

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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Agenda ID #10358
and
Alternate Agenda ID #10364
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 09-10-010

Enclosed are the proposed decision of Administrative Law Judge (ALJ) Mark S. Wetzell previously designated as the presiding officer in this proceeding and the alternate decision of President Peevey. The proposed decision and the alternate decision will not appear on the Commission's agenda sooner than 30 days from the date they are mailed.

Pub. Util. Code § 311(e) requires that the alternate item be accompanied by a digest that clearly explains the substantive revisions to the proposed decision. The digest of the alternate decision is attached.

When the Commission acts on these agenda items, it may adopt all or part of the decision as written, amend or modify them, or set them aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision and alternate decision as provided in Pub. Util. Code §§ 311(d) and 311(e) and in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Wetzell at msw@cpuc.ca.gov and President Peevey's advisor Carol Brown at cab@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTONKaren V. Clopton, Chief
Administrative Law Judge

KVC:tcg

Attachment

ATTACHMENT

A.09-10-010

Digest of Differences between Proposed Decision and Alternate Proposed Decision

Proposed Decision of Judge Mark Wetzell

Judge Wetzell's proposed decision (PD) denies approval of the proposed lease agreement between San Diego Gas & Electric Company (SDG&E) and Citizens Energy Corporation (Citizens). Under the proposed lease agreement (DCA), Citizens would have the option to lease for 30-years transfer capability rights along the Imperial Valley segment of SDG&E's Sunrise Powerlink Transmission Project (Sunrise). If approved, Citizens would pay SDG&E \$83 million upfront as pre-paid rent. In addition, Citizens will pay 50% of its after tax profits to the low-income and elderly citizens of the Imperial County, where the transmission line will be built. It is anticipated that Citizens would contribute approximately \$1 million per year for the 30 years of the lease.

The PD finds that notwithstanding certain public interest benefits that would be realized, the proposed transaction is adverse to the public interest because ratepayers would pay Citizens more for transmission service on the Imperial Valley Segment than they would pay SDG&E if it retained control. The PD therefore denies the requested authority.

Alternate Proposed Decision of President Peevey

The alternate proposed decision (APD) of President Peevey grants approval of the DCA between SDG&E and Citizens in consideration of the public interest benefits that would be realized. 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 project will contribute to employment opportunities and the tax base in Imperial County. While all California Independent System Operator 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.

Decision PROPOSED DECISION OF ALJ WETZELL (Mailed 4/26/2011)

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 DENYING APPROVAL OF
LEASE OF TRANSFER CAPABILITY RIGHTS**

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 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.

This decision finds that notwithstanding certain public interest benefits that would be realized, the proposed transaction is adverse to the public interest because ratepayers would pay Citizens more for transmission service on the Imperial Valley segment than they would pay SDG&E if it retained control. Accordingly, the requested authority is denied. 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.

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 power transfer capability 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 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 has agreed to donate 50% of its after-tax profits relating to its participation in Sunrise to programs assisting low-income electric consumers in the Imperial Valley, where the Border-East Line is located. Citizens will recover its costs through Federal Energy Regulatory Commission (FERC)-approved transmission rates.

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

The Commission granted SDG&E a certificate of public convenience and necessity authorizing the construction of Sunrise in 2008.² 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.

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. 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.

In 2006, SDG&E signed a memorandum of agreement with the Imperial Irrigation District (IID) and Citizens in order to facilitate the cooperative development and shared ownership of Sunrise in the Imperial Valley. Although IID terminated its interest in the co-development of Sunrise in November 2007,

² Decision (D.) 08-12-058 and D.09-07-024.

SDG&E continued to negotiate with Citizens. SDG&E and Citizens executed the DCA on May 11, 2009.

2.2. Positions of the Parties

Utility Consumers' Action Network (UCAN) filed a protest in opposition to the application on the grounds that ratepayers may not benefit from this transaction, and in fact may be worse off. The Division of Ratepayer Advocates (DRA) filed a response in support of 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. However, DRA is concerned that SDG&E may seek to involve other participating interests in Sunrise. In particular, DRA is concerned that by doing so, SDG&E could directly or indirectly evade or circumvent a 2007 settlement before FERC where SDG&E agreed not to file for any FERC transmission incentives related to Sunrise.³ DRA therefore proposes to impose conditions to address concerns regarding other participants in Sunrise. 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.

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.

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 circumvent its commitment in the FERC TO3 Settlement Agreement 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

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.

adverse to the public interest. SDG&E also asserts that although Section 851 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 (PG&E). 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 interested 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;
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, *i.e.*, means 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

SDG&E suggests that one of the factors demonstrating the productive impact of the DCA is the estimated \$83 million lump sum prepaid rent payment that it will receive. 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%.

Even though the prepaid rent payment may accrue to SDG&E's private benefit, we do not equate that to the public interest in the absence of a showing that SDG&E's customers or another portion of the public also receive a benefit from the payment. The situation here contrasts with the Section 851 cases cited by SDG&E, where the Commission found that public interest benefits beyond the utility's own private interest were present. In D.09-04-013, after noting that a proposed sale of property would not interfere with SDG&E's use of the property for utility purposes or with service to customers, the Commission found that "[t]he proposed sale also provides benefits for the community and SDG&E ratepayers."¹³ Specifically, as to the latter, "ratepayers will benefit because they

¹³ D.09-04-013 at 6.

will receive money from the proceeds of [the sale].”¹⁴ Similarly, in D.09-07-035, after noting that PG&E would receive approximately \$1.3 million in signboard site license fees, the Commission stated that “[i]n turn, PG&E will allocate those financial proceeds in accordance with this decision which will result in direct and immediate positive value for ratepayers in all instances.”¹⁵ Thus, we do not find the prepaid rent provision of the DCA to be a public interest benefit.

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.

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.

Finally, SDG&E states that Citizens has publicly committed that its participation in the Border-East Line will not affect property tax proceeds paid to

¹⁴ *Id.*

¹⁵ D.09-07-035 at 14.

Imperial County. We do not find that preservation of the status quo regarding property tax proceeds is a public benefit of the DCA.

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. SDG&E explains that Citizens is a new, “non-utility” competitor¹⁶ that has expressed interest in facilitating the development of new transmission resources beyond the Border-East Line. For example, Citizens intends to study 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.

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. 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.

SDG&E points out that the Commission has recognized the value of bringing new entrants into transmission development.¹⁷ SDG&E contends that approval of the DCA will serve as a catalyst, encouraging Citizens and other new entrants to further engage in these types of projects.

We note that Citizens' intent to study the feasibility of transmission projects is not the same as a firm commitment to do so. We also note that three development projects that involve Citizens have been abandoned or will not increase transmission capacity in the Imperial Valley. Moreover, 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 competitive environment. In this respect,

¹⁷ SDG&E refers to a letter dated June 25, 2009, filed at FERC in Startrans, IO, LLC, Docket No. ER08-413-002, in which the Commission's attorney stated that "California welcomes the development of needed new transmission infrastructure, especially new infrastructure needed to access renewables. Startrans promises to play an active role in the development of such needed new infrastructure."

the DCA provides a potential, if intangible and unmeasured, public interest benefit.

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 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, SDG&E would be able to seek a higher rate of return for Sunrise after 2013, when its FERC TO3 Settlement Agreement expires. 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. Citizens and DRA concur in this view. UCAN, on the other hand, points out that California Independent System Operator (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 above the debt level used in the SDG&E Representative Rate model.

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 using the SDG&E Representative 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, 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. Accordingly, we do not find the rate stability provision of the DCA to be a ratepayer benefit.

3.2.4.2. Full Cost Recovery in 30 Years

SDG&E claims another aspect of the DCA's capital cost recovery mechanism as a ratepayer benefit. At the end of the lease, the capital costs for the relevant portion of the Border-East Line will be fully depreciated and customers will then have the benefit of 28 years remaining useful life for this facility. Because this represents inter-temporal shifting of cost responsibility from future ratepayers to current ratepayers, rather than a net gain for ratepayers, we do not find this to be a public or ratepayer benefit.

3.2.4.3. Levelized Cost Recovery

Proponents of the DCA claim another, related benefit of the DCA's rate structure. 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.”¹⁸

If the DCA’s provision for deferring capital cost recovery (compared to conventional ratemaking) provides a net benefit to ratepayers, and does not merely cause an inter-temporal shift of cost responsibility among ratepayers, it would be necessary to have a quantitative analysis of the benefit. Under the circumstances, we are not able to conclude that the DCA’s deferred cost recovery provides a ratepayer benefit.¹⁹

3.3. Protection Against Adverse Impacts

3.3.1. Introduction

In Section 3.3 we evaluate SDG&E’s claim that the DCA protects against its 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 and that

¹⁸ Exhibit 6 at 26.

¹⁹ To the extent that delaying capital cost recovery provides a net benefit to ratepayers, it would appear that the DCA’s provision for collecting capital costs in the first 30 years

Footnote continued on next page

Citizens shall transfer operational control of its transfer capability to the CAISO. It secures for the benefit of CAISO's customers perpetual rights to 100% of the transfer capability on Citizens' portion of the 500kV line. Also, SDG&E has taken adequate measures to ensure it would not "double recover" costs from both Citizens and FERC-approved rates. 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, SDG&E claims, approximates the capital cost recovery rate SDG&E would charge for Citizens' interest, including some of Citizens' incremental development costs. Under the DCA, SDG&E's Representative Rate constitutes a ceiling or cap on the capital cost rate that Citizens may charge.

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

of Sunrise, rather than over its 58 year life, is adverse to ratepayers, not a ratepayer benefit as SDG&E suggests. (See Section 3.2.4.2 above.)

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.

In effect, SDG&E has estimated that over the 30-year life of a lease under the DCA, CAISO ratepayers would pay between 0.6% and 5.8% more under the DCA than they would if the Border-East Line remains under SDG&E’s control and tariffed rates. Whether this is properly calculated as a 30-year cost of \$2.3 million to \$22 million, as UCAN says, or whether those estimates should be discounted by two-thirds to create a net present value, as Citizens contends, ratepayers can expect to pay millions of dollars in additional costs if the DCA is approved and the lease option is exercised. In this respect the DCA is adverse to ratepayers.

3.4. Conclusion

As discussed earlier, the DCA provides two public interest benefits. First, 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. Second, 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, 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.

However, we have also determined that the DCA harms ratepayers by requiring them to pay more over the 30-year life of a lease under the DCA than they would if SDG&E continued to provide the service. SDG&E admits that ratepayers would pay extra for service by Citizens²⁰ but claims we should overlook this harm because, according to SDG&E, it is *de minimus*. SDG&E draws this conclusion by comparing the size of Citizens' stake in Sunrise (\$83 million) to the overall Sunrise cost of approximately \$1.9 billion. We cannot accept this argument. Ratepayer harm in this instance should be judged on its own merits, not on the basis of a comparison with a much larger expenditure.

SDG&E also contends that we should weigh the public interest benefits of the DCA against the harm to ratepayers. Specifically, in taking issue with UCAN's position that future returns on equity would have to be significantly higher for SDG&E than they currently are in order for the rate stability feature of the DCA to have a public interest benefit, SDG&E states the following:

"This conclusion improperly ignores the Commission's duty to consider all the public interest impacts and not simply those tied to potential rate impacts. Moreover, even if one were to agree that the DCA's rate stability value is low, it nevertheless remains something to be considered as part of the overall public benefit calculus. That is, even if the rate stability factor has low value for ratepayers, the

²⁰ SDG&E Opening Brief at 20.

analysis does not end there, and the Commission maintains broad discretion to consider other public interest impacts beyond those affecting SDG&E's ratepayers, including impacts on the residents of Imperial County and the State of California as a whole."²¹

Implicit in SDG&E's argument is the proposition that even though a proposed lease transaction may be adverse to ratepayers, we may approve it as long as other public interest benefits exist for residents of Imperial County and the State of California as a whole. This misapplies the standard for review of Section 851 applications, discussed at length above. Again, as the Commission stated in D.09-07-035, the *minimal* standard of review is that a proposed transaction must not be adverse to the public interest, which encompasses ratepayer interests.

We recognize that it would be appropriate to weigh any ratepayer benefits of the DCA against its demonstrable harm to ratepayers. Since the DCA's benefits to Imperial County exclude ratepayers, only the DCA's potential for enhanced competition and transmission development can be considered. We do not find that this intangible and unmeasured public benefit offsets the DCA's harm to ratepayers. Accordingly, the application must be denied.

4. Comments on Proposed Decision

The proposed decision of the ALJ 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 _____. Replies were filed by _____.

²¹ SDG&E Reply Brief at 7.

5. Assignment of Proceeding

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

Findings of Fact

1. Although 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.

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 not 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 but does not provide a net benefit to ratepayers.

6. Any potential benefit of the DCA's provision for levelized recovery of capital costs, compared to conventional utility ratemaking, has not been quantified.

7. Over the 30-year life of the DCA, ratepayers would pay Citizens millions of dollars more (between 0.6% and 5.8%) in transmission charges than they would pay SDG&E if it retained control of 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 is adverse to CAISO ratepayers because it results in ratepayers paying more in transmission charges than they would in the absence of the DCA.
3. The public interest benefits of the DCA do not offset the harm it causes to ratepayers.
4. Application 09-10-010 should be denied, 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 denied.
2. Application 09-10-010 is closed.

This order is effective today.

Dated _____, at San Francisco, California