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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 (U902E) for a Permit to Construct the South Bay Substation Relocation Project.

Application 10-06-007  
(Filed June 16, 2010)

**JOINT SCOPING MEMO AND RULING OF  
ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE**

This scoping memo and ruling sets forth the category, scope, and schedule of the proceeding pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure. Concurrent written direct testimony shall be served on October 5, 2012, concurrent written rebuttal testimony shall be served on October 26, 2012, and evidentiary hearings will be held on November 6 and 7, 2012, in San Francisco, California, as set forth more fully in the ruling. This ruling also denies in part and grants in part San Diego Gas & Electric Company's motion to file certain documents under seal.

**Background**

By this application, San Diego Gas & Electric Company (SDG&E) proposes to replace the existing 138/69 kilovolt (kV) South Bay Substation with a new 230/69 kV substation facility on an undeveloped site just to the south of the existing substation and South Bay Power Plant, within the City of Chula Vista. SDG&E's original goal was to have the new substation in service by December 2012, but SDG&E is now targeting mid-2014 as the in-service date and states that

a Commission decision by the first quarter of 2013 is needed to accomplish this goal.<sup>1</sup>

As proposed by SDG&E, the Proposed Project consists of the following major components:

1. Construction of the Bay Boulevard Substation, a new, approximately 9.7-acre 230/69/12 kV substation and related fixtures, facilities and equipment in the City of Chula Vista.
2. Construction of a 230 kV loop-in, an approximately 1,000-foot-long underground interconnection and an approximately 300-foot-long overhead interconnection of the existing 230 kV tie-line, located east of the proposed Bay Boulevard Substation.
3. Relocation of six 69 kV overhead transmission lines and associated communication cables to the proposed new substation, requiring the relocation of approximately 7,500 feet of overhead line and the construction of approximately 4,100 feet of underground line.
4. A 138 kV extension of an approximately 3,800-foot-long underground duct bank and an approximately 200-foot-long overhead span from one new steel cable pole to an existing steel lattice structure.
5. Demolition of the existing South Bay Substation and related fixtures, facilities, and equipment.

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<sup>1</sup> Reporters Transcript at 21-22. We recognize that these are estimates only and the actual on-line date depends on the approved project and associated construction timelines.

SDG&E states that the purpose of the Proposed Project is to relocate and replace the existing South Bay Substation in preparation for the retirement of the South Bay Power Plant. SDG&E states that the Project will increase reliability to electric customers in the South Bay region, because the Project will replace an aging substation that was originally constructed in 1961 and does not meet modern seismic standards. SDG&E explains that the 138/69 kV load is undersized and contributes to outages at the substation. As described by SDG&E, the existing substation is now over 48 years old, and beyond its useful life. SDG&E also states that the existing substation was not designed to meet modern seismic standards, and that the existing substation is undersized in terms of meeting loads and properly connecting to and optimizing the use of existing transmission lines.

Inland Industries, the City of Chula Vista, and San Diego Unified Port District have been granted party status in this matter. In determining the scope of this proceeding, we have considered SDG&E's application and the discussion at the prehearing conference (PHC).

### **Scope of Issues**

Pursuant to General Order (GO) 131-D, in order to issue a permit to construct, the Commission must find that the project complies with the California Environmental Quality Act (CEQA). CEQA requires the lead agency (the Commission in this case) to conduct a review to identify environmental impacts of the project, and ways to avoid or reduce environmental damage, for consideration in the determination of whether to approve the project or project alternative. CEQA precludes the lead agency from approving a proposed project or project alternative unless it requires the project proponent to eliminate or

substantially lessen all significant effects on the environment where feasible, and determines that any unavoidable remaining significant effects are acceptable due to overriding considerations.

The Commission's Energy Division, which is conducting the required environmental review, determined that it would prepare an Environmental Impact Report (EIR) for the proposed project. An EIR is an informational document to inform the Commission, and the public in general, of the environmental impacts of the proposed project and alternatives, design a recommended mitigation program to reduce any potentially significant impacts, and identify, from an environmental perspective, the preferred alternative. (Pub. Res. Code §§ 21002 and 21002.1.) The Draft EIR was issued on June 18, 2012 and the comment period has been extended to August 31, 2012. When the EIR is completed, it shall be admitted into the formal record of the proceeding. CEQA requires that, prior to approving the project or a project alternative, the lead agency certify that the EIR was completed in compliance with CEQA, that it reviewed and considered the EIR prior to approving the project or a project alternative, and that the EIR reflects our independent judgment. (Pub. Res. Code § 21082.1(c)(3), CEQA Guidelines § 15090.)

In addition, pursuant to GO 131-D and Decision (D.) 06-01-042, the Commission will consider whether the project (or project alternative) design is in compliance with the Commission's policies governing the mitigation of electromagnetic field (EMF) effects using low-cost and no-cost measures.

Accordingly, the Commission must determine the following issues in this proceeding:

1. What are the significant adverse environmental impacts of the proposed project?
2. Are there potentially feasible mitigation measures or project alternatives that will avoid or lessen the significant adverse environmental impacts?
3. As between the proposed project and the project alternatives, which is environmentally superior?
4. Are the mitigation measures or project alternatives infeasible? (CEQA Guidelines § 15091(a)(3))
5. To the extent that the proposed project and/or project alternatives result in significant and unavoidable adverse environmental impacts, are there overriding considerations that nevertheless merit Commission approval of the proposed project or project alternative? (CEQA Guidelines § 15093).
6. Was the EIR completed in compliance with CEQA, did the Commission review and consider the EIR prior to approving the project or a project alternative, and does the EIR reflect our independent judgment? (CEQA Guidelines § 15090)
7. Is the proposed project and/or project alternative designed in compliance with the Commission's policies governing the mitigation of EMF effects using low-cost and no-cost measures?

### **Need for Evidentiary Hearing (EH)**

**Issues 1, 2, and 3:** These issues are properly addressed in the course of the CEQA environmental review process and preparation of the EIR. Most of the issues that have been raised by the protesting parties are within the scope of the CEQA review, and should be pursued within that environmental review process. Upon completion of the EIR, Energy Division shall submit it to the Administrative Law Judge (ALJ) for admission into the evidentiary record and review and consideration by the Commission. No EHs or further evidence is needed on these issues.

**Issues 4 and 5:** The Energy Division issued the draft of the EIR on June 18, 2012. Other than the No-Project Alternative, the draft EIR identifies the “Existing South Bay Substation Site Alternative” as the environmentally superior alternative, because it would reduce project-related, long-term environmental impacts associated with wetlands that have been identified as significant and mitigable, while not resulting in more overall impacts than the Proposed Project. This alternative would replace the current 138/69 kV South Bay Substation with a rebuilt 230-69/12 kV substation (Air Insulated Substation or Gas Insulated Substation Alternative).

Pursuant to CEQA Guideline § 15091, the Commission may not approve a project *other* than the environmentally superior alternative unless the mitigation measures or alternative are infeasible. Pursuant to CEQA Guidelines § 15093, if the Commission approves a project which results in significant and unavoidable environmental impacts, it must state the overriding considerations for doing so, i.e., the specific economic, legal, social, technological, or other benefits of the project that outweigh the adverse environmental impacts.

Any party to the proceeding (see Rule 1.4)<sup>2</sup> may offer prepared direct testimony setting forth the specific economic, legal, social, technological, or other considerations that render the project alternatives or mitigation measures infeasible pursuant to CEQA Guidelines § 15091. Such testimony shall *not* relate to matters which will be determined in the EIR (e.g., Issues 1, 2, 3, and 6.) In addition to objectives or the proposed project related to energy, SDG&E explains that it also wishes to facilitate the City of Chula Vista's Bayfront redevelopment goals by relocating the South Bay Substation and furthering the goals of the SDG&E-City of Chula Vista Memorandum of Understanding.<sup>3</sup> To the extent that parties wish to raise issues associated with infeasibility or overriding considerations, they should be prepared to address the impacts on SDG&E's ratepayers.

Any party may offer prepared direct testimony setting forth the specific economic, legal, social, technological, or other benefits of any alternative that may outweigh its unavoidable adverse environmental impacts, if any.

Any party may offer prepared rebuttal testimony on either or both of these issues.

**Issue 6:** The Commission will review the EIR to determine whether it was completed in compliance with CEQA, whether it reflects our independent judgment, and whether to approve the proposed project or project alternative. To the extent that parties or other persons seek to offer factual evidence to

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<sup>2</sup> Persons who wish to become parties in order to participate on these issues may contact the ALJ regarding how to move for party status under Rule 1.4.

<sup>3</sup> Memorandum of Understanding, Attachment 2-A to Chapter 2 of SDG&E's Proponent's Environmental Assessment.

challenge the conduct of the CEQA process and the completion of the EIR in compliance with it, such evidence should be offered through comment on the draft EIR. No EHs or further evidence is needed on this issue.

**Issue 7:** SDG&E presents its EMF compliance plan as Appendix F to the application. Any party may offer prepared direct testimony challenging SDG&E's compliance with the Commission's policies governing the mitigation of EMF effects using low-cost and no-cost measures and/or prepared rebuttal testimony on this issue.<sup>4</sup>

### **Schedule**

In the interest of judicial efficiency, we will move forward with taking evidence on the factual issues on the basis of the Draft EIR. If the Final EIR materially deviates from the draft EIR such that due process requires require the opportunity for parties to provide supplemental evidence, we will afford that opportunity.

The following schedule is adopted here and may be modified by the ALJ as required to promote the efficient and fair resolution of the application:

<b>Event</b>	<b>Date</b>
Concurrent prepared direct testimony served	October 5, 2012
Concurrent prepared rebuttal testimony served	October 26, 2012
Cross-examination estimates served (by email to ALJ and service list)	No later than November 2, 2012

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<sup>4</sup> The issue of the sufficiency of the Commission's adopted EMF policies is beyond the scope of the proceeding.

Evidentiary hearings Commission Courtrooms, 505 Van Ness Avenue, San Francisco, CA 94102	November 6 and 7, 2012, Hearings will begin at 10:00 a.m. on November 6, 2012 and at 9:00 a.m. on November 7, 2012.
Opening briefs filed and served Request for final oral argument filed and served	To be determined after receipt of final EIR
Reply briefs filed and served	To be determined after receipt of final EIR
Proposed decision	No later than 90 days after submission of the proceeding
Commission decision	No earlier than 30 days after proposed decision is issued

Parties shall serve any prepared testimony on the official service list pursuant to Rule 1.9 and Rule 1.10, and shall serve two hard copies of it on the assigned ALJ. If the parties stipulate to the admission of written testimony without cross-examination, the ALJ may remove the EH from calendar and the parties may move the admission of prepared testimony by written motion pursuant to Rule 13.8(d).

The ALJ shall set the time for filing concurrent opening and reply briefs after the Final EIR issues and is admitted into evidence. In any event, the proceeding should be resolved within 18 months of this scoping memo as provided by Pub. Util. Code § 1701.5.

### **Final Oral Argument**

Pursuant to Rule 13.13, if hearings are held in this proceeding, a party has the right to make a final oral argument before the Commission if the request is set forth in the time and manner set forth in the scoping memo or later ruling. If hearings are held in this proceeding, parties shall file any request for final oral

argument at the same time they file their opening brief. This request shall be made in a separate pleading.

### **Rulings on Law and Motion Issues**

A Law and Motion Hearing was held directly following the PHC on July 30, 2012 to consider SDG&E's Motion For Leave to Submit Confidential Documents Under Seal. We grant SDG&E's motion to file under seal geographic information system (GIS) data layers for the proposed project and Attachment 4.5-A: the Cultural Resources Technical Report. SDG&E maintains that the GIS information is restricted for security purposes and the cultural resources should be held confidential in a manner that is consistent with federal law. We concur and this information shall remain under seal for two years from the date of this Ruling.

However, while SDG&E contends that the cost information presented in Table 3-1 of Volume II of its Proponents Environmental Assessment should remain confidential because of the precedent established in D.06-09-003, we find that the range of costs associated with SDG&E's proposed project should be made public. We therefore deny this portion of SDG&E's Motion. SDG&E should also serve parties with the range of costs for the no-project alternative and the environmentally superior alternative included in its responses to Data Request 014 to the Energy Division. Again, SDG&E may present a range of costs and need not allocate the costs in line-item detail. We also deny SDG&E's motion to file Figure 3-6 under seal. While SDG&E contends that the map

reveals critical energy infrastructure, similar maps, while perhaps not quite as detailed, are readily available.<sup>5</sup>

### **Parties**

Any person who is not yet a party to the proceeding and who wishes to participate in the proceeding by presenting or cross-examining evidence or by briefing any of the identified issues should file a motion to become a party pursuant to Rule 1.4 of the Commission's Rules of Practice and Procedure.

The ALJ may remove party status from parties who do not participate in EH or briefing, without prejudice to subsequent motion for party status pursuant to Rule 1.4.

### **Category of Proceeding/Ex Parte Requirements and Need for Hearing**

This ruling confirms the Commission's preliminary determination that this is a ratesetting proceeding, and but determines that EHs maybe needed as set forth above. (Resolution ALJ 176- 3256, June 26, 2010) Accordingly, ex parte communications are restricted and must be reported pursuant to Article 8 of the Commission's Rules of Practice and Procedure.

### **Assignment of Proceeding**

Michel Peter Florio is the assigned Commissioner and ALJ Angela Minkin is the presiding officer to the proceeding.

Therefore, **IT IS RULED** that:

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is as set forth above.
3. This proceeding is categorized as ratesetting.

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<sup>5</sup> See, e.g., [http://www.energy.ca.gov/maps/infrastructure/3P\\_Enlg.pdf](http://www.energy.ca.gov/maps/infrastructure/3P_Enlg.pdf)

4. Hearings may be needed and are scheduled, as described above.
5. The presiding officer is Administrative Law Judge Angela Minkin.
6. San Diego Gas & Electric Company's Motion for Leave to Submit

Confidential Materials Under Seal is granted in part and denied in part. San Diego Gas & Electric Company (SDG&E) may file the geographic information system data layers (or equivalent) and Attachment 4.5-A: Cultural Resources Technical Report under seal and this information will remain under seal for two years from the date of this Ruling. We deny SDG&E's motion to file Table 3-1: Proposed Project Cost Estimate under seal. SDG&E shall make this information publicly available, as well as the information provided in response to the Energy Division's Data Request 014.

Dated August 7, 2012 at San Francisco, California.

/s/ MICHEL PETER FLORIO  
Michel Peter Florio  
Assigned Commissioner

/s/ ANGELA K. MINKIN  
Angela K. Minkin  
Administrative Law Judge