



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of San Diego Gas & Electric Company (U 902-E) for a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project.

A.06-08-010
(Filed August 4, 2006)

**JOINT MOTION OF THE
CONSUMER PROTECTION AND SAFETY DIVISION
AND SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E)
FOR APPROVAL OF SETTLEMENT AGREEMENT**

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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I. INTRODUCTION

Pursuant to Article 12 of the Commission's Rules of Practice and Procedure, the Consumer Protection and Safety Division (CPSD) and San Diego Gas & Electric Company (SDG&E) (jointly referred to herein as Settling Parties) respectfully request that the Commission approve and adopt the attached proposed Settlement Agreement relating to issues pending in Phase III of the above-captioned proceeding. If approved, the proposed Settlement Agreement would resolve all of the issues in that phase.

On August 1, 2008, the Commission initiated Phase III by issuing the "Assigned Commissioner's Revised Scoping Memo and Ruling Regarding Possible Rule 1.1 and Rule 8.3 Violations; Order to Show Cause" (OSC). In the OSC, San Diego Gas & Electric Company (SDG&E) was ordered to appear and show cause why it should not have fines and other sanctions imposed for possible violations of the Commission's Rules of Practice and Procedure, Rules 1.1 and 8.3, in a third phase of this proceeding. Specifically, the OSC states as follows:

[T]here is a reasonable basis to conclude that SDG&E, through its officers, agents and/or attorneys, misrepresented material facts in its June 2008 *ex parte* meetings with Commission staff regarding the routing of the proposed Sunrise Powerlink Transmission Project, in violation of

Rule 1.1. SDG&E appears to have misrepresented that the route went through tribal lands, when in fact an alternate route had previously been jointly developed and agreed to by SDG&E that did not go through tribal lands.

Attached to the OSC are declarations from Commission Staff, in addition to letters and other evidence, supporting the facts set forth in the OSC. CPSD believes that the supporting documents attached to the OSC are sufficient evidence to demonstrate Rule 1.1 and Rule 8.3 violations on the part of SDG&E.

SDG&E filed its Answer to the OSC on August 18, 2008 and attached declarations and other evidence supporting the facts set forth in SDG&E's Answer. SDG&E believes that its Answer and supporting evidence are sufficient to demonstrate that SDG&E did not violate Rule 1.1. In its Answer, SDG&E admits that it violated Rule 8.3 by inadvertently failing to attach two of the four documents that should have been appended to ex parte notices relating to the June 10 meetings that are the subject of the OSC.

As discussed in more detail below, the Settling Parties recommend that the Commission approve the proposed Settlement Agreement because it is in the public interest, reasonable in light of the record, and consistent with the law, as required by Rule 12.1(d). Also, the Commission limited participation in Phase III of this proceeding to only CPSD and SDG&E. (OSC, p. 9.) Under Rule 14.6(b), where all Parties to a proceeding so stipulate, the public review and comment period on a proposed decision can be reduced or waived. If the proposed decision adopts the proposed Settlement Agreement without modification, CPSD and SDG&E herein request that the public review and comment period be waived. In addition, under Rule 14.6(c) where no hearings were conducted or where the matter is uncontested (such as in Phase III here), the Commission may reduce or waive the public review and comment period on a decision that grants the relief requested (unmodified adoption of the proposed Settlement Agreement).

II. DESCRIPTION OF PROPOSED SETTLEMENT AGREEMENT

The attached Settlement Agreement (Exhibit A) has been extensively negotiated by the Settling Parties in good faith. The Settling Parties believe that the proposed agreement resolves all of the issues raised by the OSC.

In the “Recitals” section drafted jointly by the Settling Parties, Commission staff as represented by CPSD states its belief that the supporting documents attached to the OSC are sufficient evidence to demonstrate Rule 1.1 and Rule 8.3 violations. In the Recitals, CPSD explains Commission staff’s belief that at a series of *ex parte* meetings with energy advisors on June 10, 2008, SDG&E failed to inform them of the modified Southern Route proposed in SDG&E’s March 12 testimony and the modifications discussed in a May 20 meeting with Commission staff and concerned parties. After the *ex parte* meetings that are the subject of the OSC, CPSD points out that SDG&E’s *ex parte* notices did not include important details discussed in the meeting and did not include all of the documents provided to Staff during the meetings.

SDG&E states in the Recitals that it denies that it misled the Commission during the subject *ex parte* meetings in violation of Rule 1.1. SDG&E further maintains that neither the proposed Settlement Agreement nor any of the transactions pursuant to it constitute an admission of a Rule 1.1 violation. Among other points, SDG&E states that at the *ex parte* meetings at issue SDG&E advocated its modified Southern Route (disclosed in testimony on March 12, 2008) as the best southern routing option and as one that avoided tribal lands. SDG&E does not believe that it misrepresented facts during the subject *ex parte* meetings by failing to state that an “alternate route had previously been jointly developed and agreed to by SDG&E that did not go through tribal lands” because SDG&E maintains that there was no such agreement.

SDG&E admits that it violated Rule 8.3 of the Commission’s Rules of Practice and Procedure by inadvertently failing to attach two of the four documents that should have been filed and served with the *ex parte* notices from the June 10 meetings that are the subject of the OSC. Upon learning of this unintentional error, SDG&E filed and served four augmented notices with the omitted documents included. SDG&E does not

believe that any party was prejudiced by this omission, and SDG&E has apologized and expressed regret for the error.

The primary terms of the proposed Settlement Agreement are as follows:

1. Statement of Apology by SDG&E: SDG&E understands the importance of clear and accurate communications with the Commission, which are critical to the integrity of the regulatory process. SDG&E strives to be clear in its communications and to ensure that its positions and facts are clearly set forth and sincerely regrets that it fell short of its own high standards here. SDG&E is taking steps to improve the processes for the precision of its communications.

2. Payments: SDG&E will contribute \$920,000 of shareholder funds as follows:

(a) Contribution to 2-1-1 San Diego and SDG&E's Neighbor-to-Neighbor Program. SDG&E will contribute \$50,000 to 2-1-1 San Diego and \$150,000 to SDG&E's Neighbor-to-Neighbor Program. 2-1-1 San Diego is a non-profit organization that provides a free, confidential, multi-lingual, 24-hour dialing code for access to community, health, and disaster services and resources. SDG&E's Neighbor-to-Neighbor Program provides assistance of up to \$200 on a customer's bill.

(b) Reimbursement to the Commission's Energy Division. SDG&E will contribute funds to the Commission's Energy Division to reimburse it for funds expended related to the allegations in the OSC and for Sunrise Powerlink Transmission Project-related expenditures in the amount of \$220,000.

(c) Payment to the State's General Fund. SDG&E will pay the remaining \$500,000 to the State's General Fund.

3. Professional Responsibility Class. SDG&E will develop and sponsor, in consultation with CPSD and the Commission's Public Advisor's Office, a professional responsibility course that would be facilitated by a third party that would focus on the Commission's Rules of Practice and Procedure with an emphasis on Rule 1.1 duties and *ex parte* rules best practices. The course will be funded up to a cost of \$200,000 by SDG&E's shareholders.

4. Ex Parte Best Practices Manual. SDG&E will create an *ex parte* best practices manual in consultation with the Commission's General Counsel's office.

III. THE PROPOSED SETTLEMENT AGREEMENT MEETS THE COMMISSION'S STANDARDS FOR APPROVAL

Pursuant to Rule 12.1(d) of the Commission's Rules of Practice and Procedure, settlements must be reasonable in light of the record, consistent with the law, and in the public interest. SDG&E and CPSD believe that the attached Settlement Agreement satisfies each of those criteria. As discussed below, the Settlement Agreement is in the public interest in light of the apology by SDG&E and SDG&E's expenditure of shareholder funds to the Commission, two disaster and financial relief programs (2-1-1 San Diego and SDG&E's Neighbor-to-Neighbor Program), and the general fund. In addition, SDG&E has undertaken remedial measures to ensure understanding of and adherence to the Commission's rules, especially those related to Rule 1.1 duties and the *ex parte* rules.

This proposed Settlement Agreement avoids the costs and burdens of further litigation, which promises to be contentious and lengthy. The proposed Settlement Agreement thus provides a substantial benefit to the CPSD, other Commission staff, and SDG&E by avoiding further proceedings in this matter in exchange for consideration that is in the public interest, as discussed in greater detail below.

This Settlement Agreement was carefully and extensively negotiated as a package by the Settling Parties, and the Settling Parties believe that each of the items is individually supported by the record or the circumstances of this case. The Settling Parties therefore recommend that the Commission approve and adopt the proposed Settlement Agreement without modification.

A. The Proposed Settlement Agreement Is Reasonable In Light Of The Record

The record developed in this case primarily consists of the Staff Declarations issued by the Commission in conjunction with the OSC¹ and the Declarations produced in response by SDG&E in its Answer to the OSC², in addition to the other supporting facts and evidence in the OSC and SDG&E's Answer. In the proposed Settlement Agreement, the Settling Parties have listed the evidence that makes up the record and briefly summarized the salient points.

The Settling Parties believe that the record developed in the OSC and SDG&E's Answer provide an ample basis for the Commission to approve the proposed Settlement Agreement without further evidence to be taken or considered in this matter. The Settling Parties believe that the Rule 1.1 and Rule 8.3 issues raised by the agreed-to record in this case are affirmatively addressed by SDG&E's statement of apology, SDG&E's expenditure of shareholder funds to the Commission, two disaster and financial relief programs (2-1-1 San Diego and SDG&E's Neighbor-to-Neighbor Program), and payment to the general fund. The proposed Settlement Agreement is closely tied to the record developed by the Settling Parties and is reasonable because it effectively addresses the specific issues raised in Phase III.

B. The Proposed Settlement Agreement Is Consistent With The Law And Precedent

The Settling Parties believe that the proposed Settlement Agreement is consistent with existing law and precedent. The Commission does not have an extensive record of exclusively Rule 1 enforcement cases relating to electric utilities. Nevertheless, the Settling Parties have looked to previous Commission settlements and decisions for

¹ The Staff Declarations include declarations from Commission Staff Billie Blanchard, and Advisors Robert Kinosian, Lindsay Brown, Nancy Ryan, and Andrew Schwartz.

² SDG&E's Declarations consist of declarations from Michael R. Niggli (Chief Operating Officer), Dan Skopec (Vice President, Regulatory Affairs), Kevin O'Beirne (Regulatory Case Manager), William H. "Billy" Blattner (Manager of Regulatory Relations), Jonathan Woldemariam (Technical Project Manager), and Jill Larson (Senior Counsel).

guidance and find that this Settlement Agreement is not inconsistent with those prior decisions.

Several past Commission Rule 1 cases involve payment to the general fund and remedial measures. In D.92-03-042, however, the Commission found that SoCalGas misrepresented the status of an affiliate arrangement in a filed report, but did not impose penalties or other sanctions. In another case (D.97-08-069), a Rule 1 allegation was settled as a part of a larger proceeding. In that case, PG&E was accused of failing to produce or identify information in discovery. PG&E and the Consumer Services Division (CSD, the former name of CPSD) ultimately entered into a stipulation. Without admitting to a Rule 1 violation, PG&E made a payment of \$850,000 to the general fund. In D.00-09-034, under a set of more complex facts than those at issue here and without an admission of any wrongdoing and denial that it violated Rule 1, Southern California Gas Company settled an investigatory matter with CSD related to the sale of its Montebello Storage Field with a voluntary contribution to the general fund of almost \$3.5 million. In D.08-01-021, a Commission finding of an ex parte violation by PG&E did not result in any financial assessments, but included a public apology and undertaking ex parte best practices remedial measures. The provisions of this proposed Settlement Agreement are not inconsistent with these decisions. Neither is the proposed Settlement Agreement inconsistent with any other Commission orders or requirements, to the best of the Settling Parties' knowledge.

C. The Proposed Settlement Agreement Is In The Public Interest

The proposed Settlement Agreement provides significant and direct benefits to the Commission, SDG&E's customers, and the state's consumers. In total, SDG&E shareholders will pay \$920,000 under the Settlement Agreement (in addition to funding the cost of a professional responsibility class at a cost of up to an additional \$200,000). Under the Settlement Agreement, SDG&E will reimburse the Commission in the amount of \$220,000 for costs associated with the OSC, as well as other Sunrise Powerlink project-related expenses. In addition, SDG&E will make contributions that benefit its customers and the SDG&E service territory with contributions to San Diego

2-1-1 and SDG&E's Neighbor-to-Neighbor program. SDG&E will also make a payment to the State's general fund in the amount of \$500,000. Finally, SDG&E will sponsor, in consultation with CPSD, a professional responsibility class with particular emphasis on Rule 1.1 duties and the ex parte rules. The course will be provided for SDG&E's San Francisco office and SDG&E internal directors and officers, in addition to interested Commission staff.

Thus, the proposed Settlement Agreement provides numerous public interest benefits. The total shareholder payment of \$920,000 represents a substantial compromise by and consideration from SDG&E. The 2-1-1 San Diego organization provides services that directly benefit SDG&E's consumers with free, 24-hour, multi-lingual disaster assistance relief. Given that disasters can affect the operation of power lines, the 2-1-1 San Diego organization has a meaningful nexus to the underlying factual context of the Sunrise proceeding. SDG&E's Neighbor-to-Neighbor program provides financial assistance for customers experiencing temporary financial hardship, which is especially timely given current dire economic conditions. The payment to the general fund benefits consumers on a State-wide basis.

Finally, SDG&E has issued a statement of apology that it regrets that it fell short of its own high standards to ensure that its positions and facts are clearly set forth. The professional responsibility training and ex parte best practices focus will help to ensure, among other benefits, that SDG&E's communications with the Commission are clear and precise. The Commission has approved similar provisions in settlement of alleged ethical violations in the past (see D.08-01-021 (PG&E CEMA proceeding); see also, D.00-09-034 (SoCalGas Montebello Proceeding), 2000 Cal. PUC LEXIS 694, p. 9, citing D.97-08-055 (PG&E employees who routinely practice before the Commission would take an ethics training course). For all of the reasons discussed above, SDG&E and CPSD believe the proposed Settlement Agreement is fully in the public interest and warrants Commission approval.

D. Settlement Conference

Rule 12.1(b) requires the Parties to hold a public settlement conference providing all Parties to the proceeding an opportunity to review and discuss the settlement. The only two parties to this proceeding are CPSD and SDG&E, who have had sufficient opportunity to review and discuss the settlement.

V. CONCLUSION

For the reasons stated above, the Settling Parties believe the proposed Settlement Agreement (Exhibit A) resolves all of the issues set forth in the OSC. The Settling Parties urge the Commission to find that the proposed Settlement Agreement is reasonable in the light of the record, consistent with the law and precedent, and in the public interest. Therefore, the Settling Parties jointly request that the Commission approve and adopt the Settlement Agreement in the form attached as Exhibit A.

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Respectfully submitted,

/s/ TRAVIS T. FOSS

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March 6, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**JOINT MOTION OF THE CONSUMER PROTECTION AND SAFETY DIVISION AND SAN DIEGO GAS AND ELECTRIC COMPANY (U 902-E) FOR APPROVAL OF SETTLEMENT AGREEMENT**” in **A.06-08-010** by using the following service:

E-Mail Service: sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on March 6, 2009 at San Francisco, California.

/s/ HALINA MARCINKOWSKI

Halina Marcinkowski

N O T I C E

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EXHIBIT A