

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**11/13/18  
02:45 PM

November 13, 2018

**Agenda ID #17021**  
**Ratesetting**

TO PARTIES OF RECORD IN APPLICATION 17-03-019:

This is the proposed decision of Administrative Law Judge Chiv. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's December 13, 2018 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4)(B).

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:mph

Attachment

Decision PROPOSED DECISION OF ALJ CHIV (Mailed 11/13/2018)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company (U902E) for Waiver of Certain Affiliate Transaction Rules for Interactions with Unregulated Subsidiary.

Application 17-03-019

**DECISION GRANTING MOTION TO WITHDRAW WITH CONDITIONS**

**Summary**

In this decision, we grant San Diego Gas & Electric Company's (SDG&E or Applicant) motion to withdraw its application without prejudice on the condition that SDG&E disclose Application 17-03-019 and this decision in any subsequent application requesting approval for a framework involving the commercialization of intellectual property that is filed by SDG&E or brought by any of Applicant's current directors, officers, or owners of more than 10% of its outstanding shares. This decision also states the Commission's intent to make the record in this proceeding available for use in any future application filed by SDG&E requesting approval for a framework involving the commercialization of intellectual property, should one be filed. Finally, this decision authorizes parties otherwise eligible for intervenor compensation to seek intervenor compensation for any substantial contributions in this proceeding. This proceeding is closed.

**1. Background**

On March 30, 2017, San Diego Gas & Electric Company (SDG&E or Applicant) filed an application requesting the Commission waive certain Affiliate Transaction Rules (ATR) to allow the utility to interact with an unregulated subsidiary. SDG&E intended to create a new unregulated subsidiary to help it commercialize innovations, especially intellectual property (IP) and related products.

The application was protested by the Office of Ratepayer Advocates (ORA)<sup>1</sup> and the Utility Consumers' Action Network (UCAN). A Prehearing Conference was held on July 28, 2017 at which parties presented their views on the scope, schedule and other procedural matters. The Utility Reform Network (TURN) was granted party status on August 25, 2017. On January 19, 2018, the assigned Commissioner issued a scoping memo and ruling.

Parties served opening testimony on February 6, 2018 and rebuttal testimony on February 22, 2018. On March 13 - 14, 2018, evidentiary hearings were held. The parties filed opening briefs on April 3, 2018 and reply briefs on April 17, 2018.

On June 15, 2018, the Assigned Commissioner issued a ruling seeking comments on proposed modifications to SDG&E's application. Comments were filed by SDG&E, TURN, and ORA on June 25, 2018, with reply comments filed by TURN and ORA on July 2, 2018. The Commission granted UCAN's motion to accept late-filed comments on July 20, 2018.

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<sup>1</sup> Senate Bill 854 (Stats. 2018, ch. 51) amended Public Utilities Code Section 309.5(a) so that the Office of Ratepayer Advocates is now named the Public Advocate's Office of the Public Utilities Commission. Because the pleadings in this case were primarily filed under the name Office of Ratepayers Advocates, we will refer to this party as ORA in this decision.

On August 27, 2018, a proposed decision was issued that granted SDG&E's request for waivers of the ATRs, subject to certain conditions. Comments on the proposed decision were due on September 17, 2018. On September 14, 2018, SDG&E requested an extension for time to submit comments to the proposed decision, stating it would be filing a motion to withdraw the application. The Administrative Law Judge (ALJ) granted the request for an extension and suspended deadlines for comment.

On September 18, 2018, Applicant filed a motion to withdraw the application. On September 19, 2018, the ALJ reinstated the deadline for comments and reply comments to the proposed decision. TURN and UCAN filed comments to the proposed decision and UCAN filed reply comments. On October 3, 2018, ORA and TURN filed responses to SDG&E's motion to withdraw.

## **2. Discussion**

The Commission has the authority to close or dismiss a contested proceeding.<sup>2</sup> The Commission has authority to deny motions to withdraw when, among other things, doing so is in the public interest or when the applicant requests withdrawal for the purpose of avoiding an adverse outcome.<sup>3</sup> The Commission may impose conditions on future applications even after a motion to withdraw an application is granted and a proceeding is closed.<sup>4</sup>

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<sup>2</sup> See *Application of SBC Pacific Bell Telephone Company for Authority to Categorize Local DA Service as a Category III Service (SBC Pacific Bell)*, Decision (D.) 04-06-016.

<sup>3</sup> See *id.* at 6.

<sup>4</sup> *Id.* See also *Request of MCI WorldCom, Inc. and Sprint Corp. for Approval of Transfer Control of Spring Corp.'s California Operating Subsidiaries to MCI WorldCom, Inc. (MCI WorldCom)*, D.01-02-040.

SDG&E seeks a withdrawal of its application because the proposed “business model no longer has promising economics. Accordingly, SDG&E is not planning to form a subsidiary to help commercialize IP.”<sup>5</sup> SDG&E concludes that “[t]o the extent SDG&E revives any NewCo-type framework in the future, it may be fundamentally different than what SDG&E presented in its Application. For the foregoing reasons, SDG&E respectfully requests the Commission grant this motion, without prejudice to a future application involving a subsidiary that may engage in IP commercialization.”<sup>6</sup>

ORA and TURN oppose SDG&E’s motion to withdraw. Both criticize SDG&E’s withdrawal motion because it comes after “parties in this case spent seventeen months developing an extensive record which resulted in the Proposed Decision...,”<sup>7</sup> and that permitting withdrawal at this stage “creates a dangerous precedent.”<sup>8</sup> Both ORA and TURN take issue with SDG&E’s statement that it “may” submit a future application, finding that doing so amounts to a “kind of forum shopping [that] encourages a waste of Commission and party resources.”<sup>9</sup>

TURN argues that the proceeding “addressed several important policy considerations when a utility forms a subsidiary to engage in commercialization of IP” and that such issues will be relevant in a future application.<sup>10</sup> Allowing SDG&E’s withdrawal without resolving these issues, TURN contends, will

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<sup>5</sup> Motion of SDG&E (U 902 E) to Withdraw its Application (Motion to Withdraw) at 1.

<sup>6</sup> *Id.* at 6.

<sup>7</sup> Response of the Public Advocates Office to Motion to Withdraw (ORA Response) at 2. *See also* Response of TURN to the Motion to Withdraw (TURN Response) at 4.

<sup>8</sup> TURN Response at 4. *See also* ORA Response at 2.

<sup>9</sup> *Id.*

<sup>10</sup> TURN Response at 3.

require parties to relitigate these issues in a future proceeding. TURN urges the Commission to preserve the record regarding these policy considerations.

Finally, ORA states that granting withdrawal “calls into question whether other intervenors will be entitled to seek compensation. [ORA] cannot support a result that jeopardizes the right of intervenors to be compensated for the substantial contributions they have made to this or any proceeding. If the Commission deems it appropriate to allow SDG&E to withdraw its application, it should do so in a manner that preserves or provides intervenors the right to seek compensation.”<sup>11</sup>

In weighing SDG&E’s motion against the parties’ concerns, we agree with ORA and TURN that the record developed in this proceeding over seventeen months should not be squandered, nor should the efforts made in developing the record go unrewarded.<sup>12</sup> The Commission finds that granting SDG&E’s motion to withdraw is appropriate given that SDG&E is no longer pursuing the specified waivers of the affiliate transaction rules or forming the proposed subsidiary. However, the Commission concludes that imposing conditions on future applications is appropriate.

The Commission acknowledges the substantial work of parties in this proceeding and seeks to make efficient use of the existing record in any future application. The Commission has previously granted applicants’ motions to withdraw with the condition that future applications brought by the same applicant or brought by any of the applicant’s current directors, officers, or

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<sup>11</sup> ORA Response at 2.

<sup>12</sup> See *MCI WorldCom*, D.01-02-040 at 12.

owners of more than 10% of its outstanding shares, are required to reference their prior applications and any decision granting the motion to withdraw their prior applications.<sup>13</sup> In light of parties' concerns with SDG&E's motion to withdraw, the Commission deems such a condition reasonable here. To that end, the Commission grants SDG&E's motion to withdraw on the condition that SDG&E disclose this application and this decision in any subsequent application requesting approval for a framework involving the commercialization of IP that is filed by SDG&E or by any of SDG&E's current directors, officers, or owners of more than 10% of its outstanding shares.

The Commission has previously authorized the prospective use of the prior evidentiary record in similar circumstances<sup>14</sup> and we find it appropriate to do so here. Accordingly, the Commission shall incorporate the record of this proceeding in any future applications filed by SDG&E requesting approval for a framework that involves the commercialization of IP. SDG&E will have the burden of showing that the record in this docket is not relevant to a future application requesting approval for a framework that involves the commercialization of IP.

Finally, we invite parties otherwise eligible to seek intervenor compensation for substantial contribution made in this proceeding to do so. Although intervenor compensation is typically granted for work contributing to a final decision on the merits of an applicant's request, the Commission has

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<sup>13</sup> See e.g., *Application of Galaxenet LLC for a Certificate of Public Convenience and Necessity in Order to Provide Resold and Limited Facilities Based Competitive Local Exchange and Interexchange Service*, D.18-08-003.

<sup>14</sup> *SBC Pacific Bell*, D.04-06-016.

authority to implement the statutory intervenor compensation program when the intervenor's participation substantially assisted in the making of an order or decision.<sup>15</sup>

Parties made a substantial contribution to the proceeding, including this decision, through testimony, comments, briefing and participation in evidentiary hearings. TURN, UCAN and ORA vigorously opposed SDG&E's application on issues relating to, among other things, conflicts of interest between the subsidiary and the utility, limitations on liability to ratepayers, the revenue sharing mechanism, the retention of IP rights for ratepayer use, and the payment of an independent evaluator. TURN, ORA, and UCAN effectively litigated these issues, creating a robust record that resulted in the Commission's careful examination of the application and informed the conditions imposed in the proposed decision that granted SDG&E's application. The parties' participation contributed to the record in this proceeding that the Commission is ordering shall be used in any future application filed by SDG&E that requests approval of a framework that involves the commercialization of intellectual property.

SDG&E filed its motion to withdraw three weeks after the proposed decision was issued. It is reasonable to infer that much of the parties' efforts in submitting testimony, comments, briefing and participating in evidentiary hearings substantially contributed to SDG&E's decision to file the motion to withdraw its application, given the timing of the motion. The intervenors should not be penalized because SDG&E requested to withdraw its application seventeen months after the initiation of the application, after the entire case was litigated and the proposed decision was issued. Accordingly, it is reasonable for

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<sup>15</sup> *New Cingular Wireless PCS, LLC v. Public Utilities Commission, Respondent; the Utility Reform Network et al., Real Parties in Interest*, 246 Cal. App. 4th 784, 821 (2016).



parties otherwise eligible to request intervenor compensation to request reasonable compensation in this case given their contributions to the proposed decision and the ultimate outcome, which is the dismissal of the proceeding.

### **3. Comments on the Proposed Decision**

The proposed decision in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.2. Opening Comments were filed on \_\_\_\_\_. Reply Comments were filed on \_\_\_\_\_.

### **4. Assignment of Proceeding**

Clifford R. Rechtschaffen is the assigned Commissioner and Debbie Chiv is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. On March 30, 2017, SDG&E filed an application seeking a waiver of affiliate transaction rules for interactions with an unregulated subsidiary.
2. A prehearing conference was held on July 28, 2017 at which parties presented their views regarding the scope, schedule, and other procedural matters.
3. Parties served testimony, comments, and briefing to develop the record in this proceeding.
4. Intervenors vigorously opposed SDG&E's application, creating a robust record that informed the proposed decision granting SDG&E's application with conditions.
5. Much of Intervenors' participation contributed to the creation of a robust record in this proceeding.

6. SDG&E filed a motion to withdraw the application on September 18, 2018.

7. SDG&E states it seeks the withdrawal of the application because it no longer believes the proposed business model has promising economics and no longer plans to form the proposed subsidiary.

8. Much of parties' efforts in submitting testimony, comments, briefing, and participating in evidentiary hearings substantially contributed to SDG&E's decision to file the motion to withdraw the application, and the dismissal of the application, given the timing of the motion.

**Conclusions of Law**

1. SDG&E's motion to withdraw its application should be granted and the application should be dismissed without prejudice, subject to conditions.

2. SDG&E should reference Application 17-03-019 and this decision in all future applications brought by SDG&E or any of SDG&E's current directors, officers, or owners of more than 10% of its outstanding shares, requesting approval for a framework that involves the commercialization of IP.

3. The evidentiary record in this proceeding should be used in any future application filed by SDG&E requesting approval for a framework that involves the commercialization of IP to further judicial efficiency.

4. Intervenors should be granted reasonable intervenor compensation for substantial contributions made in this proceeding that led to SDG&E's decision to file the motion to withdraw its application.

**ORDER**

1. San Diego Gas & Electric Company's (SDG&E) motion to withdraw its application is granted and Application 17-03-019 is dismissed without prejudice, subject to the following conditions:

- a. SDG&E shall disclose Application 17-03-019 and this decision in any subsequent application that requests approval for a framework that involves the commercialization of intellectual property (IP) brought by Applicant or Applicant's current directors, officers, or owners of more than 10% of its outstanding shares; and
  - b. The Commission shall incorporate the record of this proceeding in any future applications filed by SDG&E requesting approval for a framework that involves the commercialization of IP. SDG&E shall have the burden of showing that the record in this docket is not relevant to any future application requesting approval for a framework that involves the commercialization of IP.
2. Parties otherwise eligible to seek intervenor compensation are authorized to seek reasonable intervenor compensation for substantial contributions to this proceeding, including this decision.
3. Application 17-03-019 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.