Decision **PROPOSED DECISION OF ALJ BEMESDERFER** (Mailed 9/11/2014)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Solar Turbines Incorporated, Complainant, vs. San Diego Gas & Electric Company (U902E), Defendant.	Case 14-06-004 (Filed June 2, 2014)

DECISION GRANTING MOTION FOR SUMMARY JUDGMENT BY SAN DIEGO GAS & ELECTRIC COMPANY

Summary

Defendant has acted in accordance with the law by imposing a departing load charge on that portion of Complainant's energy needs which Complainant supplies to itself and which it formerly purchased from Defendant. There are no triable issues of material fact. The motion for summary judgment is granted.

1. Procedural History

The complaint was filed on June 2, 2014. On July 14, 2014 Defendant filed an answer together with the motion for summary judgment that is the subject of this decision. In its motion, Defendant argued that (a) there are no triable issues of fact and (b) the Customer Departing Load Charge was properly applied to customer generated electricity that replaced electricity formerly purchased from

the utility. On July 31, 2014, Complainant filed a response to Defendant's motion taking issue with the chronology of events contained in the motion but not questioning either the motion's statement that there are no triable issues of fact or its description of the manner in which electricity generated by Complainant has replaced electricity formerly purchased from Defendant. In a reply to the response, Defendant acknowledged the chronology proposed by Complainant in its response and amended its motion to adopt the revised chronology. In all other respects, the motion for summary judgment was unaltered. Although the parties did not stipulate to a set of facts, Complainant implicitly accepted the statement of facts proposed by Defendant in its revised motion.

2. Legal Standard

The Commission generally treats Motions for Summary Judgment in accord with California Code of Civil Procedure, Section 437(c) which reads, in relevant part:

> The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers . . . and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.

3. Discussion

Complainant Solar Turbines Incorporated (STI) manufactures industrial gas turbines worldwide, including at a plant located in the Kearny Mesa area in San Diego. At that plant, STI tests its turbines. Through its testing operations,

STI generates electricity. That electricity is used for plant operations. At times, the energy generated exceeds STI's operational needs ("excess energy").

As of February 1, 2001, customers with load departing from SDG&E are responsible to pay a surcharge to cover costs that were incurred by the California Department of Water Resources (CDWR) during the California energy crisis, as well as certain other costs. SDG&E recovers these CDWR costs from "Customer Generation Departing Load" pursuant to its Rate Schedule CGDL-CRS, which reads, in relevant part:

> Effective February 1, 2001, Customer Generation Departing Load is departing load that is served by Customer Generation…and is that portion of the Utility customer's electrical load for which the customer (1) discontinues or reduces its purchase of bundled, Direct Access, or CCA service from the Utility; [and] (2) purchases or consumes electricity supplied and delivered by Customer Generation to replace Utility, Direct Access or CCA purchases....

STI's electrical needs for the plant were supplied by SDG&E prior to February 1, 2001. Later that year, STI began supplying its own power for a portion of its plant's operations. Thus, STI had a post-February 1, 2001 reduction in load as a result of STI's generation. Accordingly, SDG&E has applied the departing-load surcharge to the energy STI generates to serve its plant's electrical needs because that energy was previously served by SDG&E's grid.

STI does not dispute that it is subject to the definition of Customer Generation Departing Load. Instead, STI argues that it qualifies for the exception to that definition contained in Special Condition 3(a) of Rate Schedule CGDL-CRS:

> Changes in usage occurring in the normal course of business resulting from changes in business cycles, termination of operations, departure from the Utility service territory,

> weather, reduced production, modifications to production equipment or operations, changes in production or manufacturing processes, fuel switching, enhancement or increased efficiency of equipment or performance of existing Customer Generation equipment, replacement of existing Customer Generation equipment with new power generation equipment of similar size, installation of demand-side management equipment or facilities, energy conservation efforts, or other similar factors.

That special condition exempts from the definition of Customer Generation Departing Load any change in a customer's energy usage that has resulted from a change in the customer's business. Accordingly, if STI were to experience a change to its business that caused STI to use less energy, the CDWR surcharge would not apply to that load reduction.

SDG&E began imposing the CDWR surcharge on STI on November 1, 2002.[1] The charge is imposed on the excess energy that STI uses for plant operations that were previously powered by energy purchased from SDG&E. STI maintains that this use of excess energy constitutes a "change in business" as defined in Special Condition 3(a).

We disagree. STI's business did not change in 2002 nor did the amount of energy required to operate its plant. STI supplied a portion of that energy with self-generated electricity that replaced electricity formerly purchased from SDG&E. The situation is legally indistinguishable from that which would exist if STI were to permanently install one of its own gas turbines at the plant and use it

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[1] Although STI was subject to the CDWR surcharge as of June 1, 2001, STI was on Rate Schedule AV-1 through October 31, 2002. That rate schedule was interruptible in nature, and as exempt from departing-load charges. The departing-load charges began upon STI's transfer to Rate Schedule AL-TOU, for which billing began on November 1, 2002.

to power the plant. Instead, STI generates electricity from a succession of turbines that it tests before shipping them to customers. But the result is the same: operating the turbines creates Customer Generation Departing Load to which the CDWR surcharge applies.

Because we dispose of this motion on substantive grounds, we find it unnecessary to consider whether the complaint is barred by the statute of limitations.

4. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) Bemesderfer in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by STI on September 30, 2014. In its comments, STI re-argues the issue of whether Special Condition 3.(a) applies to the facts in this case, an argument considered and rejected in the proposed decision. As SDG&E succinctly explained in its motion for summary judgment, the change to STI's operations at issue here simply involves the manner in which STI diverts excess energy produced during STI's testing operations, not the manner in which its business uses energy. Accordingly, the exception in Special Condition 3.(a) does not apply to STI.

5. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Karl J. Bemesderfer is the assigned ALJ in this proceeding.

Findings of Fact

1. Solar Turbines Incorporated generates excess energy when it tests its turbines before shipping them to customers.

2. The excess energy generated by turbine testing is used to power a portion of Solar Turbine Incorporated's turbine manufacturing facility in San Diego.

3. The excess energy generated by turbine testing replaces electricity formerly purchased from San Diego Gas & Electric Company.

Conclusions of Law

1. Excess energy produced by turbine testing that replaces electricity formerly purchased from San Diego Gas & Electric Company is "Customer Generation Departing Load" as defined in Rate Schedule CGDL-CRS.

2. Excess energy produced through testing of gas turbines prior to shipment to ultimate customers is Customer Generation Departing Load.

3. Solar Turbines Incorporated is not covered by Special Condition 3(a).

4. There are no triable issues of material fact.

5. The Motion of San Diego Gas & Electric Company for summary judgment should be granted.

ORDER

IT IS ORDERED that:

The Motion for Summary Judgment of San Diego Gas & Electric Company is granted.

Case 14-06-004 is closed.

This order is effective today.

Dated _____, at Bakersfield, California.