



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U 902-E) for Approval of: (i) Contract Administration, Least Cost Dispatch and Power Procurement Activities, and (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account, Incurred During the Record Period January 1, 2009 through December 31, 2009, and (iii) the Entries Recorded in Related Regulatory Accounts.

Application 10-06-001
(Filed June 1, 2010)

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING APPLICANTS REQUEST TO
CHANGE SCHEDULE**

1. Summary

On December 16, 2010, Pursuant to Rule 11.1 of the California Public Utilities Commission's Rules of Practice and Procedure, San Diego Gas & Electric Company (SDG&E) filed *Expedited Motion to Bifurcate or, in the Alternative, Stay Proceeding and Request for Order Shortening Time to Respond*. SDG&E's motion to bifurcate Application 10-06-001 is granted as ruled herein.

2. Background

On June 1, 2010, San Diego Gas and Electric Company (SDG&E) filed Application (A.) 10-06-001, *Application of San Diego Gas & Electric Company (U 902-E) for Approval of: (i) Contract Administration, Least Cost Dispatch and Power Procurement Activities, and (ii) Costs Related to those Activities Recorded to the Energy*

Resource Recovery Account, Incurred During the Record Period January 1, 2009 through December 31, 2009, and (iii) the Entries Recorded in Related Regulatory Accounts. (Application.)

On June 24, 2010, Resolution ALJ-176-3256 preliminarily determined that this proceeding was ratesetting and that hearings would be necessary. On July 6, 2010, the Division of Ratepayer Advocates (DRA) filed a protest, to which SDG&E responded on July 16, 2010. On July 12, 2010, a *Notice of Prehearing Conference* was issued by Chief Administrative Law Judge (ALJ) Karen Clopton.

On August 2, 2010, a prehearing conference (PHC) took place in San Francisco to establish the service list for the proceeding, discuss the scope of the proceeding, and develop a procedural timetable for the management of the proceeding.

The *Scoping Memo and Ruling of the Assigned Commissioner (Scoping Memo)* was issued on August 13, 2010. On September 7, 2010, the assigned ALJ issued *Administrative Law Judge's Ruling Correcting Error in Prior Ruling*. On October 15, 2010, the assigned ALJ issued *Administrative Law Judge's Ruling Granting Applicants Request to Change Schedule*.

DRA is the only protesting party to A.10-06-001. DRA served its direct testimony on November 22, 2010.

At the request of SDG&E, a telephone meeting with DRA and the assigned ALJ took place on the morning of December 16, 2010 to discuss procedural matters. Also on December 16, 2010, SDG&E requested, via e-mail that given its intention to file a motion that may impact the schedule of this proceeding, that its current due date for serving of rebuttal testimony be extended from December 21, 2010 to December 28, 2010. The assigned ALJ granted this

requested extension for serving of rebuttal testimony, via e-mail on December 16, 2010.

On December 16, 2010, Pursuant to Rule 11.1 of the California Public Utilities Commission's Rules of Practice and Procedure, San Diego Gas & Electric Company filed *Expedited Motion to Bifurcate or, in the Alternative, Stay Proceeding and Request for Order Shortening Time to Respond* (Motion). On December 17, 2010, the assigned ALJ ruled via e-mail that SDG&E's request that the time to respond to the Motion be shortened to two business days, be granted. A response to the Motion was filed by DRA on December 20, 2010. On December 21, 2010, SDG&E filed a reply to DRA's response.

The next step in the current schedule is for SDG&E to serve its rebuttal testimony on December 28, 2010. Hearings are scheduled for January 19 and 20, 2011, with briefs to follow and a final decision scheduled for April 2011.

3. Positions

3.1. SDG&E

Based on DRA's testimony, SDG&E states that it believes only one significant issue remains in dispute - DRA's recommendation of a disallowance for two outages at the San Onofre Nuclear Generating Station (SONGS) power plant, which is operated by the Southern California Edison Company (SCE). SDG&E is considered a non-operating owner of SONGS. DRA recommended a similar disallowance regarding the same outages at SONGS in SCE's current ERRR compliance proceeding (SCE case).¹ Hearings in the SCE case are scheduled for January 2011.

¹ A.10-04-002.

Given the similarity of DRA's recommendations regarding SONGS outages in these two proceedings, SDG&E requests that it's A.10-06-001 either be bifurcated or stayed, as a means to avoid the waste of Commission and party time and resources in separately addressing these similar SONGS issues. SDG&E states that it has no preference for one alternative over the other.

If bifurcated, all other issues besides DRA's SONGS recommendation would be addressed on the current schedule, pursuant to the Scoping Memo and rulings issued to date in A.10-06-001. The SONGS issue would then be addressed in a second phase of A.10-06-001, after the Commission issues a decision in the SCE case. In both the Motion and its reply to DRA's response, SDG&E states that it would not re-litigate the Commission's determination in the SCE case as to whether the SONGS outages were reasonable or not. SDG&E would, however, wish to litigate the amount and impact of the DRA recommended disallowance, considering SDG&E's status as a minority non-operating owner. If there is no finding of unreasonableness in the SCE proceeding, then SDG&E sees no need for a phase 2 decision in A.10-06-001.

Alternatively, SDG&E proposes that the entire proceeding be stayed, including both the remaining and the SONGS issues, pending a final decision in the SCE case. If stayed, SDG&E requests that its rebuttal testimony regarding all issues in this case would be put on hold until after the SCE decision is issued. After the SCE decision is issued, SDG&E requests that it would meet and confer with DRA to determine a new schedule for the service of SDG&E rebuttal testimony, whether hearings and briefing would be necessary, and what the new proposed decision date would be. SDG&E requests that this new proposed schedule would be presented to the assigned ALJ for consideration.

In its reply to DRA's response, SDG&E states that in litigating the impact of the DRA recommended SONGS disallowance in the second phase of this proceeding, it should be allowed to argue its separate and unique issues, and that it should not be limited on what it could argue in the future, other than the reasonableness of the SONGS outages issue.

3.2. DRA

In its response to the Motion, DRA states that it is not opposed to SDG&E's Motion, but filed its response to highlight and clarify what it sees as implications of the Motion. DRA states that its acquiescence to the SDG&E Motion is based on SDG&E's statement that a finding of unreasonable maintenance in the SCE case will be binding on SDG&E in A.10-06-001. DRA agrees with SDG&E that the amount of the disallowance attributable to SDG&E would be determined in a later phase of A.10-06-001.

DRA does not agree, though, that SDG&E's position as a minority owner of SONGS, that it is not the operator of the plant, and that it has delegated maintenance of the plant to another entity, are relevant to the assessment of the effect of that outage on ratepayers in a later phase of A.10-06-001. DRA states that even though SDG&E correctly points out in its Motion that it is a part owner of the SONGS power plant, and that SCE operates the plant, DRA believes that that ownership position does not insulate SDG&E from responsibility.

4. Conclusion

Both the bifurcation and staying of A.10-06-001 would save time and resources of both the Commission and parties regarding the litigation of the issues at hand. Given that the SONGS related issues in both the SDG&E and SCE cases are based on the same outages and recommendations are made by the same party (DRA), I find that it would be most efficient to bifurcate A.10-06-001. Since

DRA has already served its direct testimony, and SDG&E's rebuttal testimony is due soon, the most effective use of resources would be to address the remaining issues in the first phase, under the current schedule, and address the SONGS issue in a second phase of A.10-06-001, after a decision has been reached in the SCE case. In this way, the remaining issues would be resolved separately, while waiting for a determination of reasonableness regarding the SONGS issue in the SCE case.

I also find that, no matter what the Commission decides in the SCE case regarding the SONGS issue, a second phase will occur in A.10-06-001, in order to create a record in the current proceeding regarding resolution of the SONGS issue as it relates to SDG&E. The parties must meet and confer after issuance of a decision in the SCE case, to discuss a proposed schedule for the second phase of A.10-06-001.

I make no determination in this ruling regarding what information can be presented by parties in the second phase of A.10-06-001, regarding DRA's recommended disallowance due to outages at SONGS.

I also encourage the parties to discuss the possible settlement of some or all issues raised in A.10-06-001.

The schedule as detailed in the Scoping Memo and subsequent rulings in A.10-06-001 is changed as follows:

- a. A.10-06-001 is bifurcated.
- b. The current schedule in A.10-06-001 remains intact in order to address all remaining issues, other than DRA's recommended disallowance due to outages at SONGS. In this way, the Commission will have all the information it requires to make a determination regarding these remaining issues in the first phase of A.10-06-001;

- c. The determination in A.10-04-002 of whether the outages at SONGS were reasonable or not will not be re-litigated in A.10-06-001;
- d. DRA's recommended disallowance due to outages at SONGS in A.10-06-001 will be addressed in the second phase of A.10-06-001;
- e. After issuance of a decision in A.10-04-002, SDG&E, DRA and all other parties that may be granted party status subsequent to December 21, 2010 in A.10-06-001, must meet and confer regarding the joint motion referenced in Item f below;
- f. Within 30 days after issuance of a decision in A.10-04-002, SDG&E, DRA, and all other parties that may be granted party status subsequent to December 21, 2010 in A.10-06-001, must file a joint motion, to request adoption of a proposed schedule to address the SONGS issue, including dates for a second prehearing conference, service of testimony, evidentiary hearings, and filing of briefs; and
- g. A second prehearing conference will be held to determine how to proceed in the second phase of A.10-06-001.

IT IS RULED that:

1. San Diego Gas & Electric Company's Application 10-06-001 is bifurcated.
2. The schedule as detailed in the *Scoping Memo and Ruling of the Assigned*

Commissioner in Application 10-06-001 and subsequent rulings to date, is changed as follows:

- a. The current schedule in Application 10-06-001 remains intact in order to address all remaining issues, other than the Division of Ratepayer Advocate's recommended disallowance due to outages at San Onofre Nuclear Generating Station. In this way, the Commission will have all the information it requires to make a determination regarding these remaining issues in the first phase of Application 10-06-001;

- b. The determination in Application (A.) 10-04-002 of whether the outages at San Onofre Nuclear Generating Station were reasonable or not will not be re-litigated in A.10-06-001;
- c. The Division of Ratepayer Advocate's recommended disallowance due to outages at San Onofre Nuclear Generating Station in A.10-06-001 will be addressed in the second phase of A.10-06-001;
- d. After issuance of a decision in A.10-04-002, San Diego Gas & Electric Company, the Division of Ratepayer Advocates, and all other parties that may be granted party status subsequent to December 21, 2010, in A.10-06-001, must meet and confer regarding the joint motion referenced in Item e below;
- e. Within 30 days after issuance of a decision in A.10-04-002, San Diego Gas & Electric Company, the Division of Ratepayer Advocates, and all other parties that may be granted party status subsequent to December 21, 2010 in A.10-06-001, must file a joint motion, to request adoption of a proposed schedule to address the San Onofre Nuclear Generating Station issue, including dates for a second prehearing conference, service of testimony, evidentiary hearings, and filing of briefs; and
- f. A second prehearing conference will be held to determine how to proceed in the second phase of A.10-06-001.

Dated December 23, 2010, at San Francisco, California.

/s/ SEANEEN M. WILSON

Seaneen M. Wilson
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

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Dated December 23, 2010, at San Francisco, California.

/s/ ANTONINA V. SWANSEN

Antonina V. Swansen

N O T I C E

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***** PARTIES *****

***** SERVICE LIST *****

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A1006001 LIST**

John A. Pacheco
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH STREET, HQ12B
SAN DIEGO CA 92101-3017
(619) 699-5130
JPacheco@SempraUtilities.com
For: San Diego Gas & Electric Company

Mitchell Shapson
Legal Division
RM. 4107
505 VAN NESS AVENUE
San Francisco CA 94102 3298
(415) 703-2727
sha@cpuc.ca.gov
For: DRA

***** STATE EMPLOYEE *****

Andrew Campbell
Executive Division
RM. 5203
505 VAN NESS AVENUE
San Francisco CA 94102 3298
(415) 703-2501
agc@cpuc.ca.gov

Sean Wilson
Administrative Law Judge Division
RM. 5022
505 VAN NESS AVENUE
San Francisco CA 94102 3298
(415) 703-1525
smw@cpuc.ca.gov

Michael Yeo
Division of Ratepayer Advocates
RM. 4103
505 VAN NESS AVENUE
San Francisco CA 94102 3298
(415) 703-5248
mey@cpuc.ca.gov
For: DRA

***** INFORMATION ONLY *****

CALIFORNIA ENERGY MARKETS
425 DIVISADERO STREET, SUITE 303
SAN FRANCISCO CA 94117

Carolyn Kehrein
ENERGY MANAGEMENT SERVICES
2602 CELEBRATION WAY
WOODLAND CA 95776
(530) 668-5600
cmkehrein@ems-ca.com

MRW & ASSOCIATES, LLC
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 834-1999
mrw@mrwassoc.com

Case Coordination
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST., PO BOX 770000 MC B9A
SAN FRANCISCO CA 94105
(415) 973-2776
RegRelCPUCcases@pge.com

Donna Barry
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO CA 94177
(415) 973-5708
dlbf@pge.com

Kimberly C. Jones
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO CA 94105
(415) 973-8844
kcj5@pge.com

Kari Kloberdanz
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32D
SAN DIEGO CA 92123
(858) 637-7960
KKloberdanz@SempraUtilities.com
For: San Diego Gas & Electric Company

Case Administration
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE. RM 370
ROSEMEAD CA 91770
(626) 302-3003
case.admin@sce.com

A.10-06-001 SMW/avs

(415) 963-4439
cem@newsdata.com

Connor Flanigan
Attorney
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE.
ROSEMEAD CA 91770
(626) 302-6684
connor.flanigan@sce.com