

**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 South Orange
County Reliability Enhancement Project

Application 12-05-020
(Filed May 18, 2012)

**REPLY OF APPLICANT SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) TO
PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES**

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July 2, 2012

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I. INTRODUCTION

Pursuant to General Order (GO) 131-D and Rule 2.6(e) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), San Diego Gas & Electric Company (SDG&E) hereby replies to a protest of SDG&E's Application for a Certificate of Public Convenience and Necessity for the South Orange County Reliability Enhancement Project (Proposed Project).

II. BACKGROUND

Investor-owned utilities are required to obtain a permit from the Commission for construction of certain major electric transmission line facilities which are designed for immediate or eventual operation at 200 kV or more, as specified under Public Utilities Code (PU Code) sections 1001 *et seq.* and GO 131-D. The COMMISSION reviews permit applications under two concurrent processes: (1) an environmental review pursuant to the California Environmental Quality Act (CEQA); and (2) the review of project need and costs pursuant to PU Code sections 1001 *et seq.* and G.O. 131-D (Certification of Public Necessity and Convenience (CPCN)).¹

¹ <http://www.cpuc.ca.gov/puc/energy/environment/>.

On May 18, 2012, SDG&E filed the above captioned application pursuant to the Commission's GO 131-D for a CPCN (Application). A Proponent's Environmental Assessment (PEA), which addresses each of the CEQA factors for the Proposed Project, was submitted with the Application. SDG&E noticed the filing of the Application to certain public agencies, legislative bodies, and property owners located within 300 feet of the Proposed Project in accordance with GO 131-D, Section XI.A.

On June 20, 2012 the Division of Ratepayer Advocates (DRA) filed a timely protest (Protest) to SDG&E's Application. No other timely protests or responses were filed within 30 days of the date the notice of the filing of the Application first appeared in the Commission's Daily Calendar on Monday, May 21, 2012.² The last day for filing a protest or response was June 20, 2012.³ Pursuant to Rule 2.6(e) of the Commission's Rules, SDG&E hereby replies to DRA's protest within the prescribed time frame.⁴

III. REPLY

A. DRA's Proposal is Inconsistent with the Commission's Obligations

The DRA Protest indicates their intention to evaluate the Proposed Project and conduct discovery to ascertain whether or not SDG&E has met its burden.⁵ SDG&E agrees that it is appropriate for parties to conduct reasonable discovery in a ratemaking proceeding, and is prepared to assist DRA in its review.

² Two entities, the City of San Juan Capistrano and Frontlines, have filed motions for under Rule 1.4(a)(4) and to file late protest. SDG&E reserves the right to address any additional issues or late-filed protest or replies consistent with the Rules and any future Ruling by the assigned Administrative Law Judge on these pending motions.

³ Rule 2.6(a) of the Commission's Rules.

⁴ If the 10 day reply deadline falls on a weekend or holiday then the deadline is the first business day after that date.

⁵ DRA Protest at p. 2; see also pp. 3-5.

DRA also proposes its “analyses will seek to assist the Commission in determining whether or not the CPCN should be approved or denied, as well as any modifications or conditions that should be applied if the CPCN is approved.”⁶ SDG&E believes DRA’s proposal is a misguided and overzealous application of its statutory mission to obtain the lowest possible rate for service consistent with reliable and safe service levels.⁷ SDG&E disagrees with DRA’s contention. Specifically, SDG&E believes that DRA’s analyses argument is a marked departure from the Commission’s standard of conducting an independent review for determining whether the proposed facilities are necessary to promote the safety, health, comfort, and convenience of the public, and that the Proposed Project is required by the public convenience and necessity.

The Transmission Siting and Environmental Permitting Section (Siting and Permitting Section) of the Commission’s Energy Division (ED) conduct and manage CPCN applications and environmental reviews for the Commission’s consideration. Environmental reviews are conducted pursuant to the CEQA, where the Commission is a lead or responsible agency, and as further specified by the Commission's CEQA-related rules. The ED Siting and Permitting Section also administer mitigation monitoring plans and participate in other agencies’ review of investor-owned utility-related projects.⁸

Moreover, the ED develops and administers energy policy and program to serve the public interest, advise the Commission, and ensure compliance with the Commission decisions and statutory mandates. The ED also provides objective and expert analyses that promote reliable, safe and environmentally sound energy services at lowest reasonable rates for the people

⁶ DRA Protest at p. 2.

⁷ <http://www.dra.ca.gov/default.aspx>.

⁸ <http://www.cpuc.ca.gov/puc/energy/environment/>.

of California.”⁹ The Commission’s ED reviews each CPCN Application and PEA to see if it provides enough information for the Commission to begin analyzing the environmental impacts of the project, as required by GO 131-D and the CEQA.¹⁰

Notably DRA’s argument, especially given their status as a party to this proceeding, would impermissibly shift to DRA the ED’s role and Commission’s statutory obligation under Public Utilities Code 1001 *et seq.* to independently determine whether the Proposed Project is necessary and required by the public convenience and necessity. In Decision (D) 05-08-037 the Commission rejected a similar claim made by UCAN because it would tie the hands of the Commission giving opposing parties a virtual veto over the ratemaking proceeding.

DRA’s conflation based approach must be disallowed.

B. DRA’s Protest is Inconsistent with the Commission’s Rules

Rule 2.6 requires a party to submit a response rather than a protest when the party does not object to the authority sought in the application but nevertheless wishes to present information that the party tendering the response believes would be useful to the Commission in acting on the application. Consistent with Rule 2.6(c), SDG&E submits that because DRA’s comments merely presents information on the scope of the examination without raising any objection to the authority sought, DRA’s comments should be more appropriately treated as a response.

C. DRA’s Protest is Inconsistent with Sound Policy

DRA’s Protest alleges that SDG&E’s confidential designation of costs is improper.¹¹ With respect to the detailed project cost estimates filed with the Commission under seal, SDG&E

⁹ <http://www.cpuc.ca.gov/PUC/energy/Resources/about.htm> .

¹⁰ <http://www.cpuc.ca.gov/puc/energy/environment/>.

¹¹ DRA Protest at pp. 5-6.

maintains the confidentiality of this information is crucial to SDG&E's ability to function effectively for its customers in the energy markets. If this detailed project cost information were available to the general public, it could harm SDG&E, and ultimately ratepayers, by placing the regulated company at an unfair business disadvantage in its efforts to secure the most advantageous transactions for customers to acquire energy products, contract for construction, and achieve least cost management of SDG&E's System.

General Order 66-C categorizes as information that is "not open to public inspection," those "reports, records, and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage".¹² [Emphasis added].

The sealed confidential material includes confidential capital cost estimates by SDG&E for the construction of the Proposed Project. Confidential treatment of this information would serve the public interest because access to SDG&E's proprietary project cost estimates would give potential vendors a commercial advantage in formulating bids for construction materials or equipment related to the Proposed Project. Disclosure of this cost information could set a floor, discouraging the submission of lower bids. Also, access to this information gives potential bidders an advantage in formulating estimates for work related to the Proposed Project. In sum, public availability of such sensitive procurement information could hamper SDG&E's ability to receive low-cost bids, and to build the Proposed Project on a least-cost basis. Thus, not only would disclosure place SDG&E at an "unfair business disadvantage" as contemplated by General Order 66-C, but it would offend the public interest by increasing costs that will be the basis of transmission rates paid by CAISO consumers.

¹² General Order 66-C, §2.2(b).

Moreover, in D.06-09-003, issued September 7, 2006, this Commission directed that “[g]iven the competitive sensitivity of project-specific costs, the utilities may provide project cost information in one of two formats. Where recipients of the report are persons subject to Pub. Util. Code § 583 (the Commission and Commission staff) or a private confidentiality agreement, the report shall contain a project-specific cost (for example, \$31 million).¹³ Otherwise, the report may describe costs as a range (for example, \$10-50 million).”

SDG&E submits that consistent with D.06-09-003 it has used the least restrictive process available to protect the information. Moreover, SDG&E is willing to produce to DRA the unredacted, confidential materials submitted by SDG&E to the Commission under the protection of Public Utilities Code Section 583 and G.O. 66-C, and other parties may receive the costs describe as a range, or upon reasonable request, can obtain the detailed project cost information by signing an appropriate non-disclosure agreement.

DRA’s claims regarding disclosure of project cost information disregard applicable law and policy, and must be rejected.

IV. CONCLUSION

As demonstrated above, DRA’s arguments lack merit and are contrary to facts, reasonable assumptions, Rules and sound policy. SDG&E's PEA and Application adequately include all of the items required for conducting the Commission’s environmental review and/or economic and need assessment for the Proposed Project. DRA’s identified issues go beyond the requirements for a PEA, and *assuming arguendo* they have any merit, such assertions are more

¹³ Pub. Util. Code § 583 provides:

“No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.”

appropriately set aside for the Commission's independent analysis and environmental review process. For these reasons the Commission should either treated DRA's arguments as a response or reject the Protest in its entirety.

Respectfully submitted and dated this 2nd day of July 2012 at San Diego, California.

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