Decision **DRAFT DECISION OF ALJ PATRICK (Mailed 9/24/2004)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA BUILDING INDUSTRY ASSOCIATION, Complainant, vs. SAN DIEGO GAS & ELECTRIC COMPANY, Defendant.	Case 03-09-004 (Filed September 3, 2003)

OPINION DENYING REQUEST THAT UTILITIES BE REQUIRED TO SEEK COMMISSION APPROVAL BEFORE UPDATING COST FACTORS AND UNDERLYING ASSUMPTIONS FOR PROJECT-SPECIFIC LINE EXTENSION ESTIMATES

1. Summary

The Commission denies the complaint of California Building Industry Association (CBIA) that San Diego Gas & Electric Company (SDG&E) be required to seek prior Commission approval before updating cost factors and underlying assumptions used by SDG&E to prepare project-specific line extension estimates. The Commission concludes that such estimates, or cost factors and underlying assumptions, are not "charges" or "rates" that trigger the

applicability of Public Utilities Code[1] Section 451 or 454. This proceeding is closed.

2. Procedural History

This complaint was filed by CBIA on December 3, 2003. Motions to intervene filed by Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) were granted by the assigned Administrative Law Judge (ALJ). Following a telephonic prehearing conference held on January 22, 2004, an Assigned Commissioner's Ruling and Scoping Memo outlining the issues to be addressed was issued on February 17, 2004. No evidentiary hearings were held since there are no material facts in dispute. Concurrent opening briefs were filed by CBIA, PG&E, SCE and SDG&E on March 12, 2004. This matter was submitted for decision upon the filing of reply briefs by CBIA, PG&E and SDG&E on April 2, 2004.

3. Background on Line Extension Policy

Prior to 1983, the utilities were solely responsible for engineering and construction of all line extensions.[2] In 1983, the Legislature passed amendments to Section 783, requiring the utilities to implement a change in the line extension rules to allow applicants to construct their line extensions using a contractor of their choice.

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[1] All statutory references are to the Public Utilities Code unless otherwise stated.

[2] See Decision (D.) 59011 (1959) 57 CPUC 346.

In 1985, the Commission amended the line extension rules (Tariff Rule 15) to provide line extension applicants with two options.[3] Under Option 1, the utility provided an estimate based on the utility's system average or unit cost per foot of line extension, and installed the line extension. Under Option 2, the utility provided a project-specific estimate which the applicant could use to "shop" for a lower bid from an independent contractor. Since 1985, the applicant had a choice of installation by the utility or an independent contractor.

Effective July 1, 2000, the Commission eliminated Option 1 on the grounds that it had outlived its purpose and provided knowledgeable applicants with an opportunity for gaming the system at the expense of all ratepayers. Further, the Commission concluded that elimination of Option 1 would make line extension construction more competitive.[4] Currently, Option 2 remains and is simply known as the project-specific estimate.

4. The Complaint

On September 8, 2003, SDG&E updated its internal cost-estimating program and made changes to specific underlying cost assumptions used to prepare project-specific line extension estimates. The adjustments cover the cost of material, labor, fleet, engineering and overheads, current crew configuration, equipment type, safety requirements and installation time.

CBIA alleges principally that SDG&E's proposed increase in cost estimates for gas and electric line extensions, without prior Commission review and approval, violates Sections 451 and 454 and General Order (GO) 96-A. CBIA

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[3] See D.85-08-042, 18 CPUC2d 533; also see Public Utilities Code Section 738(f).

[4] See D.99-06-079.

urges the Commission to order SDG&E to defer implementing the cost increases pending Commission review and approval, or to require SDG&E to refund the difference between the implemented cost estimates and the approved cost estimates.

5. Positions of the Parties

5.1. CBIA

CBIA argues that SDG&E's line extension estimates are not merely estimates, they are also charges. According to CBIA, since they are "charges," they are by definition "rates" as set forth in Section 210, and since increased cost estimates can and will produce an increase in rates for which SDG&E has not obtained prior Commission approval, SDG&E has violated Sections 451 and 454 and GO 96-A.

CBIA also argues that the subject complaint presents essentially the same issue resolved by the *Barratt American Inc.'s (Barratt)* case:[5] Can a utility, irrespective of whether or not changes in its internal line extension practices are consistent with its tariffs, increase the costs it charges for line extension services without seeking the Commission's prior approval? CBIA contends that, as required by Sections 451 and 454, and consistent with *Barratt*, the answer is no. According to CBIA, *Barratt* establishes that line extension charges are subject to the requirements of Section 454 and GO 96-A irrespective of the fact that such charges are not set forth in the utility's Schedule of Rates.

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[5] *Barratt American Inc. v. Southern California Edison Company*, D.01-03-051, 2001 Cal. PUC LEXIS 186.

Further, CBIA argues that when the Commission authorized the utilities to rely on project-specific cost estimates[6] as the basis for charging for line extensions rather than filed unit costs,[7] the Commission did not address the issue of how and in what manner utilities could make adjustments to their cost estimation processes that had the effect of increasing such charges. CBIA contends that the Commission's silence cannot be read as exempting what (in CBIA's view) are rate increases from the otherwise applicable requirements of Sections 451 and 454.

5.2. SDG&E

SDG&E responds that project-specific cost estimates are not in fact "rates" or "charges" requiring Commission review and approval prior to implementation. According to SDG&E, CBIA's argument contradicts Section 210's definition of "rates":

> "Rates" includes rates, fares, tolls, rentals, and charges, unless the context indicates otherwise.

SDG&E notes that the list of "rates" in this definition includes "charges" but not "estimates." SDG&E argues that by omitting "estimates" from the Section 210 definition, the Legislature has signaled its intent to treat estimates differently from "rates and charges." Also, SDG&E notes that Sections 451, 454 and GO 96-A likewise refer to rates and charges, not to estimates.

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[6] Previously known as Option 2.

[7] Previously known as Option 1.

SDG&E points out that Tariff Rule 15 requires it to provide a project-specific cost estimate for every new distribution line extension. To do so, SDG&E must use current information for such items as material costs, labor, fleet, engineering, and administrative and general expenses, and ensure that estimates properly reflect the time spent traveling to the job and the time spent performing each construction activity. According to SDG&E, since 1960, it has been estimating customer line extensions and updating cost factors and assumptions for project-specific line extensions without obtaining prior Commission approval.

5.3. PG&E

PG&E believes CBIA is interpreting Sections 451 and 454 unreasonably. Specifically, according to PG&E, the utility should not have to request and await the Commission's approval, before the utility provides project-specific cost estimates, of all the components of the estimates (cost of equipment, labor, and so on). Further, according to PG&E, Sections 451 and 454 deal with monopoly utility services and do not apply to utility cost collection for work provided at a customer's request, because the customer may hire an independent contractor, and there is no requirement that the customer incur those costs in order to get electric or gas service from the utility.

5.4. SCE

SCE notes that under Tariff Rule 15, an applicant for a distribution line extension is given the option of having either the utility or the applicant's qualified contractor perform the majority of the line extension work, and any utility-performed work is provided on a cost-of-service basis. Also, SCE notes that Tariff Rule 15(D)(2) provides: "The utility's total estimated installed cost will be based on a project-specific estimated cost." Similarly, Tariff

Rule 15(G)(1)(c) requires the applicant to pay the utility's costs associated with the line extension. SCE argues that nowhere in Tariff Rule 15, or in any Commission decision, does the Commission prohibit utilities from adjusting the elements that go into costing a line extension project. According to SCE, if the price of equipment, wire, or labor goes up, the language of the tariff suggests these increased costs would be passed on to the applicant, since the applicant is required to pay the utility for its cost of completing the line extension.

6. Discussion

We deny CBIA's request that SDG&E be required to obtain prior Commission approval before updating its cost factors and underlying assumptions for line extension estimates. A policy of requiring prior approval would hamstring the utility's efforts to react timely to requests for line extensions and harm competition (because utility estimates would always be out of date). It would adversely affect the Commission's goals to encourage competition, prevent "gaming" of the system, and have the cost causer, rather than the general ratepayer, pay the full cost of line extensions. Furthermore, the prior approval's requisite filings and staff analysis might serve no useful purpose since the applicant for a line extension can "shop the bid" provided by the utility, and possibly choose an independent contractor to undertake the project.

We disagree with CBIA's contention that line extension estimates constitute rates and charges under Sections 451 and 454 and GO 96-A, that require Commission review and approval prior to implementation. The plain language of these sections refers to rates and charges, not to estimates. The Commission establishes rates and charges. It does not establish cost assumptions and estimates for line extensions.

CBIA also misconstrues D.99-06-079 in claiming that the Commission did not address the mechanism, if any, that should be employed to define at which point increases in charges under the project-specific job estimation process (known as Option 2) required prior Commission approval. In fact, the Commission concluded that no change to the utilities' project-specific estimation process, in effect since 1985, was needed. The Commission, in eliminating Option 1, stated:

> We are not persuaded by CBIA's argument that Option 1 is needed for predictability and certainty of line extension costs, and to ensure utility accountability. We believe that the site-specific estimates provided by the utility and by independent contractors under Option 2 adequately answer those needs. Additionally, independent contractor estimates serve as a check on the reasonableness of the utility's estimate. (D.99-06-079, mimeo., p. 8.)

Further, in a more recent decision addressing proposed accounting changes for line extension costs, the Commission stated:

> When a utility's actual cost of a job is less than its estimate, the difference is reflected in lower ratebase, just as an overrun would be recorded to ratebase. The theory is that over time, the overruns and underruns offset each other; therefore, the net effect on ratebase resulting from differences between estimates and actual costs, should be minimal. Each utility retains the obligation to demonstrate, in each general rate case or other appropriate rate proceeding, that the line extension costs it is recording are both accurate and reasonable. That is the basis for current accounting practices related to utility-installed extensions, and there is no compelling reason to change it. … (D.03-03-032, mimeo., pp. 14-15, footnote omitted, emphasis added.)

CBIA essentially makes the same argument it made in Rulemaking (R.) 92-03-050, when it opposed the elimination of Option 1 (approved in D.99-06-099). And, as noted above, the Commission made clear in D.03-03-032 that utility costs can be examined in the utility's general rate case or other appropriate ratemaking proceeding. Therefore, CBIA could take part in the appropriate SDG&E ratemaking proceeding, and could cross-examine utility witnesses, put on its own cost witnesses, including developers and contractors, and make any appropriate challenges to SDG&E's cost factors and assumptions.

The *Barratt* case that CBIA cites to support its position is factually distinguishable from D.03-03-032 and D.99-06-079. *Barratt* dealt with a major change by SCE to its 30-year practice of not charging developers the cost of pole removal when they were required to convert existing overhead facilities to underground facilities. The Commission found that the requirements of Section 454 and GO 96-A applied; SCE could not change a 30-year practice that resulted in an increase in a tariff rate schedule without Commission approval. The Commission also noted that in 1997, when SCE made this change in its practices, SCE had been a party to the rulemaking in which it successfully sought approval for other changes in Rule 20 that imposed new charges on relocation customers; however, SCE did not request a change in Rule 20 to cover its new policy on pole removal costs. Furthermore, the Commission expressly limited *Barratt* to its facts stating, "Our order is confined to the facts of this case."[8]

In contrast to *Barratt*, SDG&E has neither changed its business practices nor added any new categories of costs to its updated factors and assumptions.

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[8] *Barratt*, mimeo., p. 8.

More significantly, the Commission in D.99-06-079 and D.03-03-032[9] has already considered and rejected arguments akin to those CBIA asserts here. In those orders, the Commission determined that the utility's general rate case or other appropriate rate proceeding would be the only forum in which the reasonableness and accuracy of cost factors and assumptions underlying project-specific cost estimates should be examined. Accordingly, the complaint should be denied.

7. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on October 14, 2004 by CBIA, PG&E, SCE and SDG&E. Reply comments were filed on October 19, 2004 by CBIA, PG&E and SDG&E. We have reviewed the comments and conclude that the ALJ's draft decision should be adopted without any substantive change.

8. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding. Although the Commission originally found this case likely to go to hearing, no material facts are in dispute, a hearing is unnecessary, and the case stands submitted upon the filing of opening and closing briefs.

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[9] In D.99-06-079, 1999 Cal. PUC LEXIS 562 (June 24, 1999), mimeo. at 7-8, and D.03-03-032, the Commission, over CBIA's objections, removed "unit costs" from the periodic review provision of Rule 15 and determined that extension-related costs would be examined in a utility's general rate case or cost of service proceeding.

Findings of Fact

1. SDG&E is required to provide a project-specific estimate for all line extension projects.

2. Applicants for line extensions may shop SDG&E's estimate for a lower estimate, and they have a choice of installation by the utility or an independent contractor.

3. SDG&E has long had a practice of updating cost factors and underlying assumptions for line extension projects.

4. No tariff rule or Commission decision requires SDG&E to seek prior Commission approval prior to updating cost factors and underlying assumptions used for project-specific line extension estimates.

5. No material facts are in dispute.

Conclusions of Law

1. SDG&E's September 8, 2003 updating of cost factors and underlying assumptions is not analogous to the change in a longstanding business practice that we found in the *Barratt* case to have the effect of changing a tariff rate schedule without the requisite regulatory approval.

2. The concept of project-specific cost estimating was fully litigated and was resolved in D.99-06-079 and D.03-03-032.

3. In D.99-06-079 and D.03-03-032, the Commission eliminated from Tariff Rule 15 any type of periodic review procedure which would require the utilities to seek pre-authorization to update cost factors and underlying assumptions for project-specific line extension estimates.

4. In D.03-03-032, the Commission ruled that the reasonableness and accuracy of line extension costs will be examined solely in a utility's general rate case or other appropriate proceeding.

5. SDG&E's procedures for updating cost factors and underlying assumptions used to prepare project-specific line extension estimates do not violate a statute or Commission order.

6. The complaint should be denied, effective immediately.

O R D E R

IT IS ORDERED that:

1. The complaint of California Building Industry Association is denied.
2. Hearings are not necessary in this proceeding.
3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.