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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902M) for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2012.

Application 10-12-005
(Filed December 15, 2010)

And Related Matter.

Application 10-12-006

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING JOINT PARTIES' MOTION TO COMPEL TESTIMONY
OF DELOITTE & TOUCHE**

1. Summary

This ruling addresses the November 28, 2011 motion filed by the Black Economic Council, Latino Business Chamber of Greater Los Angeles, and the National Asian American Coalition (referred to as the "Joint Parties") for the issuance of a ruling to compel the testimony of K. Alan Lonbom, an auditing engagement partner of Deloitte & Touche.

Based on the reasons set forth below, the Joint Parties' motion to compel the testimony of K. Alan Lonbom is denied.¹

¹ An e-mail ruling was issued on January 12, 2012, informing the service list that based on the reasons set forth in this ruling, that the November 28, 2011 motion filed by the Joint Parties was denied.

2. Background

The Joint Parties' motion requests that K. Alan Lonbom, the Deloitte & Touche audit engagement partner who works with San Diego Gas & Electric Company and Southern California Gas Company (referred to as the "Applicants"), be called as a witness in these consolidated proceedings. The Joint Parties "believe that Sempra must put forth a witness to speak to the growing scrutiny of financial practices at Deloitte & Touche." (Motion at 6.)

A response in opposition to the Joint Parties' motion was filed on December 6, 2011 by the Applicants.

3. Discussion

The Joint Parties' motion to compel the testimony of the Deloitte & Touche audit engagement partner is based on several arguments. First, that the Public Company Accounting Oversight Board (PCAOB) "released a critical report on the 2007 inspection of Deloitte & Touche LLP," which was reported by the New York Times on October 17 and 20, 2011, and by the Wall Street Journal on October 18, 2011. (Motion at 3.)² Second, according to a data response by SDG&E and SoCalGas, over the last six years Deloitte & Touche has "received \$85 million, or an average of \$14 million a year, for auditing and other services," and that Sempra Energy, SoCalGas, and SDG&E "all use Deloitte & Touche for various accounting functions." (Motion at 2-3.) Third, that Deloitte & Touche "is

² The Joint Parties' motion provides quotations from the three newspaper articles. These articles are also contained in Exhibit 16, which was marked for identification in these proceedings. During the cross examination of Bruce Folkmann on December 21, 2011, he was also asked about a December 21, 2011 article from the Wall Street Journal, which reported about the PCAOB's review of audits conducted in 2010 by various accounting companies.

the only major CPA firm singled out for severe criticism in its auditing practices and the reliability of its methods” by the PCAOB. (Motion at 3.) Fourth, the Joint Parties contend “that Sempra must put forth a witness to speak to the growing scrutiny of financial practices at Deloitte & Touche” in light of the PCAOB’s “critical report” of problems in 27 of 61 audits, and the “payments of \$85 million of ratepayer money to Deloitte & Touche from 2005 to 2010.” (Motion at 6.) The Joint Parties also contend that the testimony of the Deloitte & Touche witness should be compelled because the data responses by SDG&E and SoCalGas defend their relationship with Deloitte & Touche.

The Applicants contend that there have been a series of rulings in different Commission proceedings which have ruled “that Applicants, not intervenors, have the right to choose the witnesses who will testify in support of requested regulatory relief.” (Applicants’ Response at 2.) The Applicants also point out that counsel for the Joint Parties, Robert Gnaizda, was the same counsel who filed similar unsuccessful motions on behalf of other parties in those other Commission proceedings.

The Applicants further contend there is no reasonable basis to compel the appearance of Lonbom, who is not an employee of the Applicants. Also, a showing has not been made that the Joint Parties’ due process rights will be violated if Lonbom does not testify. The Applicants further contend that the Joint Parties have not established that Lonbom has any “unique or superior knowledge about any issues relevant to this proceeding,” and that Michael Niggli and Anne Smith, for SDG&E and SoCalGas, respectively, have already “answered questions about the validity of Applicants’ choice of auditors.” (Applicants’ Response at 4.)

The Applicants also contend that the Joint Parties' motion is untimely and prejudicial because the witnesses for these proceedings have been known since the Notices of Intent were filed on August 1, 2010, and that the Joint Parties' motion was not filed until November 28, 2011, two days before the start of the evidentiary hearings. The Applicants further contend that the motion does not comply with due process because Lonbom was not served with the motion, nor did he prepare any testimony or respond to any discovery in this proceeding. Also, the basis for the motion is the newspaper articles which contain hearsay, and the motion fails to attach any affidavits or declarations in support of the Joint Parties' motion. The Applicants point out that Rule 11.1(d) of the Commission's Rules of Practice and Procedure require that a motion "must concisely state the facts and law supporting the motion." (Motion at 5.)

The Joint Parties' motion is denied for a number of different reasons. First, the motion is predicated on the newspaper articles referenced in the motion. The Joint Parties failed to include in its motion any affidavit or declaration regarding first hand knowledge of any of the irregularities that the PCAOB included in its report, nor is there any allegations of facts contained within the motion to establish that the PCAOB's report is relevant to the forecasts of the 2012 test year revenue requirements. Second, the Joint Parties' motion fails to establish a relevant nexus that of the audits the PCAOB reviewed, that these audits involved the Applicants.³ Third, the joint motion fails to allege any facts that Lonbom or

³ During the testimony of Folkmann on December 21, 2011, he stated that Deloitte & Touche has a duty to inform a client if the audit work performed for a client has been selected for review by the PCAOB. Folkmann stated that he learned "Sempra Energy has been selected for review two times." However, only the revenue requirements of

Footnote continued on next page

any other employee of Deloitte & Touche, prepared or created any of the data used by the Applicants to create the forecasts upon which the Applicants' 2012 test year forecasts are based upon. (See 24 R.T. at 3083-3084, 3108-3109.) Fourth, although Deloitte & Touche have been used by the Applicants and their corporate parent, the Joint Parties fail to allege any facts to establish this relationship was improper in any way or resulted in any erroneous or misleading information used by the Applicants in this proceeding. Fifth, the Applicants' witnesses and the testimony they are sponsoring have been known to the Joint Parties since the applications were filed, the Joint Parties have had ample opportunity to conduct discovery within that timeframe, and the scoping memorandum and ruling of March 2, 2011 established the dates when all of the testimony in this proceeding was to be served by. By choosing to file the motion on November 28, 2011, two days before the evidentiary hearings began, makes the motion procedurally untimely because it is past the due date for parties to submit testimony in this proceeding. In addition, the Joint Parties' motion failed to "concisely state the facts and law supporting the motion." (Rule 11.1(d).) And sixth, since the Applicants have the burden of proof in applications involving rate relief,⁴ that burden includes allowing the Applicants to select which witnesses have the requisite knowledge and experience to sponsor testimony and

SDG&E and SoCalGas, who are regulated entities subject to the Commission's jurisdiction, are being reviewed in these proceedings. (24 R.T. at 3106-3109, 3111-3112.)

⁴ See Decision (D.) 87-12-067 [27 CPUC2d 1 at 21]; D.86-10-069 [22 CPUC2d 124 at 149-150].

to testify at the evidentiary hearings.⁵ Unless another party establishes compelling reasons as to why another person should be called to testify, which the Joint Parties have failed to do, such a request should be denied.

IT IS RULED that the November 28, 2011 “Motion of the Joint Parties to Compel Testimony of Auditing Engagement Partner of Deloitte & Touche, Mr. K. Alan Lonbom,” is denied for the reasons stated above.

Dated January 20, 2012, at San Francisco, California.

/s/ JOHN S. WONG

John S. Wong
Administrative Law Judge

⁵ Public Utilities Code §454(a) provides in pertinent part that before a public utility can change any rate, there must be “a showing before the commission and a finding by the commission that the new rate is justified.”