



FILED
8-29-16
02:44 PM

MP6/JMO/ek4 8/29/2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
San Diego Gas & Electric Company for a
Certificate of Public Convenience and
Necessity for the Sunrise Powerlink
Transmission Project.

Application 06-08-010
(Filed August 4, 2006)

**SECOND AMENDMENT TO SCOPING MEMO AND RULING
OF ASSIGNED COMMISSIONER**

Summary

This Second Amendment to Scoping Memo and Ruling of Assigned Commissioner (Scoping Amendment 2) amends the scope of issues to be addressed in this proceeding and the procedural schedule.

1. Procedural and Legal Background

On August 18, 2015, San Diego Gas & Electric Company (SDG&E) filed a Petition for Modification (PFM) asking that the cost cap established by Decision (D.) 08-12-058 be increased. D.08-12-058 granted a Certificate of Public Convenience and Necessity (CPCN) to SDG&E to build the Sunrise Powerlink Transmission Project (Sunrise) conditioned on a maximum cost of \$1.883 billion.¹

Under Section 1005.5 of the Public Utilities Code (Pub. Util. Code),² when granting a CPCN the California Public Utilities Commission (Commission) must

¹ All amounts are in 2012 dollars.

² All subsequent section references are to the California Public Utilities Code unless otherwise indicated. For ease of reference, Section 1005.5 is included with this Ruling as Attachment A.

specify a “maximum cost determined to be reasonable and prudent for the facility.” The Commission is also responsible for approving the environmental review of the project under the California Environmental Quality Act (CEQA). Although the Commission is responsible for ensuring fair and reasonable electricity rates,³ the Federal Energy Regulatory Commission (FERC) has jurisdiction to set rates to recover transmission costs.

D.08-12-058 set a cost cap of \$1.883 billion, subject to certain adjustments. The largest adjustment would apply if SDG&E was not permitted to underground the line along Alpine Boulevard as planned. In that event, the cost cap was to be reduced commensurate with the estimated savings from not undergrounding the line. D.08-12-058 set a formula to be used to calculate the reduction.

The PFM requests that the original cost cap be increased. Although the new maximum cost proposed by SDG&E is only approximately \$4.4 billion more than the original estimated cost of \$1.883 billion, it is approximately \$80 billion more than the adjusted cost cap which parties have stipulated is approximately \$1.800 billion.

SDG&E cites two significant areas of increased costs: (1) environmental mitigation and monitoring costs are nearly double the original estimate, (2) a change order dispute with the construction contractor lead to a \$65 million settlement.

³ Section 451 of the California Public Utilities Code.

Table Summarizing Changes (excerpt from SDG&E petition):
(in millions of dollars)

	Recorded cost	Estimated Cost	Over/Under
Construction costs & AFUDC	\$1,490.9	\$1,594.2	\$(103.3)
Alpine undergrounding	\$11.7	\$91.0	\$(79.3)
Mitigation & Monitoring	\$384.8	\$197.8	\$187.0
TOTAL	\$1887.4	\$1,883.0	\$4.4

San Diego Consumers Action Network (SDCAN) filed a response to the PFM on September 16, 2015 and SDG&E replied on September 28, 2016. A PHC was held on December 22, 2015. An Amendment to Scoping Memo was issued on January 7, 2016 (Scoping Amendment 1). As permitted by Scoping Amendment 1, SDG&E and SDGAN filed opening and reply briefs on threshold legal issues regarding what level of review should apply to SDG&E's request to increase the cost cap. Southern California Edison Company (SCE) also filed an opening brief. The Amendment to Scoping Memo set a second PHC for April 7, 2016 to address the briefs on legal issues, but that date was suspended to allow additional time for review of the briefs.

The briefs raise a number of important issues regarding what level of review, if any, is required from the Commission at this time. Scoping Amendment 1 contemplated a review to determine if SDG&E's additional expenditures were reasonable. The reasonableness standard is used frequently by the Commission. However, as SCE pointed out in its opening brief, "determination of the reasonableness of costs and associated ratemaking and revenue requirement fall under the sole jurisdiction of FERC." The Commission

would not be performing a reasonableness review for the purpose of setting transmission rates, but SCE's point does beg the question of whether it is an efficient and appropriate use of the Commission's resources for the Commission to perform a reasonableness review at this time.

SDCAN argues that the Section 1005.5 requirement for a cost cap increase should apply. Section 1005.5(b) allows the Commission to increase a cost cap if it finds 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." But this statutory authority to increase the cost cap in connection with a CPCN contemplates that the project is not yet constructed when the request for an increase is made.

SDG&E recommends that if the Commission agrees with SDGAN that Section 1005.5(b) is limited to pre-completion adjustments to the cost cap, "the Commission should simply dismiss the petition and defer recovery of the costs at issue to [FERC]."⁴

To protect ratepayers, D.08-12-058 required SDG&E to file quarterly reports on the Sunrise project construction status.⁵ In its filings related to the

⁴ SDG&E Reply Brief at 3.

⁵ Ordering Paragraph 13 states "SDG&E shall file quarterly Sunrise project status updates. Contained in these status reports shall be, at minimum, a comprehensive project development schedule, including estimated project in-service date; any changes in project scope and schedule, including the reasons for such changes; any engineering difficulties encountered in constructing the project; the need for the Encina transformer, the cost of undergrounding in Alpine Boulevard, and the amount of undergrounding contemplated; total estimated project costs; actual spending to date; any and all filings submitted to FERC for ultimate cost recovery through transmission rates; and, any additional information SDG&E believes relevant and necessary to accurately convey the status of the Sunrise project. This quarterly report shall be served (but not filed) on each Commissioner, the Director of the Commission's Energy Division, and the service list for A.06-08-010."

PFM, SDCAN has raised significant concerns about whether SDG&E complied with the D.08-12-058 reporting requirements.

Because Sunrise was one of the largest and most complicated transmission projects in California's history, the Commission sought to protect ratepayers from changes in cost. Under D.08-12-058, the primary protection for California ratepayers came in the form of required quarterly status reports. SDG&E was required to file these reports during construction.⁶ SDG&E began filing the reports in 2009. Sunrise was energized in 2012. Construction was completed in 2013. SDG&E continued to file quarterly reports, the most detailed of which is Quarterly Report 25, dated April 22, 2015, filed after construction was completed. Quarterly Report 25 includes significantly more detailed information on expenditures – especially estimated environmental mitigation and monitoring expenditures – than any previous quarterly report. By ruling, SDG&E was directed to file additional information regarding the cost cap and SDG&E's compliance with D.08-12-058's reporting requirements.

SDG&E's supplemental filing was made on May 13, 2016. By ruling on June 6, 2016 the assigned Administrative Law Judge (ALJ) suspended the procedural calendar.

2. Discussion of Revised Scope

On July 29, 2016, the assigned ALJ issued a ruling setting a new PHC and proposing to modify the scope of the proceeding and to set a new procedural schedule. The July 29, 2016 Ruling described the issue as follows:

After reviewing the January 22, 2016 and February 12, 2016 briefs and the May 13, 2016 submission by SDG&E, it appears that the

⁶ D.08-12-058 at 273.

requested change to the cost cap is moot and that the real issue is whether SDG&E took the steps required by D.08-12-058 to protect California ratepayers by keeping the Commission informed of changes to the project.

Section 1005.5 requires the Commission to set the cost cap. Section 1005.5 also includes a procedure for changing the cost cap prior to completion of a project. That procedure is prospective, and requires the Commission to make findings as to whether the cost has in fact increased and whether public convenience and necessity requires construction of the project at the increased cost.

The Sunrise project has already been built and put in service. SDG&E has already incurred the costs of construction. Section 1005.5 does not address whether or how changes could be made to the cost cap for a completed project. The determination of whether SDG&E can include these costs in rates is not before the Commission. Although the Commission must set a cost cap for transmission projects, recovery of those costs, including determination of the reasonableness of rates, is under FERC jurisdiction.

Because the Sunrise has already been built and put into operation, the request to change the cost cap is moot. But an important issue has been raised by SDCAN: Did SDG&E comply with the provisions of the decision that were designed to protect California's rate payers?

Communication with the Commission was an issue early in this proceeding when the assigned Commissioner expanded the scope to include a possible violation of Rule 1.1 of the Commission's Rules of Practice and Procedure (Rules).⁷ SDG&E reached a settlement with the Commission's Safety and Enforcement Division (then known as

⁷ Rule 1.1 states: "Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law."

Consumer Safety and Protection Division (CPSD)). SDG&E did not admit to violating Rule 1.1, but did formally acknowledge the critical importance of “clear and accurate communications for the regulatory process to retain its integrity.”⁸ As part of the settlement, SDG&E was required to develop and sponsor “a professional responsibility course, in consultation with CPSD and the Commission’s Public Advisor’s Office, that focuses on the Commission’s Rules, emphasizing Rule 1.1 duties and *ex parte* rules best practices.”

2.1. Proposed Amended Scope

The July 29, 2016 Ruling proposed to delete the issues set forth in the January 7, 2016 Amendment to Scoping Memo and replace them with the following:

1. Given the particular facts of this case, is SDG&E’s request for a cost cap increase moot?
2. Did SDG&E comply with D.08-12-058 reporting requirements? If not, is this noncompliance sufficient to raise a Rule 1.1 issue?

At the PHC, the assigned ALJ clarified that this revised scope is intended to determine if SDG&E’s actions complied with the quarterly reporting requirements and if SDG&E has potentially violated Rule 1.1. If either of these issues is determining in the affirmative, then a separate investigation would need to be opened to determine if there was a violation of Rule 1.1 or the Reporting Requirements and if a penalty is warranted.

The current scope invites parties to suggest alternatives for more effective reporting on construction project milestones and costs for future construction projects.

⁸ D.09-07-018.

2.2. Revised Procedural Schedule

The proposed procedural schedule, below, does not include evidentiary hearings. At the PHC parties agreed that evidentiary hearings are not necessary to address the issues as set forth above. However, evidentiary hearings could be required if an Order Instituting Investigation is issued in the future.

The procedural schedule is as follows:

Event	Date
Opening Briefs, concurrent, filed and served	September 9, 2016
Reply Briefs, concurrent, filed and served	September 16, 2016
Proposed Decision issued	Within 90 days of reply briefs

IT IS RULED that:

1. The revised scope of this proceeding is as set forth above.
2. The revised procedural schedule for this proceeding is as set forth above.
3. Except as specifically set forth above, the terms of the January 7, 2016

Amendment to Scoping Memo and Ruling of Assigned Commissioner remain in place.

Dated August 29, 2016, at San Francisco, California.

/s/ MICHAEL PICKER
Michael Picker
Assigned Commissioner

/s/ JEANNE M. MCKINNEY
Jeanne M. McKinney
Administrative Law Judge

Attachment A

California Public Utilities Code Section 1005.5

(a) 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 determined 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, an estimate of the effects of economic inflation, and any known engineering difficulties associated with the project.

(b) 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.*

(c) After construction has commenced, the corporation may apply to the commission for authorization to discontinue construction and recover those costs which were reasonably and prudently incurred. After a showing to the satisfaction of the commission that the present or future public convenience and necessity no longer require the completion of construction of the project, the commission may authorize discontinuance of construction and the recovery of those construction costs which were reasonable and prudent.

(d) In any decision establishing rates for an electrical or gas corporation reflecting the reasonable and prudent costs of the new construction of any addition to or extension of the corporation's plant, when the commission has found and determined that the addition or extension is used and useful, the commission shall consider whether or not the actual costs of construction are within the maximum cost specified by the commission.

(Added by Stats. 1985, Ch. 926, Sec. 2.)

(END OF ATTACHMENT A)