

Decision 11-05-048 May 26, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902E) for Approval Pursuant to Public Utilities Code Section 851 to Lease Transfer Capability Rights to Citizens Energy Corporation.

Application 09-10-010
(Filed October 9, 2009)

**DECISION GRANTING APPROVAL OF
LEASE OF TRANSFER CAPABILITY RIGHTS FROM SAN DIEGO GAS &
ELECTRIC COMPANY TO CITIZENS ENERGY CORPORATION**

1. Summary

San Diego Gas & Electric Company (SDG&E) seeks Commission approval of an agreement it has reached with Citizens Energy Corporation (Citizens) under which Citizens would have the option to lease transfer capability rights, for a 30-year term, along the Imperial Valley segment of SDG&E's Sunrise Powerlink Transmission Project. If the authority is granted and Citizens exercises the lease option, Citizens will pay SDG&E an estimated \$83 million in prepaid rent for the lease and at the expiration of the 30-year lease term, the facility reverts to SDG&E. Citizens will also spend 50% of its profits, after taxes, to programs serving low income families in Imperial County.

This decision finds in consideration of public interest benefits that would be realized, this proposed transaction is approved. The public interest benefits are: the involvement by Citizens spurs the development of a line by an independent transmission provider; the development of this line alleviates a

transmission bottleneck and facilitates delivery of renewable energy to Southern California—allowing the California regulated utilities to reach their mandated renewable targets easier; consumer protections are built into the rate Citizens can charge; the 30-year locked-in nature of Citizens’ rate shields ratepayers from market fluctuations; Citizens will provide direct financial benefits to lower income electric consumers in the Imperial Valley; and the project will contribute to employment opportunities and the tax base in Imperial County. While all California CAISO electric ratepayers could pay more for transmission service than they would pay if SDG&E retained control of the line segment, any projected higher costs are outweighed by the benefits all SDG&E ratepayers, and the citizens of Imperial Valley, will receive from this lease agreement with Citizens. Accordingly, the requested authority is granted. Application 09-10-010 is closed.

2. Background

2.1. Application Overview

San Diego Gas & Electric Company (SDG&E) seeks Commission authorization pursuant to Section 851¹ to grant Citizens Energy Corporation (Citizens) an option to lease 50% of the transfer capability rights along the Imperial Valley section (the Border-East Line) of SDG&E’s Sunrise Powerlink Transmission Project (Sunrise). The lease would be executed under the terms and conditions of a Development and Coordination Agreement (DCA) entered into by SDG&E and Citizens on May 11, 2009. The term of the lease would be 30 years.

¹ Unless otherwise stated, all code citations are to the Public Utilities Code.

On December 18, 2008, in Decision (D.) 08-12-058, the Commission granted SDG&E's application for a Certificate of Public Convenience and Necessity (CPCN) to construct Sunrise. As approved by the Commission, Sunrise consists of a new electric transmission line of approximately 120 miles between the existing Imperial Valley and Sycamore Canyon Substations, a proposed new Suncrest Substation, and other system modifications needed in order to reliably operate the new line. Sunrise comprises three separate links, including the Imperial County 500 kilovolt (kV) link, or the Border-East Line, that traverses approximately 30 miles. SDG&E estimates that the in-service date for Sunrise is June 2012. It is this 30-mile Border-East line that is the subject of this application.

To facilitate cooperative development and shared ownership of Sunrise in the Imperial Valley, SDG&E began negotiations with other developers before the CPCN was granted. In March 2006, SDG&E signed a memorandum of agreement with the Imperial Irrigation District (IID) and Citizens. Although IID terminated its interest in the co-development of Sunrise in November 2007, SDG&E continued to negotiate with Citizens. SDG&E and Citizens executed the DCA on May 11, 2009.²

Pursuant to the terms of the DCA, if Citizens exercises its lease option before the in-service date for Sunrise, Citizens will pay SDG&E an estimated \$83 million as prepaid rent to lease the entitlement to transfer capability rights over the Border-East Line. The rent payment is the proportionate share of SDG&E's actual cost to develop, design, permit, engineer, and construct the Border-East Line. Citizens and SDG&E will treat this payment as a loan for tax

² D.08-12-058 and D.09-07-024.

purposes to the extent that it exceeds accrued rent. SDG&E will use the prepaid rent to finance the development, design, and construction of the Border-East Line. Citizens will recover its costs through Federal Energy Regulatory Commission (FERC)-approved transmission rates.

Citizens is a non-profit Massachusetts corporation that is exempt from federal taxes under Section 501(c)(4) of the Internal Revenue Code. It is a FERC-jurisdictional public utility whose commercial subsidiaries support social and charitable programs in the United States and abroad. Citizens owns 100% of a for-profit holding company that in turn wholly owns several for-profit subsidiaries, including Citizens Business Enterprises.

In 1985, Citizens began its electricity industry operations by buying power from utilities with surplus generating capacity, reselling the excess power to other utilities, and using the profits to help low-income families pay their electricity bills. If the DCA is approved, Citizens will utilize a limited liability company, which will be a subsidiary of Citizens Business Enterprises, to carry out the ultimate lease transaction with SDG&E. Then Citizens will donate 50% of its after tax profits relating to its participation in Sunrise to assist low-income and elderly electric consumers in the Imperial Valley—where the Border-East Line is located.

2.2. Positions of the Parties

Only two responses were filed to SDG&E's application: One by Utility Consumers' Action Network (UCAN) and the other by the Division of Ratepayer Advocates (DRA). Although both UCAN and DRA represent ratepayers, their positions differed in the way they viewed the potential benefits from the Citizens lease. UCAN protested the application on the grounds that ratepayers may not benefit from this transaction, and in fact may be worse off; and DRA supported

the transaction, noting that the benefits to low-income persons in Imperial County resulting from Citizens' agreement to donate 50% of its profits from Imperial County operations to social programs could amount to millions of dollars. DRA also supports the transaction because it provides ratepayers with rate stability and protection against possible capital cost increases. DRA, however, asks that the Commission expressly hold that its approval is based on the unique public benefits presented by Citizens participation in Sunrise and that the decision not be precedential.

DRA, however, did raise a concern that if SDG&E involves other participating interests in Sunrise, SDG&E could directly or indirectly evade or circumvent a 2007 settlement before FERC (FERC TO3 Settlement) where SDG&E agreed not to file for any FERC transmission incentives related to Sunrise.³ DRA supports a one-time exception to this settlement in support of the Citizens lease. Finally, DRA believes that SDG&E should be required to file an advice letter for approval of the executed lease if and when Citizens exercises its lease option.

SDG&E filed a reply to UCAN's protest and DRA's response. SDG&E disputes the allegations made in UCAN's protest and contends that none of the issues raised by UCAN constitute grounds upon which to reject the application. With respect to DRA's response, SDG&E denies that the DCA is intended to

³ As explained by DRA, on December 12, 2006, in FERC Docket No. ER07-284-000, SDG&E applied under Section 205 of the Federal Power Act to implement a new Transmission Owner formula rate mechanism (FERC TO3 Settlement Agreement). After several parties including DRA intervened, SDG&E made an offer of settlement on March 28, 2007. FERC approved this offer in unpublished letter orders dated May 18 and July 11, 2007. Under that settlement, SDG&E agreed not to file for any transmission incentives related to Sunrise.

circumvent its commitment in the FERC TO3 Settlement not to apply for transmission incentives. However, SDG&E agrees that each transmission development project that SDG&E brings to the Commission for approval, including those related to Sunrise, should be considered separately on its own merits. Thus, SDG&E agrees that, as appropriate, it would file a separate application pursuant to Section 851 for each additional participant. SDG&E also agrees with DRA's request to file the final lease with the Commission pursuant to an advice letter, but wishes to work with DRA to come up with a procedure that is consistent with the terms of the DCA.

2.3. Procedural History

UCAN initially took the position that evidentiary hearings were required. After reviewing data request responses, UCAN informed the then-assigned Administrative Law Judge (ALJ) that it no longer believed hearings were necessary. The *Joint Scoping Memo and Ruling of Assigned Commissioner and Assigned Administrative Law Judge* (Scoping Memo) confirmed that evidentiary hearings were not required and received into evidence prepared testimony and exhibits sponsored by SDG&E, Citizens, and UCAN. SDG&E, Citizens, DRA, and UCAN filed opening briefs. SDG&E, Citizens, and UCAN filed reply briefs.

3. Discussion

3.1. Standard of Review

Section 851 provides in relevant part that:

"A public utility ... shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its ... line, plant, system, or other property necessary or useful in the

performance of its duties to the public, ... without first having ... secured from the commission an order authorizing it to do so”⁴

Thus, the DCA may not take effect absent our authorization. Since Section 851 does not specify the standard by which the Commission is to review such requests, we look to how the Commission and the courts have applied the statute in the past.

SDG&E points to D.09-07-035, where the Commission noted that in applying Section 851, it:

“historically looked to public interest as its guiding post. While the minimal standard we consider in our review is that the transaction being proposed in a particular application is ‘not adverse to the public interest,’ we do foster and encourage transactions ... where the transaction is also ‘in the public interest.’”⁵

SDG&E also points to D.09-04-013, where, the Commission held that:

“The primary question for the Commission in Section 851 proceedings is whether the proposed transaction serves the public interest: ‘The public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to utility customers.’”⁶

Based on these decisions, SDG&E asserts that the minimum standard for reviewing Section 851 applications is that the proposed transaction may not be adverse to the public interest. SDG&E also asserts that although Section 851

⁴ Section 851 was amended effective January 1, 2010. (Stats. 2009, Ch. 370, Sec. 1.) Among other things, the basic sentence structure was modified from “no public utility shall sell, etc.” to “a public utility shall not sell, etc.” We do not find that the amendments to Section 851 affect the disposition of this proceeding.

⁵ D.09-07-035 at 13, emphases in original.

⁶ D.09-04-013 at 6, quoting D.02-01-058.

review may encompass rate impacts, it is not limited to such impacts; instead, it encompasses a broader range of public interest effects.

UCAN contends that a stricter standard should be applied. Specifically, according to UCAN, an applicant must prove that ratepayers will benefit from a proposed transaction before the Commission can approve it under Section 851. UCAN cites *Hanlon v. Eshleman*⁷ in support of this proposition. *Hanlon*, an early California Supreme Court decision regarding Section 51a of the Public Utilities Act,⁸ said among other things that “[t]he commission’s power is to be exercised for the protection of the rights of the public interested in the service, and to that end alone.”⁹

UCAN also relies on D.00-07-010, which approved an application by Southern California Edison Company to lease communication facility sites and equipment placements to Pacific Bell Mobile Services. Noting the benefits of such joint use of utility facilities, the Commission said that:

“The public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to utility customers. [¶] Also, revenues generated by the Agreements will flow to and benefit ratepayers under the sharing arrangement approved in D.99-09-070. [¶] The Agreements will allow improved service to Pacific’s customers. Since Pacific is a public utility, the welfare of its customers also enters into our consideration of this application.”¹⁰

⁷ *Hanlon v. Eshleman*, 169 Cal 200 (1915).

⁸ Section 51a is the predecessor to Section 851.

⁹ *Hanlon*, 169 Cal at 202.

¹⁰ D.00-07-010 at 6-7.

Finally, UCAN cites D.02-09-024, which denied rehearing of and modified an earlier decision (D.02-04-005) authorizing a sale of property by Pacific Gas and Electric Company. The Commission stated that:

“[Section 851] confers on the Commission virtually unlimited discretion to determine whether the sale of a public utility’s property should be approved – and on what conditions in order that it prove sufficiently beneficial to ratepayers and the public generally.”¹¹

We find that none of the cases relied upon by UCAN supports its proposed standard of proven ratepayer benefits. Instead, we find that the Section 851 review standard stated in D.09-07-035 and D.09-04-013 should be applied, i.e., that the subject transaction should not be adverse to the public interest and that transactions that are in the public interest are to be encouraged. First, *Hanlon’s* provision for protecting the public’s rights cannot be equated to requiring public benefits. Moreover, *Hanlon* also stated that “[a]ll that the commission is concerned with ... is whether a proposed transfer will be injurious to the rights of the public.”¹² This is fully consistent with D.09-07-035, which confirmed that the minimal standard for Section 851 review is that the transaction being proposed in a particular application is not adverse to the public interest. Also, while the “public interest in the service” obviously includes ratepayers, it is not limited to that portion of the public. Members of the public may be affected by, and therefore interested in, a utility’s facilities even if they are not served by that utility.

¹¹ D.02-09-024 at 3.

¹² *Hanlon*, 169 Cal at 202.

UCAN also misreads D.00-07-010. As noted above, that decision said that “[t]he public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to utility customers.” This is consistent with the “not adverse to the public interest” standard. While it is true that D.00-07-010 also recognized that ratepayer benefits were present in that particular situation, that is simply an indication that the transaction not only met the minimal “not adverse” standard for Section 851 but exceeded it.

Finally, we do not find that D.02-09-024 supports UCAN’s proposed standard of proven ratepayer benefits. That decision addressed a dispute over the ratemaking treatment of the proceeds of the sale, not the standard of review to be applied under Section 851. Accordingly, the introductory *dicta* of that decision relied upon by UCAN, including its reference to “sufficiently beneficial to ratepayers,” cannot be taken as a statement of intent by the Commission to overturn the long-standing “not adverse to the public interest” standard for Section 851 review.

The Scoping Memo stated that two of the issues to be resolved in this proceeding are:

1. Whether the transaction described in the DCA will be adverse to the public interest, i.e., the continued ability of SDG&E to offer adequate service to customers and the members of the public interested in receiving utility service at fair and reasonable rates; and
2. Whether the ratemaking aspects of this transaction will be adverse to the interests of impacted ratepayers.

The Scoping Memo’s statement of the minimal standard of review to be applied in this proceeding is consistent with the foregoing discussion, and we

therefore affirm it. Additionally, consistent with D.09-07-035, we determine whether the proposed transaction is in the public interest.

3.2. Public Interest Benefits of the DCA

SDG&E claims that allowing Citizens' participation in the Border-East Line has four public interest benefits: SDG&E will receive \$83 million as prepaid rent; development of the line will bring employment and tax benefits to Imperial County; Citizens would be an independent and "new" developer bringing competition to transmission development; and costs are capped and levelized over the 30-year term of the lease providing certainty and rate stability. These benefits are ways by which SDG&E's utility property would be put to productive use if the DCA is approved and the lease option is exercised by Citizens.

Section 3.2 of this decision reviews these claims.

3.2.1. Prepaid Rent to SDG&E

Pursuant to the DCA, SDG&E will receive an estimated \$83 million lump sum as prepaid rent payment at the closing of the transaction after Citizens exercises its option. This \$83 million is the proportional share of the actual cost incurred by SDG&E to develop, design, permit, engineer and construct the Border-East Line through the Imperial Valley. UCAN essentially agrees that SDG&E would benefit from the DCA, noting that SDG&E would effectively be borrowing \$83 million for 30 years at an interest rate of 4%.

This lump sum payment will be allocated over the lease term and will be reported as rent accruing for tax purposes quarterly in arrears according to the schedule agreed to by the parties. This provision is designed to maximize the tax position of the parties, and appears to be indifferent to ratepayers. Therefore, we will not consider this provision of the DCA as promoting, or harming, the public interest since there is no affirmative showing presented in the record that

supports a finding either way. However, we do make a finding that approval of this term will not interfere with SDG&E's operations or service.

In addition, there is another potential, and hard-to-quantify benefit from Citizens pre-payment of rent: with the receipt of the \$83 million, SDG&E could direct other monies toward other investments because Citizens is supplying such a large portion of the financing for the Sunrise. This benefit was not fully developed in the record and therefore we do not make a finding on this issue.

3.2.2. Benefits to Imperial County

Citizens has agreed to spend 50% of its DCA-related after-tax profits on programs serving low-income families in Imperial County, which, according to SDG&E, is one of the poorest counties in California. Citizens estimated that distributions to low-income residents in the county would be \$1 million per year for 30 years. This provision is a significant public benefit even though, as UCAN observes, SDG&E does not serve Imperial County. As SDG&E argues "the DCA's positive impact on their lives should be considered as weighing against potential negative rate impacts."¹³

DRA fully supports Citizens commitment to contributing 50% of their after-tax profits from this project to benefit low income consumers in Imperial Valley. As DRA states "DRA does not know of any other investor in the electrical industry such as Citizens, whose corporate goal is to engage in business ventures that generate revenues for the funding of social and charitable

¹³ Reply Brief of SDG&E, July 2, 2010 at 8.

assistance programs for the elderly and the poor.”¹⁴ The record fully supports a finding that this provision of the DCA is in the public interest.

SDG&E also claims that by enhancing the development potential of renewable projects in this area of California, employment opportunities and the tax base of Imperial County will be improved. We address whether approval of the DCA will improve transmission development opportunities in Section 3.2.3 below. Here, we note that to the extent that transmission development in Imperial County occurs, improved employment opportunities and an improved tax base in the County could be realized. We find that these factors are a public benefit and support approval of the application.

3.2.3 Transmission Development

SDG&E and Citizens contend that another significant public benefit of the DCA would be its catalytic effect on transmission development and development by a non-utility financial participant—signaling “a new competitor in an industry that is traditionally absent of competition.”¹⁵ SDG&E further states that Citizens, as a new, “non-utility” competitor,¹⁶ has expressed interest in

¹⁴ DRA’s Opening Brief, June 18, 2010 at 6.

¹⁵ Opening Brief of SDG&E, June 18, 2010 at 11.

¹⁶ SDG&E and Citizens both state that “Citizens is a FERC-jurisdictional public utility.” (Application 09-10-010 at 8; Citizens Opening Brief at 9.) SDG&E also states:

“Citizens is not a public utility with an obligation to serve and, as such, is significantly different from a traditional utility, both in structure and in its exposure to regulatory risk. Citizens, as a non-utility financial participant in electric transmission, is a new competitor in an industry that is traditionally absent of competition.” (SDG&E Opening Brief at 11.)

SDG&E may be referring in the second instance to the fact that Citizens is a FERC-regulated, transmission-only utility that does not serve retail electric customers.

Footnote continued on next page

facilitating the development of new transmission resources beyond the Border-East Line. For example, Citizens plans to investigate the feasibility of a project that could enhance the transfer capacity between California and Arizona by as much as several thousand megawatts, providing renewable developers greater opportunity to reach the transmission grids in those states. Citizens has been a leader in spearheading discussions among regional utilities regarding transmission development.

We acknowledge that while having Citizens' as a new, non-utility participant in the Border-East Line is a positive element of the DCA, we also note that the extent of the "catalytic effect" that approval of the DCA would have on the propensity of both Citizens and other investors to participate in other transmission development opportunities is not readily measured. Among other things, it is unclear how likely Citizens' participation in other projects might be if the DCA is not approved, and, therefore, what the incremental impact of the DCA might be. Still, on a theoretical basis, the presence of another firm with a significant interest in transmission investment in and near Imperial County increases the potential for such development, and approval of the DCA would make it more likely than not that Citizens will become and remain a viable competitor in transmission development beyond its interest in Sunrise. In summary, approval of the DCA would set in motion a series of possible outcomes that could lead to needed transmission development in a more

Nevertheless, in light of the confusion surrounding these statements, we give no weight to how Citizens' utility status is characterized as we evaluate whether the DCA will lead to further transmission development. The important question that we consider is whether Citizens would be a viable new competitor in the transmission industry.

competitive environment. In this respect, the DCA provides a potential, if intangible and unmeasured, public interest benefit.

In addition, development of the Sunrise line can help to alleviate transmission bottlenecks in Southern California to facilitate the delivery of renewable energy. Citizens promotes both renewable energy and mitigating the cost of this more expensive resource through its public interest entities and donating money to help the most economically vulnerable pay their electricity bills.

3.2.4. Capital Cost Recovery Benefits

3.2.4.1 Rate Stability

The DCA provides that Citizens' capital cost recovery rate, which is the largest cost component in the rate that Citizens will be able to charge, will remain fixed for the 30-year term of the lease. This capital-cost cap provision contrasts with typical financing for investor-owned utilities, where capital-related costs paid by ratepayers are subject to equity market fluctuations. Where the Citizens rate for the Border-East Line would be fixed, we note that in the absence of the DCA with Citizens, SDG&E would be able to seek a higher rate of return for Sunrise after 2013, when its FERC TO3 Settlement Agreement expires. In addition, if the DCA is approved and the lease option is exercised, any rate increase that FERC might authorize for SDG&E would not be applicable to Citizens' proportionate share of the Border-East Line.

SDG&E contends that the DCA's provision for locking in project financing costs constitutes a significant ratepayer benefit to the extent that capital market costs increase significantly during the 30-year lease. As SDG&E argues, "Citizens would be providing long-term rate stability to the extent that capital market costs ever increased significantly during the 30 years of Citizens'

participation by locking in all 100% of its required financing over 30 years as opposed to a traditional investor-owned utility's financing that would have half of its costs subjected to swings in the equity markets."¹⁷ Citizens and DRA concur in this view.

UCAN, on the other hand, points out that CAISO ratepayers would not benefit from the Citizens' fixed rate provision if, after 2013, SDG&E's FERC-approved return on equity or debt cost were to decline. UCAN claims that the current capital costs are arguably high on a long term basis because they reflect capital market conditions during the credit crisis of 2008. According to UCAN, this suggests that transmission rates could decline in the future in the absence of the DCA. UCAN submits that in order for the DCA's fixed rate provision to be a benefit for ratepayers, future returns on equity would have to exceed significantly the 11.35% return in effect under the current FERC TO3 Settlement Agreement or future debt costs would have to rise significantly.

In response to this argument, SDG&E takes the position that since future capital costs (both equity and debt) are unknown, and it is reasonably possible they could rise above the capital cost assumptions in the DCA, there is some rate stability value in locking Citizens into a capped rate. We concur with SDG&E that capital costs 30 years into the future are unknown. Thus, we do not attempt to forecast the future performance of capital markets over the next 30 years. Although approval of the DCA would establish a potential for ratepayer gain by enabling them to pay less than SDG&E's capital cost in the event that cost rises,

¹⁷ SDG&E's Opening Brief, June 18, 2010 at 13.

that possibility is offset by the DCA's risk of ratepayers having to pay more than SDG&E's cost in the event that cost falls.

DRA also argues that this rate stability provision is a benefit to ratepayers because it does protect them from capital cost increases. As SDG&E posits, this position by DRA "can't be ignored . . ." Since DRA has the statutory mandate to "represent and advocate on behalf of the interests of public utility customers" and "to obtain the lowest possible rate for service consistent with reliable and safe service levels,"¹⁸ if DRA finds rate stability to be a benefit, we should weigh it carefully.

Accordingly, since we are not prescient, we do not know the ratepayer benefit of the rate stability provision of the DCA, but we do find value in the fact that the cost component is capped and provides certainty to a key component of potential costs to ratepayers. In a sense, this is "insurance" against future higher costs. We find, therefore, that this provision of the DCA is not harmful to the public or to ratepayers, and only the passage of time will clearly tell us whether it was a benefit.

3.2.4.2. Full Cost Recovery in 30 Years

At the expiration of the Citizens' 30-year lease, the capital costs for the portion of the Border-East Line will be fully depreciated and customers will have the benefit of 28 years remaining of useful life for this facility. SDG&E claims this provision is a ratepayer benefit because ratepayers will still have a valuable and useful asset, but without continuing to pay for depreciation. This is the advantage of the lease arrangement with Citizens instead of a sale of the asset.

¹⁸ SDG&E's Reply Brief, July 2, 2010 at 7 citing the P.U.C. Section 309.5(a).

SDG&E will continue to have the transmission line as part of its utility owned resources

This arrangement, however, only provides a clear benefit to future ratepayers, and not to those current ratepayers paying for the 30-year lease. We therefore, do not find that this feature of the DCA is a benefit to current ratepayers.

3.2.4.3. Levelized Cost Recovery

SDG&E touts the levelized cost recovery component of the DCA as another benefit of the Citizens project. In contrast to conventional utility ratemaking, where capital investment cost recovery is “front end loaded” because revenue requirements decline as rate base depreciates, the DCA provides for levelized revenue requirements over the 30-year lease period. Citizens contends this is a significant consumer advantage because, according to its witness Dr. Wilson, in any long term projection the early years are important and “distant forecasts (30, 40, 50 years into the future) are scarcely worth the air they ride on.”¹⁹

DCA’s provision for levelized capital cost recovery over the 30-year term of the lease, (compared to conventional ratemaking) provides a net benefit to ratepayers, because ratepayers are paying a constant amount for the lease period. While some could argue that this levelization is merely an inter-temporal shift of cost responsibility among ratepayers, it is a benefit to the ratepayers of today to not have to pay the front-ended costs. It is fair to ratepayers to levelize the costs out, at a set, but lower amount, for the entire 30 years rather than burdening

¹⁹ Exhibit 6 at 26.

some ratepayers today. Under the circumstances, we conclude that the DCA's levelized rate methodology provides a ratepayer benefit

3.3. Protection Against Adverse Impacts

3.3.1. Introduction

In Section 3.3 we evaluate SDG&E's claim that the DCA has built-in protections to ensure that there are no potential adverse impacts on its utility operations and service to customers. We also consider UCAN's claim that it fails to do so.

For the most part SDG&E's protection claims are straightforward, uncontested, and do not require detailed discussion here. Most importantly among these non-controversial claims, the DCA provides that Citizens shall become a Participating Transmission Owner under the CAISO tariff. Citizens' entitlement to the transfer capability in its portion of Sunrise shall be provided for the benefit of and made available to CAISO eligible customers at just and reasonable rates and terms. Also, SDG&E has taken adequate measures to ensure it would not "double recover" costs from both Citizens and FERC-approved rates. In addition, Citizens intends to securitize the financing of its participation cost with a pledge of the revenues it will receive from the CAISO. Except as discussed below, we find that the DCA provides adequate protection against adverse impacts on utility operations and service.

3.3.2 Ratemaking Protections

SDG&E states that one of its goals in negotiating the DCA was to ensure that ratepayers would not have to pay rates above those it would charge in the absence of the DCA. SDG&E was concerned that Citizens could obtain FERC-approved rates much greater than the rates SDG&E would charge if the DCA were not approved. To address this concern, the DCA provides for a

“SDG&E Representative Rate” which is a model specified and agreed to in the DCA. This Representative Rate calculates a theoretical annual rate that SDG&E could recover at the time of commercial operation, if SDG&E held Citizens’ Transfer Capability, and then amortized that rate over a 30-year period on a level basis to produce a theoretical Levelized Annual Amount. This Rate addresses capital requirements and incorporates Depreciation Expense, Return on Common Equity, Return on Debt, Federal and State Income Taxes, and Property Taxes. A revenue requirement including these items is calculated for each of the 58 years of the estimated 58-year depreciable life of the Citizens’ portion of Sunrise. A net present value is then calculated for each of the 58 annual revenue requirements. A Levelized Annual Amount is then calculated to amortize the sum of the net present value of the 58 years of annual revenue requirements over a 30-year period. This Levelized Annual Amount is the SDG&E Representative Rate for Capital Requirements. Under the DCA, SDG&E’s Representative Rate constitutes a ceiling or cap on the capital cost rate that Citizens may charge. In other words, Citizens’ cost recovery from the CAISO is limited to this Representative Rate.

SDG&E states that since the SDG&E Representative Rate is to be based on actual costs, it is impossible to predict with certainty what that rate would be when Citizens exercises its lease option under the DCA. However, SDG&E has estimated these costs. The testimony of SDG&E witness Michael Calabrese includes an illustrative comparative analysis of the annual levelized revenue requirement that results from the DCA. The analysis uses what is described as a “current snap shot case” for SDG&E (assuming that Citizens does not exercise its lease option under the DCA) and “current snap shot” and “high” cases for Citizens (assuming Citizens does exercise its lease option). According to

SDG&E, this testimony shows that the annual discounted and levelized revenue requirement under the snap shot case would be \$77,000 (0.6%) higher for Citizens than for SDG&E, and the annual discounted and levelized revenue requirement under the high case would be \$734,000 (5.8%) higher for Citizens than for SDG&E. SDG&E acknowledges that these are estimates, and that actual differences could prove to be higher or lower.

As SDG&E argues, however, before any actual costs can be collected, Citizens will have to file its proposed tariff with FERC in a Section 205 rate proceeding where all affected parties will have an opportunity to examine their justness and reasonableness. In addition, it is important to note that Citizens' costs, whether it be the de minimus 0.6% or the higher 5.8% more than SDG&E's might be, these costs will be collected from all California electric consumers who receive transmission service from load serving entities that are participants in the CAISO, through the CAISO's Transmission Access Charge.²⁰

As SDG&E further contends, any rate difference between the Citizens' rate and the non-citizens' rate becomes diluted by both the magnitude of the number of ratepayers who will be sharing in the cost, as well as by the proportionality of the \$83 million which is out of a total estimated Sunrise cost of \$1.9 billion.

Finally, we are dealing with forecasting issues and a margin of error over a 30-year period involving multiple factors over which no party has control. In the context of the totality of Citizens' proposal for the Sunrise project, and the benefits that ratepayers will receive, and in particular the residents of Imperial County who will be the recipients of Citizens' largess, and the de minimus

²⁰ SDG&E's Opening Brief, June 10, 2010 at 15.

possible increase to all California electric consumers, we find that the DCA is in the public interest.

4. Conclusion

As discussed earlier, the DCA provides numerous public interest benefits. To begin, Imperial County would benefit from Citizens' commitment to provide funding for 30 years, at an estimated \$1 million per year, to low-income assistance programs for county residents. These same Imperial County residents will also benefit from the employment opportunities and increased tax base Citizens' participation will bring. Next, approval of the DCA would facilitate Citizens' operations as a transmission owner, thereby potentially enhancing its viability as a new competitor in transmission development. In addition, development of this line alleviates a transmission bottleneck and facilitates delivery of renewable energy to southern California. As an additional factor supporting the DCA, we have determined that the DCA provides several protections against adverse public impacts. Most significantly, there would be no adverse impact on the transmission service provided by the Sunrise project since the DCA provides for Citizens to transfer operational control of its interest in the Border-East Line to the CAISO. In addition, there are several consumer protections built into the DCA, including the payment of a levelized 30-year rate that is capped to protect ratepayers from market fluctuations.

While it is possible that all California electric customers will pay more for the CAISO transmission charge, and the range is 0.6 to 5.8 as the potential estimated increased charge, when this amount is balanced against the de minimus cost to an actual ratepayer, and the other public interest benefits are considered—including the estimated \$1 million per year to assist the needy of

Imperial County with their electric bills—we find that it is in the public interest to authorize the Citizens’ lease with SDG&E.

Applying the standard for review of Section 851 applications, discussed at length above and set forth by the Commission in D.09-07-035, the *minimal* standard of review is that a proposed transaction must not be adverse to the public interest. While we are mindful that the public interest also encompasses ratepayer interests, and we have recognized that there could be higher rates for all electricity customers in California under the Citizens’ lease, we find that in the over-all balance between approving the Citizens’ lease and denying it, we find that there are sufficient public interest benefits to support approving the DCA.

Accordingly, the application must be approved.

5. Comments on Alternate Proposed Decision

The alternate proposed decision (APD) of President Peevey 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 and/or replies were filed by SDG&E, Citizens and UCAN. Both SDG&E and Citizens presented arguments supporting the APD, while UCAN argued in favor of the proposed decision. In summary, the dispute between the parties’ positions centers on whether the Commission’s consideration of “public interest” is limited to “ratepayer interest” or whether public interest be viewed more broadly as the proponents of the APD request. After careful and thoughtful consideration of UCAN’s arguments concerning the *potential* higher costs to state ratepayers for transmission service, the APD finds that the benefits from the Citizens’ lease justify the approval of the

DCA. The Findings of Fact, Conclusions of Law and Ordering Paragraphs have been edited to reflect suggested changes from the comments.

In addition, SDG&E submitted new arguments supporting the lease agreement with Citizens based on SDG&E's agreement to pass on its bonus-depreciation benefits from the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010²¹ (Tax Relief Act) to Citizens' ratepayers. However, since this fact was not fully developed on the record and all parties did not have adequate time to comment on it, it will not be used by the Commission as an additional factor to support the DCA. However, since SDG&E proposed treating the bonus depreciation in this manner, this proposed treatment is included in an Ordering Paragraph so that if the APD is adopted, ratepayers can benefit from this tax treatment.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Mark Wetzell is the assigned ALJ in this proceeding.

Findings of Fact

1. Since SDG&E would benefit from the DCA's provision for a prepaid rent payment from Citizens that is estimated at \$83 million, that payment does not provide a public benefit.
2. The DCA's provision for Citizens' funding of low-income assistance programs in Imperial County, estimated at \$1 million per year, is a public benefit.

²¹ 111 P.L.312, 2010 Enacted H.R.4852.

3. The DCA provides an intangible and unmeasured public benefit by enhancing Citizens' viability as a competitor in transmission development.

4. Because the DCA's provision for stability in the capital cost recovery component of Citizens' transmission rate could result in ratepayers paying either more or less than they would if SDG&E retained control of the Border-East Line, such rate stability is a ratepayer benefit.

5. Fully depreciating Citizens' proportionate share of the Border-East Line in 30 years rather than the full life of Sunrise shifts cost responsibility among ratepayers to the benefit of ratepayers in the early years of the lease, but does not provide a net benefit to ratepayers over the 30-year term of the lease.

6. The DCA's provision for levelized capital cost recovery over the 30-year term of the lease (compared to conventional ratemaking) provides a net benefit to ratepayers, because ratepayers are paying a constant amount for the lease period that will not increase with money-costs.

7. Over the 30-year life of the DCA, all California CAISO electric ratepayers might pay Citizens more (estimated between 0.6% and 5.8%) or possibly less in transmission charges than they would pay SDG&E if it retained control of the entire transfer capability rights over the Border-East Line.

Conclusions of Law

1. Consistent with prior Commission decisions regarding Section 851, the minimal standard of review for approval of the DCA is whether it is adverse to the public interest, which includes ratepayer interest.

2. The DCA potentially could cost CAISO electric ratepayers more than they would pay without the DCA (if it is assumed that SDG&E's capital costs do not increase over the next 30 years). While estimates of the next 30 years involve

multiple factors over which no party has control, it is in the public interest to authorize the Citizen's lease with SDG&E.

3. The foreseeable public interest benefits of the DCA offset any potential harm it could cause to ratepayers.

4. Application 09-10-010 should be approved, and the proceeding should be closed.

5. The following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The request of San Diego Gas & Electric Company for authority pursuant to Public Utilities Code Section 851 to lease transfer capability rights along the Imperial Valley section of its Sunrise Powerlink Transmission Project (Border-East Line) to Citizens Energy Corporation is granted.

2. San Diego Gas & Electric Company is directed to file the final lease with Citizens Energy Corporation pursuant to a Tier 1 Advice Letter. The final lease shall include terms reflecting San Diego Gas & Electric Company's proposed treatment of bonus depreciation so that Citizens can pass this benefit through to its customers.

3. Application 09-10-010 is closed.

This order is effective today.

Dated May 26, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners