Decision 08-09-011 September 4, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U 902 M) and Southern California Gas Company (U 904 G) for Approval of Proposals Set Forth in their Joint Climate Action Initiative.	Application 07-08-031 (Filed August 31, 2007)

DECISION GRANTING THE MOTION TO WITHDRAW THE APPLICATION

1. Summary

San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas), jointly Sempra Utilities, filed Application 07-08-031 on August 31, 2007, seeking approval of and funding for a number of proposals that the utilities state would "advance implementation of California's climate change policy."[1] Sempra Utilities' Joint Climate Action Initiative has four program areas: (1) clean energy facilities; (2) clean transportation initiatives; (3) utility clean fleet, facilities and infrastructure; and (4) customer assistance and programs. This decision grants a motion filed by SDG&E and SoCalGas for permission to withdraw the application.

[1] Application, p. 1.

2. Background

Western Power Trading Forum (WPTF),[2] The Utility Reform Network, Indicated Producers,[3] Southern California Generation Coalition (SCGC), Energy Users and Producers Coalition,[4] Division of Ratepayer Advocates (DRA), and Western States Petroleum Association[5] timely protested the application. Two parties supported the application, California Natural Gas Vehicle Coalition (after

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[2] WPTF is a California non-profit, mutual benefit corporation. It is a broadly based membership organization dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants. (From a statement of counsel, by electronic mail dated November 7, 2007.) Sempra Generating, an affiliate of Sempra Utilities, is a member, thus, an affiliate is protesting the application. (http://wptf.org/www/memberslist.htm)

[3] Indicated Producers is an ad hoc coalition which includes, for the purposes of this protest, Aera Energy LLC, BP Energy Company, BP America Inc. (including Atlantic Richfield Company), ConocoPhillips Company, Chevron U.S.A. Inc., and Occidental Energy Marketing Inc. (Protest, p. 1.)

[4] Energy Users and Producers Coalition is an ad hoc group representing the electric end-use and customer generation interests of the following companies: Aera Energy LLC, BP West Coast Products LLC, Chevron U.S.A. Inc., ConocoPhillips Company, ExxonMobil Power and Gas Services Inc., Shell Oil Products US, THUMS Long Beach Company, Occidental Elk Hills, Inc., and Valero Refining Company–California. (Protest, p. 1.)

[5] Western States Petroleum Association is a non-profit trade association that represents approximately 30 companies that account for the bulk of petroleum exploration, production, refining, transportation and marketing in the six western states of Arizona, California, Hawaii, Nevada, Oregon and Washington. (Protest, p. 8.)

it withdrew its initial protest and late-filed comments in support),[6] and the South Coast Air Quality Management District, which late-served a letter of support of the application.[7] On October 29, 2007, the assigned Commissioner and assigned Administrative Law Judge (ALJ) conducted a prehearing conference and heard further oral argument on the scope, schedule and disputed issues for the proceeding.

A proposed decision of the assigned ALJ in this matter was previously 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 on February 19, 2008 by SDG&E and SoCalGas, applicants, as well as DRA, Energy Producers and Users Coalition, The Indicated Producers, and the Western States Petroleum Association (jointly, EPUC); Independent Energy Producers Association (IEP), Clean Energy Fuels Corporation (Clean Energy), Western Power Trading Forum (WPTF), SCGC and California Center for Sustainable Energy. Reply comments were filed on February 25, 2008 by applicants, DRA, and EPUC. The proposed decision was subsequently withdrawn from the Commission's agenda.

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[6] California Natural Gas Vehicle Coalition is a California mutual benefit corporation, the members are a coalition of more than 40 businesses committed to natural gas transportation technology and infrastructure, and the rapid development of the alternate fuel transportation market. Members include auto and truck engine manufacturers and Sempra Utilities, and Pacific Gas and Electric Company, among many others. (Protest, p. 1.) Thus, for a few days, Sempra Utilities protested its own application. We accept for filing the late-filed comments of the California Natural Gas Vehicle Coalition.

[7] This letter is correspondence, and has been placed in the correspondence file, and is therefore not part of the official record for the proceeding. The Administrative Law

Footnote continued on next page

On June 27, 2008, SDG&E and SoCalGas filed a motion for permission to withdraw the application, without prejudice. No responses were filed.

3. Categorization

Rule 2.1(c) requires that an application include a proposed procedural category and indicate whether hearings will be needed. The Commission preliminarily categorized this application as ratesetting and requiring hearings in Resolution ALJ 176-3198, dated September 6, 2007.[8] The ratesetting categorization is affirmed. We determine, however, that hearings are not required.

4. Hearing and Record

The record is composed of all documents filed and served on parties, including the application, the filed protests and reply, and the prehearing conference transcript. SDG&E and SoCalGas served testimony with the application. Because this testimony provides more detailed descriptions of the request, we admit the testimony into the record, identified as Exhibit Sempra-1. We admit the exhibit not for the truth of the matters stated, because there have been no hearings, but only to more fully describe the applicants' request.

5. Overview of the Request

Sempra Utilities describes the application as a proposal "achieving [greenhouse gas] reductions through (i) voluntary measures that SDG&E and SoCalGas have implemented in order to reduce [greenhouse gas] emission; (ii) actions pursued in the context of current Commission proceedings; and

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Judge (ALJ) granted South Coast Air Quality Management District party status at the prehearing conference.

[8] The application appeared on the Commission's September 6, 2007 calendar.

(iii) certain enhancements to existing programs or additional measures designed to produce even greater [greenhouse gas] emissions [reductions]." (Exhibit Sempra-1, p. I-1.) Sempra Utilities links this application to both the Commission's Energy Action Plan II and the October 6, 2005 Policy Statement. Sempra Utilities also states this application helps achieve the goals of greenhouse gas reductions in advance of the requirements embodied in Assembly Bill 32 (Stats. 2006, Ch. 488).

Sempra Utilities' proposed Joint Climate Action Initiative has four program areas: (1) clean energy facilities; (2) clean transportation initiatives; (3) utility clean fleet, facilities and infrastructure; and (4) customer assistance and programs as described below.

5.1. Clean Energy Facilities

Sempra Utilities requests an incentive mechanism similar to that established by Pub. Util. Code § 454.3; a finding that "use of utility subsidiary ownership structures to secure federal tax benefits . . . is in the interest of ratepayers . . . "; $1.12 million per year for six years of incremental funding for research and development of renewable and clean energy facilities, allocated to bundled customers as a procurement cost; and modification of Tariff Rule 39 to provide an "interconnect allowance" to pursue biofuel resources. (Application, pp. 8-9; Ex. Sempra-1, Chapter 3.)

5.2. Clean Transportation Initiatives

Sempra Utilities seeks to include in rate base the costs of natural gas vehicle fueling facilities at government-owned sites; $1.5 million per year of incremental funding to construct natural gas vehicles fueling facilities and to demonstrate small-scale liquefied natural gas facilities; $1.75 million per year of incremental funding for research, development and demonstration programs for

natural gas vehicles and compressed natural gas vehicles; $3 million per year of incremental funding for public information programs; and $1.455 million per year of incremental funding for development of, and public information programs related to, zero-emission electric vehicles. (Application, p. 9; Ex. Sempra-1, Chapter 4.)

5.3. Utility Clean Fleet, Facilities, and Infrastructure

Sempra Utilities seeks $2 million annual incremental funding for 2008-2012 to purchase compressed natural gas and/or other hybrid vehicles; $2.52 million per year of incremental capital in 2009-2013 for compressed natural gas fueling stations and $50,000 annually per station for operations and maintenance costs; and $1.407 million per year for three years to reduce non-hazardous methane leaks. (Application, p. 10; Ex. Sempra-1, Chapter 5.)

5.4. Customer Assistance Programs

Sempra Utilities seeks approval to develop a new customer information and education center; development of new and/or modified energy efficiency and demand response programs; and a finding that "utility ownership of energy efficient, major energy systems on customer property is in the interest of ratepayers to the extent that those projects are cost-effective and secure energy savings . . . ." (Application, p. 11; Ex. Sempra-1, Chapter 6.)

5.5. Proposed Cost Recovery

Sempra Utilities seeks approximately $13 million for each of six years, totaling $74.7 million in incremental funding (Ex. Sempra-1, Chapter 7, p. VII-10). Sempra Utilities proposes a cost recovery in a new regulatory account, the Climate Action Initiative Balancing Account (Climate Action Account), to be recovered in the next general rate cases for SDG&E and SoCalGas. Sempra

Utilities also proposes that certain future projects with costs under $5 million should be approved by the advice letter process, whereas those future projects with costs over $5 million, and not already proposed here, should be approved by application. Lastly, the Sempra Utilities would provide annual reporting on the Climate Action Initiative activities. (Application, p. 12; Ex. Sempra-1, Chapter 7.)

6. Granting the Motion to Withdraw the Application Without Prejudice

SDG&E and SoCalGas request permission to withdraw the application based on the ALJ's proposed decision recommending dismissal of the case, the lack of activity in moving forward with the Joint Climate Action Initiative over the past few months since the proposed decision was withdrawn, and the existence of other pending proceedings at the Commission dealing with climate-related issues. (Motion, p. 1.) Applicants filed the motion on June 27, 2008. No responses were filed.

It is a discretionary act for the Commission to allow SDG&E and SoCalGas to withdraw the application. We grant the motion to withdraw the application without prejudice because the application proposes programs or projects that are premature and should be raised in other pending proceedings or are untimely and should have been included in recent proceedings.

6.1. Commission Policy on Withdrawal

The Commission fully delineated its position on withdrawing an application in Decision (D.) 92-04-027 (43 CPUC2d 639, 1992 Cal PUC Lexis 340). In that proceeding, like here, there was a proposed decision on a SoCalGas application released for comment pursuant to Pub. Util. Code § 311(d). The Commission took the view, that consistent with California Supreme Court's

rulings, there is an interest in protecting the Commission's "capacity to address issues of continuing public interest." (43 CPUC2d at 640.) The Commission ruled "[i]t is sufficient that we indicate that submission of a matter upon an evidentiary record and obtaining a proposed decision within the meaning of Section 311(d) involves steps which clearly make termination a matter of the Commission's discretion." (43 CPUC2d at 641.)

6.2. Duplicative of Pending Proceedings

We find the Clean Energy Facilities portion of the proposed scope of this proceeding is duplicative of the existing scope for Rulemaking (R.) 06-04-009 addressing greenhouse gases. We also find the Customer Assistance portion of the proposed scope of this proceeding is duplicative of the existing scope of the individual utility energy efficiency portfolios and a Joint California Energy Efficiency Strategic Plan for 2009-2011 required by D.07-10-032 (OP 10 and 4) in R.06-04-010. We therefore find these programs to be premature and, if pursued in the future, they should be a part of the open (and any subsequent) proceedings on greenhouse gas reduction, energy efficiency and/or demand response.

6.3. Duplicative of the General Rate Cases and Untimely

We find that the Clean Transportation Initiatives portion of the proposed scope of this proceeding is duplicative of the existing scope of the general rate cases, Application (A.) 06-12-009 and A.06-12-010. We also find the Utility Clean Fleet, Facilities and Infrastructure portion of the proposed scope of this proceeding is duplicative of the existing scope of the general rate cases, A.06-12-009 and A.06-12-010. The specific proposals should have been addressed in the general rate cases. However, these programs are within the operating

discretion of SDG&E and SoCalGas management to pursue using the base rate revenues set in the general rate cases as necessary to provide safe and reliable service during the multi-year rate cycle until the next general rate case.

7. Advice Letter Proposal

In light of granting SDG&E and SoCalGas' motion to withdraw the application, including all four component parts, it is also reasonable to reject the advice letter proposal which would allow piecemeal filings for projects under $5 million (or at any price) rather than as a part of a comprehensive general rate case or a program-specific application. SDG&E and SoCalGas should not resubmit any of the proposed projects, or their component parts, by subsequent advice letter without specific authority from a Commission decision in a related matter to employ the advice letter process.

8. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commissions Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

9. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Douglas M. Long is the assigned ALJ in this proceeding.

Findings of Fact

1. The Clean Energy Facilities portion of the proposed scope of this proceeding is premature and duplicative of the existing scope for R.06-04-009 addressing greenhouse gases.

2. The Customer Assistance portion of the proposed scope of this proceeding is premature and duplicative of the existing scope of the individual utility energy

efficiency portfolios and a Joint California Energy Efficiency Strategic Plan for 2009-2011 required by D.07-10-032 (OPs 10 and 4) in R.06-04-010.

3. The Clean Transportation Initiatives portion of the proposed scope of this proceeding is untimely and duplicative of the existing scope of the general rate cases, A.06-12-009 and A.06-12-010.

4. The Utility Clean Fleet, Facilities and Infrastructure portion of the proposed scope of this proceeding is untimely and duplicative of the existing scope of the general rate cases, A.06-12-009 and A.06-12-010.

5. The proposed advice letter procedure would unreasonably allow SDG&E and SoCalGas to seek recovery of potential projects on a piecemeal basis.

Conclusions of Law

1. It is within the Commission's discretion to grant the motion for permission to withdraw this application without prejudice.

2. It is reasonable to include Exhibit Sempra-1 in the record. We admit the testimony, not for the truth of the matters stated, because there have been no hearings, but only to more fully describe the applicants' request.

3. It is reasonable to reject the proposal for advice letter filings, since we are dismissing the application.

4. This decision should be effective today.

O R D E R

IT IS ORDERED that:

1. Application (A.) 07-08-031 is dismissed without prejudice. San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) may seek authority for certain of the proposed projects, to the extent

they can be appropriately raised in subsequent issue-specific proceedings, as set forth in this decision.

2. Exhibit Sempra-1 is received in the record, as conditioned herein.

3. SDG&E and SoCalGas shall not file for recovery of any of the withdrawn projects, or their component parts, by an advice letter without specific authority from a Commission decision in a related matter. The Commission's Energy Division shall reject any pending advice letters which are associated with the subjects of this application.

4. The preliminary ratesetting categorization in Resolution ALJ 176-3198 is affirmed and the preliminary determination of the need for hearings is changed, because hearings are not necessary.

5. A.07-08-031 is closed.

This order is effective today.

Dated September 4, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners