portion that Citizens is proposing to finance/lease), then in conjunction with IID and SDG&E through the course of obtaining CAISO approval -- helped bring IID into the project as a participant, and not an opponent.

Although IID eventually decided not to participate in the project as originally contemplated in the Memorandum of Understanding between SDGE, Citizens, and IID, Citizens' effort in that regard led to IID's ultimate support for the Sunrise Powerlink Project as expressed in the CPCN process, and led to a more rapid CPCN process than if IID had been openly opposed to the Sunrise Powerlink Project. Citizens' partnership with IID helped ensure IID's support, which led to the 12/2008 CPCN approval.

E. Facilitating Citizens' Participation in the Sunrise Powerlink Project Signals the Entry of a New Investor into the California Transmission Industry.

Citizens is a new competitor in an industry that is traditionally absent of competition. As evidenced by a June 25, 2009 letter filed by the CPUC in a Startrans, IO, LLC proceeding with FERC in Docket No. ER08-413-002, the CPUC recognizes the value of bringing new entrants into transmission development.[19] Indeed, it is important to bring diverse participants such as Citizens 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. The benefits from a new entrant such as Citizens into

[19] The CPUC's June 25, 2009 letter to FERC provided support of the acquisition adjustment that was the subject of Startrans' request for rehearing. Specifically:

- Startrans is a transmission-only company and, as such, is significantly different from a traditional utility, both in structure and in its exposure to regulatory risk;
- Startrans is a new competitor in an industry that is traditionally absent of competition;
- The nature of the industry is such that a new competitor cannot fully recover its cost of purchasing existing infrastructure when the market value is substantially higher than book value;
- The acquisition adjustment represents roughly a 15% difference between the purchase price and the remaining un-depreciated value of the assets; and
- As the CPUC understands it, this small acquisition adjustment will make the project financially viable as opposed to a losing proposition for Startrans.

The CPUC's June 25, 2009 letter can be found at: http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12083655 the development of California's transmission system are already tangible. For instance, Citizens facilitated a degree of joint planning in the Green Path Southwest Project effort (which, as discussed above, was a precursor to the current Sunrise Powerlink Project). Citizens also played a significant role in boosting early activity on the Green Path North Project.

Approval of the DCA will serve as a catalyst and encourage Citizens to continue engaging in these types of projects. Citizens success to date in advancing its participation in Sunrise (both in terms of reaching a final agreement with SDG&E and obtaining FERC approval of its proposed rate methodology) has already helped facilitate its involvement in the development of new transmission resources beyond participation in Sunrise.

In July of 2009, Citizens entered into a Memorandum of Understanding with the Western Area Power Administration ("WAPA") to investigate a major new addition to the transmission system serving the Desert Southwest and California, as part of WAPA's directive pursuant to the American Recovery and Reinvestment Act of 2009 ("Recovery Act"), Public Law No. 111-5. Citizens had submitted a proposal to include its Imperial Valley Renewables Transmission Project ("IVRTP")[20/] into WAPA's consideration for development

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[20/] As explained by Mr. Mayben (Mayben, Ex. Citizens-2 at p. 18), IVRTP is a project that Citizens developed conceptually because of interests shown to Citizens by a large solar power developer seeking support for project development of 1000MW in Imperial Valley. Citizens' transmission consulting engineer conducted some general studies of the feasibility of a 1000 MW plant in Imperial County which Citizens reviewed. In mid-2007, Citizens authorized and funded load flow studies and renewable power injection studies of renewable power generation in Imperial Valley. Those studies were very encouraging and indicated that the IVRTP could accept and deliver to CAISO of renewable resources as directed by the Recovery Act. (Mayben, Ex. Citizens-2 at pp. 18-19). The proposed IVRTP[21] is now bundled for investigation purposes with other new transmission opportunities into what WAPA has named its Sonoran-Mojave Renewable Transmission Project, or the SMRT Project.[22] The SMRTP Project would interconnect the transmission systems of major utilities in Arizona and California with new 500 kV transmission lines. Among other things, this project could enhance the transfer capacity between Arizona and California by up to several thousand megawatts, and could unlock additional renewables that would remain undevelopable, even with the completion of Sunrise. The IVRTP portion of SMRT would specifically increase the transfer capability of the west-of-river and east-of-river transmission systems to provide renewable developers with

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system between 5,000 and 6,000 MW. When the concept plans and estimated cost of the project was informally reviewed by CAISO management they expressed the view that it is a good concept because it would improve the reliability for east to west power flows out of Arizona. However at that time, CAISO was working to obtain FERC approval of their modifications to their Transmission Tariff to allow for Location Constrained Resource Interconnection to be used to bring renewable power generated in Imperial Valley into the CAISO load balancing area through radial transmission lines without the CAISO Transmission Access Charge being burdened with the entire cost of the line. Citizens agreed to shelve the IVRTP concept project until a later date.

[21] Citizens has not only conceptualized the IVRTP as a transmission infrastructure development opportunity available to virtually all of the major transmission system operators in Southern California and Arizona, but has also been willing to invest considerable effort, resources and funding to pursue the actual development of IVRTP, employing its unique perspective and resources to address critical transmission infrastructure constraints and opportunities to resolve them.

[22] *See* hhttp://www.wapa.gov/recovery/planning.htm#SMRT.

greater opportunities to reach both the California and Arizona transmission grids.

Citizens' efforts under its MOU with WAPA to develop the IVRTP have already triggered a broader discussion among WAPA, Citizens, the Imperial Irrigation District 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 transmission projects to attract development of renewable resources in the Desert Southwest region. Citizens has been a leader in spearheading the discussion which have led to these developments so far. (Mayben, Ex. Citizens-2 at p. 19).

III. UCAN'S PROTEST IS BASED ON A MISCHARACTERIZATION AND MISUNDERSTANDING OF THE DCA

A. UCAN's Protest Mischaracterizes the Benefits to Citizens

Only one party has protested SDG&E's application – that is, UCAN. This Opening Brief has focused on putting forth arguments in support of SDG&E's application and generally resisted the temptation to reply to issues its assumes UCAN may raise in its opening brief. Nothwithstanding, Citizens briefly responds to the various characterizations made in UCAN's Protest.

In its Protest, UCAN argued that Citizens "will see an abundance of profit" from the lease arrangement with SDG&E, and that Citizens' FERC revenue requirement will provide for recovery of "far more money than it actually needs." This position is inaccurate and misleading. Citizens' involvement in Sunrise stems from its desire to help resolve transmission bottlenecks and reduce energy costs, and more particularly, attract renewable resource development in Southern California. As explained by Dr. Wilson (Wilson, Ex. Citizens-1 at p. 4):

> Unlike most private corporations that are in business to earn profits so they can pay dividends and build equity-funded asset value through retained earnings for the benefit of their stockholders, Citizens' business purpose is to earn profits to support its various programs. In this case, for example, Citizens is required to spend one half of any margin it earns over its costs to support low income assistance programs in the Imperial Valley, where Citizens' transmission investment will be developed.

The remaining margin from its participation in Sunrise will be used to further Citizens' other assistance programs. As explained herein, Citizens capital cost recovery is limited, and therefore Citizens' opportunity for a profit margin is limited. Its capital cost recovery will be no higher than allowed by FERC, and is further capped by the SDG&E Representative Rate. Thus, Citizens' profit is neither excessive by any reasonable comparability standard, nor is it more than Citizens "needs" for its business purposes.

The only premise from which one could conclude that Citizens' profit exceeds what it "actually needs" is that Citizens' actual revenue "need" is no more than enough to cover its out of pocket costs, a model which is not sustainable. Such zero profit result would not be sustainable for any entity, and would entirely defeat Citizens' corporate purpose and eliminate any reason for Citizens' participation in Sunrise.

UCAN also argued that CPUC's approval of the application will have a net negative impact on SDG&E's ratepayers and on CPUC-jurisdictional ratepayers in general. This contention is disingenuous and ignores the considerable ratepayer benefits likely to result from Citizens' participation in Sunrise. In fact, the ratepayer benefits are expected to exceed significantly Citizens' development costs.

For instance, as explained herein, Citizens' levelized project financing will permit low capital costs for its share of Sunrise that will be fixed for the full thirty year term of the lease agreement with SDG&E. CAISO-area ratepayers will thus benefit significantly in the early years of project operation from Citizens' levelized financing and capital cost recovery. This arrangement will provide a zero capital cost burden for ratepayers over the ensuing twenty-eight years when Citizens' entitlement reverts to SDG&E. That is, at the end of the lease, the capital costs for the portion of Citizens' portion of Sunrise will be fully depreciated and customers will have the benefit of the twenty-eight years remaining useful life for the facilities.

Moreover, Citizens' fixed capital cost commitment alone contributes a potential ratepayer gain that is much larger than any potential development cost burden. The capital costs that SDG&E recovers in its rates are fixed at present levels only until 2013, but may be subject to modification thereafter as current capital costs change.

Certainly, any argument that CPUC's approval of the application will have a "net negative impact on SDG&E's ratepayers and on CPUC-jurisdictional ratepayers in general," is misplaced and reflects a misunderstanding and misinterpretation of the underlying facts.

IV. MOTION TO RECEIVE CITIZENS' EVIDENCE INTO THE RECORD

Citizens hereby moves that the following evidentiary Exhibits in support of SDG&E's Section 851 Application and this Opening Brief be received into the record of this proceeding:

- Ex. Citizens-1 (Rebuttal Testimony of John Wilson)
- Ex. Citizens-2 (Rebuttal Testimony of William Mayben)
- Ex. Citizens-3 (Citizens' Response to UCAN's First Set of Data Requests to Citizens)
- Ex. Citizens-4 (Citizens' Response to UCAN's Second Set of Data Requests to Citizens).

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

V. SUMMARY

As discussed herein, Citizens is a unique investor in the electric service industry and facilitating its participation in the Sunrise Powerlink Project signals the entry of a new investor into the California transmission industry.

Citizens' proposed financing, as well as its proposed ratemaking capital structure and its expectations and intentions with respect to profits, have been fully explained and justified, and they are in keeping with Citizens' altruistic, philanthropic corporate purpose and consistent with the FERC regulatory and accounting policies. FERC, in its December, 2009 Declaratory Order, found that Citizens' capital cost recovery methodology will produce just and reasonable results (*Citizens Energy Corporation*, 129 FERC ¶ 61,242 (2009)).

While it is understandable that San Diego-based UCAN may desire a different deal (or at least varying terms), the existing arrangement between Citizens and SDG&E as set forth in the DCA is reasonable, consistent with the law and in the public interest. The question before the CPUC is not whether there exists some "better" deal from the perspective of UCAN. The question is whether the arrangement is reasonable, consistent with the law, and in the public interest. The benefits of project operation will be enjoyed by those outside of Imperial County who are served from the CAISO grid, while low income residents of Imperial County will benefit from the profits of the electric transmission project that is to be developed in their area. San Diego and the rest of the CAISO grid will benefit from the renewable electric power resources from Imperial County that will flow over the Sunrise Powerlink Project to the rest of the State, as well as cost of power reductions that the CAISO's expanded transmission capability will make possible and the resolution of acknowledged local transmission reliability deficits that Sunrise will facilitate. These are all benefits that have been previously considered and approved by the CPUC.

Respectfully submitted this 18th day of June 2010.

By: *   /s/ Donald R. Allen*
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<u>**CERTIFICATE OF SERVICE**</u>

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 CITIZENS ENERGY CORPORATION REGARDING APPLICATION OF SAN DIEGO GAS & ELECTRIC FOR APPROVAL PURSUANT TO PUBLIC UTILITIES CODE SECTION 851 TO LEASE CERTAIN TRANSFER CAPABILITY RIGHTS** to each party named in the official service list 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 and electronic copies will also be sent to the Assigned Commissioner and Administrative Law Judge.

Dated at Washington, D.C., this 18th day of June, 2010.

<u>*/s/ Paul M. Breakman*</u>
Paul M. Breakman

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