

ATTACHMENT 1

SETTLEMENT AGREEMENT

RECITALS

A. On August 1, 2008, an "Assigned Commissioner's Revised Scoping Memo and Ruling Regarding Possible Rule 1.1 and Rule 8.3 Violations; Order to Show Cause" (OSC) was issued. In the OSC, San Diego Gas & Electric Company (SDG&E) was ordered to appear and show cause why it should not have fines and other sanctions imposed for possible violations of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, Rules 1.1 and 8.3, at a time and place to be determined, in a third phase of this proceeding. Specifically, the OSC states as follows:

[T]here is a reasonable basis to conclude that SDG&E, through its officers, agents and/or attorneys, misrepresented material facts in its June 2008 *ex parte* meetings with Commission staff regarding the routing of the proposed Sunrise Powerlink Transmission Project, in violation of Rule 1.1. SDG&E appears to have misrepresented that the route went through tribal lands, when in fact an alternate route had previously been jointly developed and agreed to by SDG&E that did not go through tribal lands.

B. Attachments to the OSC include declarations from Commission Staff Billie Blanchard, and Advisors Robert Kinosian, Lindsay Brown, Nancy Ryan, and Andrew Schwartz, in addition to letters and other evidence supporting the facts set forth in the OSC.

C. The Commission's Consumer Protection & Safety Division (CPSD) believes that the supporting documents attached to the OSC are sufficient evidence to demonstrate Rule 1.1 and Rule 8.3 violations on the part of Respondent SDG&E. The evidence shows that in February 2008 tribal groups made objections to the surveying of the proposed Southern Route of the Sunrise Powerlink Transmission Project because the route crossed

their lands. (Attachment 1 to the OSC.) On March 12, 2008, in its Phase II direct testimony SDG&E proposed a modified Southern Route that avoided tribal lands. (OSC, p. 3.) On April 11, 2008, the Campos Indian Tribe provided more complete comments regarding their concerns, and concurrently the United States Forest Service raised concerns about the proposed Southern Route. (Attachment 2.) On May 20, 2008, Commission Staff met with representatives of SDG&E, the Bureau of Land Management, the Forest Service, and Aspen Environmental Group to discuss the tribal objections as well as concerns raised by the Forest Service. (Attachments 3 and 4.) At the meeting SDG&E agreed to revise the mapping of the existing proposed Southern Route to address the concerns. (Attachment 4.)

Beginning on June 10, 2008, SDG&E began a series of meetings with Commission energy advisors to provide an update on the underlying proceeding. According to the declarations made by these advisors, SDG&E's representatives during the meetings told the advisors that "the only southern route will have to go through the Indian tribal lands," and pushed for approval of the Northern Route. (Attachments 9, 10, 11, and 12.) SDG&E failed to inform the energy advisors of the modified Southern Route proposed in its March 12 testimony and the modifications discussed in the May 20 meeting with the Staff and concerned parties. (Id.) After these meetings, SDG&E filed a "Notice of Ex Parte Communication" that summarized each meeting, but the notices did not include important details discussed in the meeting and did not include all of the documents provided to Staff during the meetings. (Attachments 5, 6, 7, and 8.)

D. SDG&E filed its Answer to the OSC on August 18, 2008. Attached to the Answer are Declarations from SDG&E representatives Michael R. Niggli (Chief

Operating Officer), Dan Skopec (Vice President, Regulatory Affairs), Kevin O'Beirne (Regulatory Case Manager), William H. "Billy" Blattner (Manager of Regulatory Relations), Jonathan Woldemariam (Technical Project Manager), and Jill Larson (Senior Counsel), as well as other evidence supporting the facts set forth in SDG&E's Answer.

SDG&E denies that it misled the Commission during the subject *ex parte* meetings in violation of Rule 1.1. (Answer, p. 6.) SDG&E's objective in the June *ex parte* meetings was to review the need for the project and to discuss routing options. (Answer, p. 3.) At those meetings, SDG&E "identified a number of challenges that need to be overcome if a southern route is selected, including crossing tribal land, impacts to cultural resources, impacts to undisturbed areas of the Cleveland National Forest, engineering concerns and delay in project completion." (Answer, p. 15; Appendix 3, pp. 3-5; Appendix 4, pp. 2-3; Appendix 5, p. 2; Appendix 6, p. 1.) Among other points, at the *ex parte* meetings SDG&E advocated its Modified Southern Route (disclosed in testimony on March 12, 2008) as the best southern routing option and as one that avoided tribal lands. (Appendix 3, pp. 2, 5; Appendix 4, p. 2; Appendix 6, p. 1.) Additionally, SDG&E stated that its Enhanced Northern Route was the best overall routing option for Sunrise. (Appendix 3, p. 5; Appendix 4, p. 2; Appendix 6, p. 1.) SDG&E does not believe that it misrepresented facts during the subject *ex parte* meetings by failing to state that an "alternate route had previously been jointly developed and agreed to by SDG&E that did not go through tribal lands." SDG&E maintains that there was no such agreement. (Answer, pp. 18-20; Appendix 2, p. 4; Appendix 7, p. 2.) SDG&E did not know at the time of the *ex parte* meetings that the Commission had determined to avoid tribal lands by amending the routing alternative for its "Environmentally Superior

Southern Route,” and SDG&E did not become aware of this fact until the Draft Environmental Impact Report was re-circulated on July 11, 2008. (Appendix 2, p. 6.)

SDG&E admits that it violated Rule 8.3 of the Commission’s Rules of Practice and Procedure by inadvertently failing to attach two of the four documents that should have been filed and served with the notices. (Answer, pp. 28-33; Appendix 3, p. 6; Appendix 4, p. 4; Appendix 6, p. 2.) Upon learning of this unintentional error, SDG&E filed and served four augmented notices with the omitted documents included. SDG&E does not believe that any party was prejudiced by this omission, and SDG&E has apologized and expressed regret for the error. (Answer, pp. 29, 31-32; Appendix 3, p. 6; Appendix 4, pp. 3-6; Appendix 6, p. 2.)

E. SDG&E maintains that neither this Settlement Agreement nor any of the transactions pursuant to it constitute an admission of a Rule 1 violation on the part of SDG&E.

DEFINITION

In this Settlement Agreement, approval refers to the date that this Settlement Agreement is approved by the Commission and does not include any additional time that may be required to address any applications for rehearing or appeals.

AGREEMENT

In order to avoid the risks and costs of further litigation, SDG&E and CPSD (jointly referred to herein as the Settling Parties) have agreed to the following terms and conditions as a complete and final resolution of all disputed issues¹ in this proceeding.

1. Statement of Apology. SDG&E understands the importance of clear and accurate communications with the Commission. Such communications are critical to the

¹ This Agreement addresses both the alleged Rule 1.1 and Rule 8.3 violations.

integrity of the regulatory process. SDG&E strives to be clear in its communications and to ensure that its positions and facts are clearly set forth. SDG&E sincerely regrets that it fell short of its own high standards here and is taking steps to improve the processes for the precision of its communications.

2. Payments. To resolve this matter, SDG&E will contribute \$920,000 of shareholder funds as follows:

- (a) Contribution to 2-1-1 San Diego and SDG&E's Neighbor-to-Neighbor Program. Within 60 days of the effective date of the Settlement Agreement, SDG&E will contribute \$50,000 to 2-1-1 San Diego and \$150,000 to SDG&E's Neighbor-to-Neighbor Program. 2-1-1 San Diego is a non-profit organization that provides a free, confidential, multi-lingual, 24-hour dialing code for access to community, health, and disaster services and resources. SDG&E's Neighbor-to-Neighbor Program provides assistance of up to \$200 on a customer's bill. The Program is open to qualified customers who are experiencing temporary financial hardship and are not eligible for State or Federal assistance. SDG&E will provide a proof of compliance to CPSD of the payments to 2-1-1 San Diego and the Neighbor-to-Neighbor Program.
- (b) Reimbursement to the Commission's Energy Division. Within 60 days of the effective date of the Settlement Agreement, SDG&E will contribute funds to the Commission's Energy Division to reimburse it for funds expended related to the allegations herein and for Sunrise Powerlink Transmission Project-related expenditures in the amount of \$220,000.

(c) Payment to the State's General Fund. Within 60 days of the effective date of the Settlement Agreement, SDG&E will pay the remaining \$500,000 to the State's General Fund.

3. Professional Responsibility Class. Within one year of the effective date of the Settlement Agreement, SDG&E will develop and sponsor, in consultation with CPSD and the Commission's Public Advisor's Office, a professional responsibility course that would be facilitated by a third party, agreeable to CPSD, that would focus on the Commission's Rules of Practice and Procedure with an emphasis on Rule 1 duties and *ex parte* rule best practices. SDG&E would offer the course to SDG&E's San Francisco office staff, interested Commission staff, and outside parties at SDG&E's shareholders' cost up to \$200,000. All SDG&E Directors and Officers would be required to attend the same course that would be offered internally as well at a separate time.

4. Ex Parte Best Practices Manual. SDG&E will create an *ex parte* best practices manual in consultation with the Commission's General Counsel's office.

5. Compromise. The Settling Parties agree that this Settlement Agreement represents a compromise, not agreement or endorsement of disputed facts and law, and the Settlement Agreement does not constitute a precedent regarding any principle or issue in this proceeding or any future proceeding.

6. Intent of Settlement Agreement. This Settlement Agreement embodies the entire understanding of the Settling Parties with respect to the matters described herein and supersedes any and all prior oral or written agreements, principles, negotiations, statements, or understandings among the Settling Parties. The Settlement Agreement may be amended only by a written agreement signed by all the Settling Parties. The

Settling Parties have bargained in good faith to achieve this Settlement Agreement. The Settling Parties intend the Settlement Agreement to be interpreted as a unified, interrelated agreement. Each of the Settling Parties has contributed to the preparation of this Settlement Agreement. Accordingly, the Settling Parties agree that no provision of the Settlement Agreement shall be construed against any party because that party or its counsel drafted the provision. The section headings contained in this Settlement Agreement are solely for the purpose of reference, are not part of the agreement of the Settling Parties and shall not in any way affect the meaning or interpretation of this Settlement Agreement.

7. Governing Law. This Settlement Agreement shall be governed by the laws of the State of California.

8. Record. The Settling Parties agree that the declarations and other exhibits, appendices, and attachments provided by CPSD and SDG&E in the OSC and SDG&E's Answer to the OSC should be identified as exhibits in this proceeding and received in evidence. In the event that this Settlement Agreement is not approved by the Commission and the issues in this case proceed through discovery and to evidentiary hearing, the Settling Parties reserve the right to object to the admissibility of any party's testimony or portion thereof.

9. Successors and Assigns. The rights conferred and obligations imposed on any party by this Settlement Agreement shall inure to the benefit of or be binding on that party's successors in interest or assignees as if such successor or assignee was itself a party hereto.

10. Counterparts. This Settlement Agreement may be executed in counterparts.

11. Effective Date. This Settlement Agreement will become effective on the date that this Settlement Agreement is approved by the Commission.

In witness whereof, the Settling Parties hereto have duly executed this Settlement Agreement.

Dated: _____ SAN DIEGO GAS & ELECTRIC COMPANY

By: _____

Lee Schavrien, Senior Vice President

By: _____

W. Davis Smith, Senior Vice President
and General Counsel

Dated: 2/27/09 CONSUMER PROTECTION & SAFETY DIVISION

By: _____

Richard W. Clark, Director

By: Travis T. Foss

Travis T. Foss, Staff Counsel

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(END OF ATTACHMENT 1)