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09-29-10

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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)

**JOINT SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER AND
ASSIGNED ADMINISTRATIVE LAW JUDGE**

1. Summary

This ruling confirms the schedule for the proceeding, determines its scope, and addresses other procedural matters.

2. Background

2.1 Application Overview

San Diego Gas & Electric Company (SD&GE) 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) 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 will be for 30 years.

¹ All Code citations are to the Public Utilities Code, unless otherwise stated.

If Citizens exercises the option before the in-service date for Sunrise, Citizens will pay SDG&E an estimated \$83 million as prepaid rent, in a lump sum, to lease the entitlement to power transfer capability over 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. Citizens will recover its costs through Federal Energy Regulatory Commission (FERC)-approved transmission rates.

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 between the existing Imperial Valley and Sycamore Canyon Substations, a proposed new Suncrest Substation, and other system modifications in order to reliably operate the new line. Sunrise is composed of three separate segments or “links” according to geographical location, including the Imperial County 500 kilovolt (kV) link or the Border-East line that traverses approximately 30 miles. SDG&E estimates the in-service date for Sunrise is June 2012.

Citizens is a non-profit Massachusetts corporation which 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 a wide array of social and charitable programs in the United States and abroad. Citizens owns

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

100% of a for-profit holding company which in turn wholly owns several for-profit subsidiaries, including Citizens Business Enterprises. 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. Citizens relies on the profits from the businesses that it owns and operates to generate revenues for charitable and social programs.

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

2.2 Ratemaking Impacts of the Transaction

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 which it would charge if it were to apply its cost-of-service principles to Citizens' involvement, in view of the fact that Citizens will incur additional costs above those allocated from SDG&E to Citizens. SDG&E was concerned that Citizens could obtain FERC-approved rates much greater than the rates SDG&E would charge in the absence of the DCA. The DCA, therefore, 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. Pursuant to the DCA, SDG&E's Representative Rate constitutes a ceiling or cap on the capital cost rate that Citizens may charge.

SDG&E estimates that, depending on assumptions used, the annual discounted and levelized revenue requirement is \$77,000 (0.6%) higher for

Citizens than it is for SDG&E. Under a “high” case, the revenue requirement is \$734,000 (5.8%) higher for Citizens than it is for SDG&E.

2.3 Benefits of the Transaction

SDG&E asks the Commission to consider the benefits of Citizens’ participation in the Border-East line, the consumer protections built into the cap on Citizens’ rate in the SDG&E Representative Rate, the permanently locked-in nature of Citizens’ rate, and the relative magnitude of the overall dollars at stake. With respect to the latter point, SDG&E notes that Citizens’ participation will only amount to approximately \$83 million out of a total Sunrise cost of approximately \$1.9 billion.

2.4 Protest of Utility Consumer Action Network (UCAN)

On November 5, 2009, UCAN filed a protest. UCAN believes that Citizens, SDG&E, the Internal Revenue Service, and low-income residents of Imperial County will benefit from the proposed transaction but ratepayers may be worse off. Among other things, UCAN notes that Citizens’ ratepayers could be liable for approximately \$5 million in development costs that they would not have to pay if SDG&E were not entering into this transaction, and that ratepayers would not benefit from the fixed rate provision in Citizens’ rate if, after 2013, SDG&E’s return on equity or debt cost declines.

2.5 Response of Division of Ratepayer Advocates (DRA)

DRA supports the transaction because of the benefits to low-income persons in Imperial County resulting from Citizens’ agreement to donate 50% of its profits from operations in the County to social programs. DRA also supports the transaction because it will result in rate stability and protection against

possible capital cost increases for ratepayers. Further, DRA believes that the levelized rate structure proposed for Citizens is a public benefit because it avoids “front-end loading” of cost recovery.

DRA is concerned that by bringing in additional Sunrise participants, SDG&E could circumvent the 2007 settlement in FERC Docket No. ER07-284-000 (2007 Settlement) where SDG&E agreed not to file for any transmission incentives related to Sunrise. DRA, therefore, believes that the Commission should expressly state that its approval of this application (a) is conditioned on the unique public benefits resulting from Citizens’ participation in this transaction, (b) shall not be precedent in any other proceeding, and (c) is conditioned upon SDG&E not bringing in additional participating interests in a manner that would be inconsistent with the 2007 Settlement.

Finally, because Citizens has yet to exercise its lease option, DRA recommends that the Commission require SDG&E to file an executed copy of the Lease of Transfer Capability and all related documents with the Commission Energy Division, pursuant to General Order (GO) 96-B, Sections 3.9 and 6.1 no later than 30 days after the execution of the lease. DRA also recommends that the Commission require SDG&E to file an advice letter to obtain Commission approval of the Lease of Transfer Capability between SDG&E and Citizens at least 6 months before the expected in-service date of the Border-East line. According to DRA, these measures would ensure that the Commission’s approval will be linked to an actual Lease of Transfer Capability.

2.6 Reply of SDG&E

On November 23, 2009, 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 the commitment it made in the 2007 Settlement not to apply for FERC 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. When appropriate, SDG&E will file a separate application pursuant to Section 851. 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 DCA.

3. Scope of the Proceeding

The issues to be addressed 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;
3. Whether the DCA should be approved pursuant to Section 851, and, if it is approved, what subsequent filing (e.g., an advice letter) should be required if and when a lease based on the DCA is entered into by SDG&E and Citizens;
4. In the event the Commission approves the DCA, whether it should issue an order proscribing SDG&E from bringing additional participants into the Sunrise project who would seek transmission incentives at FERC; and
5. Whether the Commission should grant intervenor compensation to UCAN based on its participation in this proceeding and, if so, in what amount? (UCAN filed a Notice of Intent to claim compensation on January 20, 2010.)

4. Schedule

Date	Event
October 9, 2009	Application Filed
November 15, 2009	Protest by UCAN
November 13, 2009	Response to Application by Consumer Protection and Safety Division
January 11, 2010	Prehearing conference
February 10, 2010	Prehearing conference
March 1, 2010	Deadline for service of UCAN rebuttal testimony
April 19, 2010	Deadline for service of Citizens reply testimony
April 29, 2010	Telephonic status conference
May 10, 2010	Deadline for UCAN to serve limited discovery requests
May 24, 2010	Deadline for UCAN to confirm its request for a hearing by e-mail to assigned Administrative Law Judge (ALJ) and all parties
June 18, 2010	Filing and service of concurrent opening briefs by all parties
July 2, 2010	Filing and service of concurrent reply briefs by all parties
4 th Quarter 2010	Issuance of proposed decision by assigned ALJ
Not less than 30 days after proposed decision issued	Final decision on Commission agenda

In any event, it is anticipated that this proceeding will be resolved within 18 months of the issuance of this Scoping Memo pursuant to Section 1701.5.

5. Filing and Service of Documents

All documents required to be filed in the proceeding shall be filed with the Commission Docket Office in accordance with the Commission's Rules of Practice and Procedure (Rules).³ Parties shall also serve all prepared testimony and other documents required to be filed in this proceeding on each other by the deadlines stated in this ruling by personal delivery, facsimile, overnight mail, or by e-mail. Parties shall comply with Rule 1.10 regarding the service of documents by e-mail.

Parties shall submit a copy of all documents filed or served in this proceeding directly to the assigned ALJ by regular mail, e-mail addressed to msw@cpuc.ca.gov; or by facsimile sent to (415) 703-1723.

6. Categorization and Need for Hearing

In Resolution ALJ 176-3242, dated October 15, 2009, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that no hearing is necessary. We confirm these preliminary determinations. This ruling, as to categorization only, is appealable pursuant to Rule 7.6.

7. Ex Parte Communications

Ex parte communications are permitted in ratesetting proceedings subject to the requirements of Rule 8.2 and must be reported pursuant to Rule 8.3. Parties having questions regarding the rules governing ex parte communications

³ The Rules are available at the Commission's website:
http://www.cpsc.ca.gov/word_pdf/RULES_PRAC_PROC/63835.doc.

should contact the Commission Public Advisor’s Office by phone at (866) 849-8390 or by e-mail addressed to public.advisor@cpuc.ca.gov.

8. Assistance with Procedural Questions

Parties may contact the Commission Public Advisor’s Office by phone at (866) 849-8390 or by e-mail at public.advisor@cpuc.ca.gov for assistance with procedural questions.

9. Designation of Presiding Officer

ALJ Mark S. Wetzell will be the presiding officer.

10. Receipt of Evidence

SDG&E and Citizens in their respective opening briefs, and UCAN in its reply brief, move that the exhibits described in the table below be received in evidence. We identify the exhibits and hereby receive them in evidence.

Exh. No.	Sponsor	Description
1	SDG&E	SDGE-1: Direct Testimony of James Avery
2	SDG&E	SDGE-2: Direct Testimony of Michael Calbrese
3	SDG&E	SDGE-3: Direct Testimony of Randall Rose
4	SDG&E	SDGE-4: SDG&E Responses to First Set of UCAN’s Data Requests
5	SDG&E	SDGE-5: SDG&E verified Section 851 Application, including Attachment 1 (DCA), Attachment 2 (Citizens’ FERC Petition, dated October 9, 2009) and Attachment 3 (SDG&E financial documents)
6	Citizens	Ex. Citizens-1 (Rebuttal Testimony of John Wilson)
7	Citizens	Ex. Citizens-2 (Rebuttal Testimony of William Mayben)
8	Citizens	Ex. Citizens-3 (Citizens’ Response to UCAN’s First Set of Data Requests to Citizens)
9	Citizens	Ex. Citizens-4 (Citizens’ Response to UCAN’s Second Set of Data Requests to Citizens)

10	UCAN	Ex. UCAN-1 (Direct Testimony of David Marcus)
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THEREFORE, IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is as set forth herein.
3. The presiding officer will be Administrative Law Judge Mark S. Wetzell.
4. The preliminary determinations that this proceeding is categorized as ratesetting and that hearings are not necessary is confirmed. This ruling is appealable as to categorization only pursuant to Rule 7.6.
5. Rules 8.2 and 8.3 apply with respect to ex parte communications.
6. Exhibits 1-10, identified in the foregoing discussion, are received in evidence.

Dated September 29, 2010, at San Francisco, California.

/s/ DIAN M. GRUENEICH

Dian M. Grueneich
Assigned Commissioner

/s/ MARK S. WETZELL

Mark S. Wetzell
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated September 29, 2010, at San Francisco, California.

/s/ OYIN MILON

Oyin Milon

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.