Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902E) For Approval to Enter into a New Electric Resource Contract with the San Diego County Water Authority and For Approval of the Cost Recovery and Ratemaking Mechanisms Associated Therewith.	Application 04-04-042 (Filed April 2, 2004)

DECISION ON PETITION FOR MODIFICATION OF DECISION 04-08-028

Summary

This decision grants the Petition for Modification of Decision (D.) 04-08-028 filed by San Diego Gas & Electric Company (SDG&E) to request Commission approval of an Amendment to a electric resource contract, known as the Hodges Agreement, between SDG&E and the San Diego County Water Authority (Water Authority), whereby SDG&E purchases capacity from the Water Authority's proposed 40 megawatt Lake Hodges-Olivenhain Pumped Hydroelectric Storage Facility. The Commission issued D.04-08-028 on August 19, 2004, approving the application of SDG&E to enter into the Hodges Agreement with the Water Authority with an operational date of January 2008. Due to a confluence of events, there has been a delay in the operational date and the project is not yet on-line. The Amendment to the Hodges Agreement extends the operational date in exchange for delay damages and expanded rights under the Hodges Agreement that will benefit SDG&E

consumers. We adopt the proposed Amendment to the Hodges Agreement (Attachment A).

Rule 16.4(d)

Rule 16.4[1] governs the process for the filing and consideration of Petition's for Modification (PFM). Rule 16.4(d) states that if more than one year has elapsed since the effective date of the decision, then then PFM must explain why it could not have been presented within one year of the effective date of the decision.

SDG&E included a declaration with its PFM that set forth in detail the events that transpired since the Commission approved the Hodges Agreement to explain why the PFM was not filed within one-year of the decision's adoption date as required by Rule 16.4(d). SDG&E states it did not know about the operational delay of the Hodges facility until March 2006, over two years since the issuance of D.04-08-028. Therefore, compliance with the one year limitation of Rule 16.4(d) was not possible. SDG&E further explains that it did not seek to modify the original agreement in 2006 because SDG&E's rights and remedies under the Hodges Agreement were not triggered until a further delay was announced by the Water Authority in August 2007. From that date forward until the PFM was filed, SDG&E was negotiating a possible Amendment to the Hodges Agreement that would allow the project to proceed forward, yet protect SDG&E's ratepayers.

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[1] References to Rules means the Rules of Practice and Procedure of the California Public Utilities Commission.

We find SDG&E's explanation for the late submission of the PFM satisfactory and consider the PFM on its merits.

Petition for Modification

The Hodges Agreement approved by the Commission in D.04-08-028 had an on-line date of January 2008, and provided that if the date was not met, SDG&E had default rights under the contract. As the January 2008 date loomed closer, both SDG&E and the Water Authority acknowledged that the operational on-line date would not be met, and instead of SDG&E exercising its default rights, the parties negotiated an Amendment to the agreement. On December 29, 2008, SDG&E filed a PFM of D.04-08-028 to reflect the Amendment to the Hodges Agreement.

No opposition to the PFM was filed.

Discussion

The testimony submitted by SDG&E in support of the PFM reports the obstacles that prevented the Water Authority from completing the Hodges project on time. In addition, SDG&E narrates the steps it took to determine what efforts it should take in response to the default. As SDG&E states, it determined that extending the Hodges Agreement operational date, in exchange for delay damages and expanded rights under the agreement, would be in the best interest of its ratepayers. SDG&E provided an Amendment to the original Hodges Agreement reflecting the negotiated changes and the changes are summarized as follows:

1. The Water Authority receives a two-year extension to December 2010 to make Hodges operational in exchange for a one-time cash payment of $700,000 to SDG&E, due within 30 days from the execution date of the Amendment. SDG&E proposes to flow the $700,000 cash payment through the Energy Resource Recovery

Account (ERRA), such that the benefit of the payment will flow directly and immediately to ratepayers. The original contract pricing terms and conditions, however, remain unchanged.

2. SDG&E receives the right to provide Hodges' Ancillary Services (A/S) to the California Independent System Operator and will share any A/S revenues 50/50 with the Water Authority. The future value of the A/S will also ultimately be reflected in the ERRA, and thus will likewise flow directly to the benefit of ratepayers.

3. SDG&E will accrue monthly damages from the Water Authority, amounting to $3.2 million annually. The damages will be adjusted by a compound interest rate until Hodges become operational, at which point the Water Authority will repay the remaining damages by foregoing capacity payment from SDG&E. The damages payments will flow through ERRA and the waived capacity payments will result in less expenses flowing to ERRA, again directly benefiting ratepayers.

4. The term "Resource Adequacy", which was not previously included in the Hodges Agreement, is identified and defined.

For these reasons, SDG&E urges the Commission to modify D.04-08-028 to reflect the Amendment and the changes discussed herein.

We find that the proposed Amendment to the Hodges Agreement will allow SDG&E to receive the benefits of the electric resource contract with the Water Authority, and receive delay damages and expanded rights under the Agreement. We adopt the Amendment set forth in the PFM and Attachment A to this decision. As we previously determined in D.04-08-028, the Hodges Agreement provides needed capacity to SDG&E and an essential water project to the Water Authority to ensure that water is available during

emergencies to the greater San Diego area. (D.04-08-028, Findings of Fact 1.) We found in D.04-08-028 that the Hodges Agreement is reasonable and in the public interest. Today, with this decision, we find that the proposed Amendment to the Hodges Agreement is reasonable and in the public interest and will allow the benefits of the Hodges Agreement to inure to the SDG&E ratepayers with enhanced rights and damages for the delay.

The adoption of the Amendment to the Hodges Agreement changes Findings of Fact, Conclusions of Law, and Ordering Paragraphs of D.04-08-028 and those changes are reflected in this decision.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Carol A. Brown is the assigned Administrative Law Judge in this proceeding.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. The proposed Amendment to the Hodges Agreement is in the public interest and will benefit SDG&E ratepayers.

2. We adopt the proposed Amendment to the Hodges Agreement as set forth in Attachment A.

3. The adopted Amendment makes the following changes to the Findings of Fact in D.04-08-028:

   A. The proposed agreement, <u>as modified by Amendment No. 1 to the agreement</u>, between SDG&E and the Water Authority, the Hodges Agreement allows SDG&E to

purchase 40 MW of capacity from the Hodges for a term of 25 years and share 50/50 with the Water Authority any Ancillary Services (A/S) revenues from providing Hodges' A/S to the California Independent System Operator, and the Water Authority will complete an essential water project to ensure that water is available during emergencies to the greater San Diego area.

B. Commitment risk to SDG&E ratepayers is minimized since SDG&E can terminate the agreement if the project fails to perform as expected and, as provided for in Amendment No. 1, the Water Authority shall owe damages to SDG&E for failure to achieve commercial operations by specific dates. SDG&E shall record the payments received for the damages through its Energy Resource Recovery Account.

Conclusions of Law

1. As set forth herein, it is reasonable and in the public interest to grant the Amendment to the Hodges Agreement proposed by SDG&E and set forth in Attachment A.

2. The adopted Amendment makes the following changes to the Conclusions of Law in D.04-08-028:

A. It is reasonable that SDG&E recover the energy and related costs, and to record payments received for damages, and revenues received in conjunction with providing Ancillary Services to the California Independent System Operator, related to the Hodges Agreement, through its Energy Resource Recovery Account.

B. This decision should be effective today in order to allow the Water Authority to meet its schedule to place orders for critical equipment with long lead times in order to meet the Hodges in-service date of December 2010.

O R D E R

IT IS ORDERED that:

1. We approve the Amendment to the Hodges Agreement between San Diego Gas & Electric Company (SDG&E) and the San Diego County Water Authority requested in the Petition for Modification of Decision (D.) 04-08-028 and set forth in Attachment A.

2. SDG&E shall recover the costs, and payments received for damages and revenues received in conjunction with providing Ancillary Services to the California Independent System Operator, associated with the Hodges Agreement through its Energy Resource Recovery Account.

3. All other terms and conditions of the Hodges Agreement approved in D.04-08-028 that are not specifically modified by this decision remain in full force and effect.

4. Application 04-04-042 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Brown Agenda Dec. Attachment A