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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U 902 E) for Authority to Enter into Purchase Power Tolling Agreements with Escondido Energy Center, Pio Pico Energy Center and Quail Brush Power.

Application 11-05-023
(Filed May 19, 2011)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON MOTION FOR OFFICIAL NOTICE**

By motion filed July 13, 2012, the Division of Ratepayer Advocates (DRA) seeks official notice of (1) Assigned Commissioner and Administrative Law Judge's Joint Scoping Memo and Ruling, December 3, 2010, Rulemaking (R.) 10-05-006; (2) Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, May 17, 2012, R.12-03-014; and (3) Assigned Commissioner's Ruling on Standardized Planning Assumptions, June 27, 2012, R.12-03-014. DRA argues that these documents are official acts of the Commission and therefore judicially noticeable pursuant to Evidence Code § 452(c) and Rule 13.9.

The motion is denied with respect to the rulings in R.12-03-014. Rulings of the assigned Commissioner and/or Administrative Law Judge (ALJ) are not official acts of the California Public Utilities Commission and are therefore not judicially noticeable pursuant to Evidence Code §452(c). An assigned Commissioner and/or ALJ does not have the authority to act on behalf of the agency, and rulings of assigned Commissioners and/or ALJ do not so.

The motion is granted with respect to the December 3, 2010, Assigned Commissioner and ALJ's Joint Scoping Memo and Ruling in R.10-05-006, except that it may not be used for the truth of the matters asserted therein. In addition and on the same basis, judicial notice is taken of the February 10, 2011, ALJ's ruling in R.10-05-006 which, among other things, updates and corrects the standardized planning assumptions in the December 3, 2010, Joint Scoping Memo and Ruling. The rulings are appropriately noticed under the circumstances and for this limited purpose.

"Within the purview of the provisions of section 1875, and the principles applicable to such notice under the 'common knowledge' rule, judicial notice should be taken 'when the circumstances obviously require such action.' (Livermore v. Beal, 18 Cal.App.2d 535, 543; see McCormick, Evidence, § 323, pp. 687-689.)" (*South Shore Land Co. v. Petersen*, 226 Cal. App. 2d 725, 746 (1964).) Here, it is common knowledge and uncontested that the ruling in R.10-05-006 adopted certain standardized planning assumptions for purposes of consistent runs (see, e.g., Ex. 7, pp. RA-7 and RA-8) and, as the issue of San Diego Gas & Electric Company's (SDG&E) 2010-2020 local capacity requirement was initially considered in R.10-05-006 and then delegated to this proceeding for resolution, circumstances obviously merit judicial notice of relevant portions of the record developed in the predecessor docket. Thus, for example, the amended scoping memo in this proceeding invited parties to offer portions of the evidentiary record in R.10-05-006 into evidence in this proceeding (Assigned Commissioner's Amended Scoping Memo and Ruling at 4-5, March 12, 2012).

Nevertheless, "[a] court should, of course, be reasonably certain of everything of which it takes judicial notice, and if there is any doubt whatever either as to the fact itself or as to its being a matter of common knowledge,

evidence should be required. (*Varcoe v. Lee*, 180 Cal. 338, 345; *Livermore v. Beal*, supra, p. 543.)” (*South Shore Land Co. v. Petersen*, supra.) While the ruling is a record of the Commission and commonly known to parties who have participated in both proceedings, and the fact of its existence and that the assigned Commissioner and ALJ approved the use of specified assumptions in the 2010 Long-Term Procurement Plan is a fact not reasonably subject to dispute, there most certainly is doubt as to whether the Commission should rely on the 2010 LTPP standardized planning assumptions for purposes of determining SDG&E’s local capacity requirement in this proceeding; it is a key and contentiously litigated issue in this proceeding.

Under the principles applicable to the doctrine of judicial notice and due process, judicial notice may be taken of the December 3, 2010, and February 10, 2011 rulings, in R.10-05-006, but not of the truth of reasonableness of the assumptions made therein. That determination is for the Commission to make.

IT IS SO RULED.

Dated July 23, 2012, at San Francisco, California.

 /s/ HALLIE YACKNIN
Hallie Yacknin
Administrative Law Judge