

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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In The Matter of the Application of SAN
DIEGO GAS & ELECTRIC COMPANY
(U902E) for a Certificate of Public
Convenience and Necessity for the
Sycamore-Penasquitos 230 Kilovolt
Transmission Line Project.

Application 14-04-011
(Filed April 7, 2014)

**OPENING BRIEF OF THE
OFFICE OF RATEPAYER ADVOCATES**

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TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION	1
II. DISCUSSION.....	2
A. THE COMMISSION SHOULD SET A COST CAP THAT MATCHES SDG&E’S COST ESTIMATE	2
B. THE COMMISSION SHOULD REQUIRE SDG&E TO REQUEST A REDUCED AUTHORIZED BUDGET IF COSTS ARE LOWER THAN EXPECTED	3
C. THE COMMISSION SHOULD REQUIRE SDG&E TO FILE A TIER 3 ADVICE LETTER IF IT EXCEEDS THE COST CAP	4
III. CONCLUSION	7
APPENDIX A	

TABLE OF AUTHORITIES

PAGE

CALIFORNIA RULES OF PRACTICE AND PROCEDURES

Rule 13.11 1

CALIFORNIA PUBLIC UTILITIES COMMISSION DECISIONS

D.04-08-046..... 3
D.07-01-040..... 3, 5
D.07-03-012..... 3
D.08-12-058..... 3
D.12-12-031..... 6
D.15-12-020..... 6
D.16-05-024..... 6
D.16-05-041..... 6

CALIFORNIA PUBLIC UTILITIES COMMISSION CODES

§1005.5 2, 4
§1005.5(a)..... 2
§1005.5(b)..... 4, 5

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I. INTRODUCTION

Pursuant to Rule 13.11 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rule) and the March 18, 2016 Administrative Law Judge's Ruling Setting Remaining Schedule (Ruling), the Office of Ratepayer Advocates (ORA) hereby submits this opening brief in San Diego Gas & Electric Company's (SDG&E) Application (A.) 14-04-011.

ORA recommends the Commission institute a cost cap if it grants SDG&E a certificate of public convenience and necessity (CPCN).¹ If the Commission grants a CPCN, the cost cap should apply regardless of whether the Commission authorizes SDG&E to construct a 230 kilovolt (kV) transmission line between the Sycamore and Penasquitos Substations (Proposed Project); or to construct any of the other feasible alternatives identified in the Final Environmental Impact Report (FEIR),² initially published March 7, 2016,³ with an Addendum published as of May 2016. Further, if a

¹ Exhibit 22: Office of Ratepayer Advocates' (ORA) Revised Testimony of Christopher Myers, dated May 13, 2016 (redacted version). (Hereafter called, "Exhibit 22"), p. 2. Note: When discussing a cost cap throughout this brief, ORA does not presume the Commission should issue a CPCN. Rather, ORA only proposes a cost cap in the event that the Commission issues a CPCN in the present proceeding.

² Exhibit 22, p. 4.

³ Exhibit 22, p. 1; *See also*

CPCN is granted, and actual costs exceed such a cost cap, the Commission should require SDG&E to file a Tier 3 Advice Letter (AL) identifying the reason(s) for the increase and justification as to why it should be granted authority to recover that excess in rates.⁴

II. DISCUSSION

A. The Commission Should Set a Cost Cap that Matches SDG&E's Cost Estimate

ORA recommends the Commission institute a cost cap if it determines it is just and reasonable to grant SDG&E a CPCN.⁵ For a table showing the recommended cost cap for various alternatives in the FEIR, see Appendix A of this brief. This recommendation is consistent with California Public Utilities (Cal. Pub. Util.) Code Section 1005.5(a), which requires:

Whenever the commission issues to an electrical or gas corporation a certificate authorizing the new construction of any addition to or extension of the corporation's plant estimated to cost greater than fifty million dollars (\$50,000,000), the commission shall specify in the certificate a maximum cost determination to be reasonable and prudent for the facility. The commission shall determine the maximum cost using an estimate of the anticipated construction cost, taking into consideration the design of the project, the expected duration of construction, and estimate of the effects of economic inflation, and any known engineering difficulties associated with the project.

In order to effectively implement Cal. Pub. Util. Code §1005.5, the cost cap of an authorized alternative should match the cost estimate for that alternative that SDG&E provided in its comments on the Draft Environmental Impact Report, and restated and expanded upon in Attachment C of ORA's Prepared Testimony.⁶ For convenience, these cost estimates are provided in Appendix A of this brief. SDG&E provided a cost

http://www.cpuc.ca.gov/environment/info/panoramaenv/sycamore_penasquitos/index.html.

⁴ Exhibit 22, p. 4.

⁵ Exhibit 22, p. 2.

⁶ Exhibit 22, Attachment C (SDG&E Revised Response to ORA Data Request 18 Question 1 [Received April 12, 2016]), pp. 5-6.

estimate for the Proposed Project with the Application,⁷ as well as in a follow up data response.⁸ ORA received from SDG&E cost-estimates for most of the other alternatives listed in the Final Environmental Impact Report by April 12, 2016.² Given these recent dates, the estimates serve as a current basis in the record to set the appropriate cost cap. Therefore, the Commission should rely on these cost estimates to institute a cost cap should it grant a CPCN to SDG&E.

B. The Commission Should Require SDG&E to Request a Reduced Authorized Budget if Costs are Lower than Expected

In accordance with well-established practices, if the Commission authorizes an alternative, the Commission should direct SDG&E to apply for a lower cost cap if costs for that alternative are lower than the estimate that SDG&E has provided for the record. For instance, the Commission “adopt[ed] \$92.5 million as a cost cap for the Antelope-Pardee Transmission Project”¹⁰ and instructed Southern California Edison Company (SCE) to “apply for a lower maximum if it appears that actual cost will be lower than the adopted estimated by at least 1%.”¹¹ The Commission adopted similar measures in other CPCN proceedings.¹² Thus, it is reasonable and consistent with this Commission’s established precedent to instruct SDG&E to apply for a lower cost cap if the actual costs are less than the authorized amount.

⁷ See Application, Volume II, Proponents Environmental Assessment, Section 3.0, at Section 3.4, Table 3-1, pp. 3-5.

⁸ Exhibit 22, Attachment C (SDG&E Revised Response to ORA Data Request 18 Question 1 [Received April 12, 2016]).

² Exhibit 22, Attachment C (SDG&E Revised Response to ORA Data Request 18 Question 1 [Received April 12, 2016]), p. 1.

¹⁰ D.07-03-012, *Opinion Granting A Certificate of Public Convenience and Necessity*, (issued March 1, 2007; in A.04-12-007. p. 3.

¹¹ D.07-03-012, Ordering Paragraph (OP) 6, pages 114-115.

¹² See D.08-12-058, *Decision Granting A Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project*, OP 6(a), p. 293 (issued December 18, 2008). See also D.07-01-040, *Opinion Granting A Certificate of Public Convenience and Necessity*, OP 11, p. 115 (issued January 25, 2007). See also D.04-08-046, *Opinion Granting A Certificate of Public Convenience and Necessity*, OP 10, p.146 (issued August 19, 2004). (“Once PG&E has developed a final engineering design-based construction estimate for the adopted route, if this estimate is one percent or more lower than the adopted maximum reasonable and prudent cost determined pursuant

C. The Commission Should Require SDG&E to File a Tier 3 Advice Letter If It Exceeds the Cost Cap

In the event SDG&E may wish to seek to put into rates in an amount in excess of the approved cost cap, ORA recommends that the Commission require SDG&E to file a Tier 3 AL, consistent with Pub. Util. Code Section 1005.5(b), which states:

After the certificate has been issued, the corporation may apply to the commission for an increase in the maximum cost specified in the certificate. The commission may authorize an increase in the specified maximum cost if it finds and determines that the cost has in fact increased and that the present or future public convenience and necessity require construction of the project at the increased cost; otherwise, it shall deny the application.

Pursuant to this statute, the Commission should require SDG&E to provide a thorough justification for any increase in the cost cap. As described in further detail below a Tier 3 Advice Letter is the appropriate mechanism to request upward adjustments to the cost cap.

to Pub. Util. Code § 1005.5, PG&E must, within 30 days, show cause why the Commission should not adopt a lower amount as the maximum reasonable and prudent cost to reflect the final estimate.”)

A Tier 3 Advice Letter is the appropriate mechanism because General Order (GO) 96-B requires that the Commission exercise discretion over similar types of rate changes or charges via the Tier 3 Advice Letter process.¹³

There is also precedent in which the Commission processed an advice letter to exceed a cost cap as Tier 3, so that it could exercise discretion about whether to grant recovery of the additional expenditures. In D.07-01-040, the Commission granted Southern California Edison Company (SCE) a CPCN to construct the California portion of the Devers Palo Verde Number 2 Transmission Line Project; the Commission also required SCE to file an advice letter if it exceeded the authorized maximum cost, but did not identify whether it should be a Tier 3.¹⁴ SCE later requested an increase to this cost cap via Tier 2 Advice Letter, which typically results in a staff disposition. However, the Commission processed SCE's filing as a Tier 3 Advice Letter, with a resolution adopted by the Commission instead of a staff disposition. In that Resolution, the Commission explicitly stated:

¹³ See GO 96-B, Energy Industry Rule 5, which provides: "a Tier 3 advice letter is subject to disposition under General Rule 7.6.2". See also GO 96-B, Energy Industry Rule, Section 5.3(9), which requires "A change to a rate or charge pursuant to a methodology approved by the Commission for use in an advice letter . . . may become effective only after Commission approval". See also, GO 96-B General Rule 7.6.2, which requires for Tier 3 advice letters that "[t]he reviewing Industry Division will prepare and place on the Commission's meeting agenda a resolution approving, rejecting, or modifying any advice letter filed with the Industry Division. . ."

¹⁴ See D.07-01-040, OP 12, pp. 115-116. ("If SCE's final detailed engineering design-based construction estimate for the authorized project exceeds the authorized maximum cost, SCE shall, within 30 days, file an advice letter to seek an increase in the approved maximum cost pursuant to § 1005.5(b), and shall address whether the cost increases affect the cost effectiveness and need for the DPV2 project.")

The cost increase requested by SCE is substantial in magnitude and does not result from a pre-specified formula or index approved in D.07-01-040 to adjust the approved cost cap. We note that while this Advice Letter was filed as a Tier 2, it is effectively being processed as a Tier 3 advice letter with a resolution adopted by the Commission instead of a staff disposition.¹⁵

More generally, the Commission has come to use a Tier 3 advice letter review in matters where it must exercise discretion, stating:

In a Tier 3 advice letter review, a matter is subject to the scrutiny of the full Commission in a public meeting and enables the Commission to address matters through advice letters that go beyond a ministerial review. In addition, over the course of years, a Tier 3 advice letter review has come to signal that the Commission views the issues addressed in the advice letter as rising to a level of high importance to California, and deserving of review at the highest levels of the Commission.¹⁶

Thus, it is reasonable for the Commission to instruct SDG&E to file a Tier 3 Advice Letter if SDG&E requests a recovery in rates in excess of the final adopted cost cap. In the Tier 3 Advice Letter, SDG&E bears the burden of affirmatively showing that all aspects of its request for an increase to a cost cap are reasonable.¹⁷

¹⁵ See Commission Resolution E-4602, *S. California Edison Co. (Sce) Seeks Approval of the California Pub. Utilities Comm'n (Cpuc or Comm'n) to Revise the Cost Cap for Its California Portion of the Devers Palo Verde No. 2 Transmission Line Project, Now Referred to As Devers Colorado River Transmission Line Project (Dcr), from \$545.3 Million (2005\$) to \$944.8 Million (2012\$)*. (Feb. 5, 2014) 2014 WL 554997, at *15; See also, <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M087/K776/87776740.PDF>.

¹⁶ D.12-12-031, *Decision Granting Authority to Enter into a Research and Development Agreement with Lawrence Livermore National Laboratory for 21st Century Energy Systems and for Costs up to \$152.19 Million*, p. 18 (issued December 20, 2012).

¹⁷ D.16-05-041, *Application of Great Oaks Water Company (U162W) for an Order authorizing it to increase rates charges for water service by \$ 1,442,313 or 8.50% in 2016, by \$ 1,051,887 or 5.71% in 2017, and by \$ 683,236 or 3.51% in 2018*, p. 31, Conclusion of Law Number 1. (“The Applicant alone bears the burden of proof to show that its requests are reasonable.”). See also D.16-05-024, *Order Denying the Application for Rehearing of Decision (D.) 15-12-020*. (“Precedent is clear that the ultimate burden of proof as to reasonableness never completely shifts from the utility which is seeking to pass its costs to ratepayers.”)

III. CONCLUSION

For the reasons stated above, the Commission should adopt the recommendations made herein.

Respectfully submitted,

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