

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

January 16, 2002

TO: PARTIES OF RECORD IN CASE 01-04-031
DECISION 02-01-049, MAILED JANUARY 16, 2002

On December 13, 2001, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 8.2 of the Commission's Rules of Practice and Procedure provide that the Presiding Officer's Decision becomes the decision of the Commission 30 days after its mailing unless an appeal to the Commission or a request for review has been filed.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officer's Decision is now the decision of the Commission.

The decision number is shown above.

/s/ LYNN T. CAREW
Lynn T. Carew, Chief
Administrative Law Judge

LTC:hkr

Attachment

Decision 02-01-049 January 15, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Advantage Energy, LLC,

Complainant,

vs.

San Diego Gas & Electric Company,

Defendant.

Case 01-04-031
(Filed April 23, 2001)

Charles Farrell, for Advantage Energy, LLC,
complainant.

Theodore E. Roberts, Attorney at Law, for San Diego
Gas & Electric Company, defendant.

O P I N I O N

1. Summary

Advantage Energy, LLC (Advantage) complains that San Diego Gas & Electric Company (SDG&E) violates Pub. Util. Code § 6350 et seq.¹ by charging its gas customers a “municipal franchise fee” lower than the “municipal surcharge” that it collects from customers who procure gas from other vendors. In addition, Advantage complains that SDG&E illegally benefits from large balances that accrue in the Gas Franchise Equivalent Surcharge Account.

¹ All subsequent statutory references are to the Public Utilities Code.

We deny the complaint. We find that SDG&E levies the municipal surcharge consistent with § 6353. Further, § 6354 explicitly permits SDG&E to benefit from interest that accrues on balances in the Gas Franchise Equivalent Surcharge Account. We find that there is no evidence that large positive balances will persist in this account. Thus, Advantage has failed to show by the preponderance of the evidence that SDG&E has violated a tariff rule, order, general order or statute.

2. Advantage's Complaint

Advantage alleges that SDG&E charges 18% lower "franchise fees" to those customers for whom it procures natural gas than it charges customers who procure gas from other vendors. In response, SDG&E asserts that it collects fees for municipalities pursuant to tariff and statute. SDG&E denies all allegations of misconduct.

Following discovery and the preparation of testimony, parties filed a joint statement in advance of evidentiary hearings that distilled the complaint to two central issues:

1. Is the disparity between the rate charged for franchise fees and the rate charged for the municipal surcharge permissible under the statutory framework? If there is an impermissible disparity between "franchise fee" rates and municipal surcharge rates, what remedy, if any, should the Commission order?
2. Is there an overcollection of municipal surcharge fees that result in an accumulative balance of "millions of dollars that simply sit in an SDG&E account," and what remedy, if any, should the Commission order?

3. Procedural History

Pursuant to Commission direction, on May 1, 2001, Advantage filed a "Rule 9 Compliance" in which 32 customers added their names to Advantage's

complaint.² On June 21, 2001, SDG&E answered the complaint and at the same time filed a Motion to Dismiss (Motion) the complaint. On July 30, 2001, Advantage filed a response to SDG&E's Motion. SDG&E filed a reply to Advantage's response on August 6, 2001.

A prehearing conference (PHC) took place on July 13, 2001. Advantage and SDG&E made appearances and are the only parties to this matter. On August 7, 2001, Commissioner Bilas issued a scoping memo designating Administrative Law Judge (ALJ) Sullivan as the presiding officer, reaffirming the preliminary categorization of this proceeding as adjudicatory, and setting a schedule for the resolution of the proceeding.

On September 27, 2001, SDG&E and Advantage filed a report on a conference held in advance of the evidentiary hearings. This conference resulted in a stipulation of facts and a statement of disputed issues.

On October 2, 2001, the Commission held evidentiary hearings in San Francisco. The testimony of Charles Farrell for Advantage and the reply testimony of Alan C. Buyre on behalf of SDG&E was received into evidence, as was a table called "Gas Franchise Equivalent Account—Month End Balance" and a table of annual April balances. In addition, SDG&E renewed its Motion to dismiss the complaint. With the filing of reply briefs on November 1, 2001, the proceeding was deemed submitted.

² The purpose of the additional customers was to satisfy the requirement of § 1702 that a complaint challenging the reasonableness of rates or charges be signed by "25 actual or prospective consumers" of the relevant service.

4. The Franchise Fee and the Municipal Surcharge— Two Different Charges

To comprehend this dispute, one must examine two closely related, but different fees provided to municipalities in compensation for the use of public lands. The “franchise fee” is compensation paid by a utility for the use of public lands in providing a utility service to a customer. Franchise fees are included in a utility’s revenue requirement, and there are no exemptions from franchise fees, i.e., the fees are embedded in the tariffed rates paid by all utility customers.

The “municipal surcharge” is compensation paid by a specific customer for the use of public lands to provide gas service to that customer. The municipal surcharge was created by statute, §§ 6350-6354.1, enacted by Senate Bill (SB) 278 (1993). This surcharge is a substitute for the franchise fees that local governments lost when the Commission opened gas markets to competitors and unbundled gas commodity service from gas transportation service. Section 6353 specifies how to calculate the municipal surcharge applicable to each customer and requires that the Commission approve “the franchise fee factor, plus any franchise fee surcharge” used to calculate the municipal surcharge. In addition, §6351(c) exempts certain customers, such as the State of California and political subdivisions, as well as certain types of electricity generation facilities, from this surcharge.

Pursuant to § 6354, municipal surcharges are the sole property of the local government, with the utility acting as a billing agent. Under this scheme, a utility remits these charges to cities and counties consistent with the purchases of gas by customers and pursuant to the community’s franchise ordinance and its contract with the utility.

Customers pay either the franchise fee or the municipal surcharge, but not both. Customers who obtain gas service from a utility such as SDG&E pay rates

that include the franchise fee. Customers who procure commodity gas directly from a broker or producer, rather than from the local utility, pay the municipal surcharge. For SDG&E, the municipal surcharge applies to customers who take service under SDG&E's "GP-SUR" tariff.

5. The Scope and Source of Disparities between the Franchise Fee and the Municipal Surcharge

The Commission has established a process for calculating a franchise fee rate to include in the charges to gas customers. Specifically, the total dollars in franchise fees that a utility pays to all localities are divided by the revenue base upon which the fees are paid.³ The individual franchising communities know each of these numbers. Each number can be and is routinely audited. The Commission itself reviews this matter in a general rate case or cost of service proceeding, and grosses up rates to enable the utility to pay the municipal franchise fee.

The municipal surcharge, on the other hand, is set pursuant to a formula embedded in § 6353. It requires that the customer pay a surcharge equal to an estimate of the customer's gas purchases multiplied by "the franchise fee factor plus any franchise fee surcharge⁴ authorized by the commission in the energy transporter's most recent proceeding in which those factors and surcharges were set."

The parties in this proceeding have stipulated to the fact that there is currently a disparity between the effective "franchise fee" embedded in the rates charged to SDG&E natural gas customers who procure their gas commodity

³ The City of San Diego also has an additional surcharge of 1%, which is collected separately and booked through a miscellaneous revenue category.

⁴ This provision deals directly with the City of San Diego's 1% surcharge.

from SDG&E and the “municipal surcharge” rate charged to transportation customers under SDG&E’s GP-SUR tariff. (Conference Report, pp. 1-2.) Based on data received from SDG&E, Advantage states that embedded in SDG&E’s rates for core customers is a 2.0% franchise fee, and in SDG&E’s rates for non-core customers, a 1.83% franchise fee. In contrast, the current municipal surcharge rate is 2.16%. Advantage notes that for core customers this difference is .16%, and for non-core customers, it is .33%. (Ex. 100, p. 3.) Advantage further states that this creates a financial disadvantage for self-procurement customers. With the rapid increase in natural gas commodity prices between June 2000 and July 2001 the impact of this disparity grew.

The functioning of the municipal surcharge is approximate. Exhibit 2 shows that in some months, more is collected than paid to municipalities. In other months, more is paid than collected. Table 1 provides a snap shot of the Gas Franchise Equivalent Surcharge Account Month-End Balances in April for the past five years.⁵

Table 1: Gas Franchise Equivalent Surcharge Account
Month-End Balances

Date	Cumulative Municipal Surcharge Account Excess/(Deficit)
April 1997	\$16,856.21
April 1998	\$18,750.61
April 1999	(\$421,236.39)
April 2000	(\$292,326.66)

⁵ April is chosen for this snapshot because by that month all taxes due for the previous year are paid.

April 2001	\$1,204,411.75
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Source: Exhibit 2

An examination of Table 1 shows that in the last five years, April balances were de minimus in two years, substantially negative for two years, and substantially positive in the last complete year.

6. Are the Disparities between the Franchise Fees and the Municipal Surcharges Permissible? What Can and Should the Commission Do?

With Advantage and SDG&E stipulating to the disparity between the franchise fees embedded in rates and the municipal surcharges levied on customers, there are no major factual disputes in this complaint. The crux of the complaint is whether the disparities in franchise fees and municipal surcharges are permissible under the statute and whether the Commission could or should remedy the disparities.

Under § 1702, the only causes of action that can be litigated in complaint cases are violations of tariff rule, orders, general orders or statutes. With this in mind, we turn to an examination of SDG&E's municipal surcharge and SB 278.

A. Advantage Argues that Disparate Rates Violate Legislative Intent

Advantage says that the disparity between the franchise fees, embedded in SDG&E rates for commodity customers, and the municipal surcharge, levied on customers who buy their natural gas from other suppliers, is unfair. Although Advantage “appreciates SDG&E’s argument that they are billing self-procurement customers based on the letter of the law using the CPUC approved franchise fee factor of 2.16%,” Advantage argues that this violates the intent of SB 278. Advantage states that the purpose of this legislation was to “ensure that the municipalities would continue to receive their land use fees

whether a customer was buying from the local utility or a third party.” (Opening Brief, p. 2.) Advantage further notes that the language of SB 278 states that all customers should share equitably in compensating local governments for private use of public lands.

B. SDG&E Argues that Explicit Statutory Formula Determines Outcome

SDG&E acknowledges that SB 278 does seek to promote an equitable outcome for customers, whether they purchase natural gas through the utility or elsewhere, but argues that SB 278 did not necessarily require an outcome in which franchise fees and municipal surcharges are identical. SDG&E states that a proper interpretation of the statutory language needs to consider the broader purposes of the bill, as well as the explicit statutory formula for calculating the municipal surcharge.

SDG&E states that the main purpose of SB 278 was to protect local governments from the erosion of franchise fees that resulted in changes in regulation and to ensure that all customers shared equitably in the burden of reimbursing local governments for the use of private land. SDG&E claims that the apparent tension contained in SB 278 between the desire to protect local government and the desire to ensure equitable treatment of customers is resolved in § 6352(c), which prohibits a municipality from assessing both franchise fees and a municipal surcharge on the same physical commodity. SDG&E believes that §6352(c) elucidates what § 6350 intended by the phrase “replace but not increase.” (Opening Brief, p. 5.) Thus, customers would pay either the franchise fee (embedded in rates or through an agreement with the municipality) or the municipal surcharge, but not both. SDG&E argues that this interpretation “harmonizes” the apparent disparate language in § 6350.

In addition, SDG&E points out that § 6353 sets forth an explicit formula and procedure that determines the surcharge rate, and that these are the formula and procedures that SDG&E used. SDG&E concludes that traditional principles of statutory interpretation support the current method of calculating and levying the municipal surcharge.

C. Discussion—Disparities between Franchise Fees and Municipal Surcharges are Permissible; No Commission Action Necessary

According to the California Court of Appeals, statutory interpretation is a matter of law and has the primary goal of giving effect to what the Legislature intended.⁶ The Metropolitan decision describes an analysis as consisting of three parts: 1) an examination of the actual statutory language; 2) an examination of the legislative history; and 3) an application of reason, practicality, and common sense to the language and, if possible, the words should be interpreted to make them workable and reasonable.

The key language in this dispute is contained in the legislative intent set forth in Section 1 (uncodified but chaptered) of the statute:

In enacting this chapter, the Legislature finds and declares that changes in the public utility regulatory environment have inadvertently provided for the potential erosion of the franchise fee base upon which local government has become quite dependent for its financial stability.

Further, the Legislature has determined that there exists the possibility that these same regulatory changes may not ensure equitable treatment between customers purchasing gas or electricity from a utility and customers purchasing gas or electricity from other sources. Therefore, the purpose

⁶ *Metropolitan Water District v. Superior Court*, (2001) 2001 Cal. App. LEXIS 805, at *25.

of this act is to provide protection for the financial integrity of local government and to ensure that all customers purchasing gas or electricity who transport gas or electricity

on transmission systems that are subject to a franchise agreement share equitably in the burden of compensating local government for the private use of public lands. (1993 Cal. Stat., ch 233, § 1.)

This language sounds two themes: avoiding the erosion of taxes and ensuring equitable treatment of customers.

Subsequently, a third theme, avoiding double taxation, is explicitly taken up in the statutory language codified in § 6352(c):

Nothing in this chapter permits a municipality to recover surcharges imposed pursuant to this chapter on the commodity cost of gas or electricity transported for transportation customers *in addition to franchise fees calculated on the imputed value of the same quantities of gas or electricity*. If a municipality has a franchise agreement with an energy transporter that requires the energy transporter to pay a franchise fee based upon an imputed value for the commodity cost of gas or electricity transported but not sold by the energy transporter, the energy transporter may apply the surcharge imposed by this chapter toward the amount of the franchise fee due under the franchise agreement. (Emphasis added.)

In interpreting the provisions of SB 278, we find that it is possible to develop a unified interpretation that harmonizes the statutory language. Specifically, we can harmonize the language that states that the municipal surcharge should “replace but not increase the franchise fees (codified in § 6350)” with the language codified in § 6352(c) that creates a procedure to ensure that no customer pays both a franchise fee and a municipal surcharge. In this instance, § 6352(c) seeks to maintain a broadly equitable outcome by ensuring that no customer pays this tax twice.

Furthermore, a reading of the entire statute makes it clear that this legislation seeks to protect the fiscal integrity of local government without burdening any particular group of customers. We particularly note that had the

Legislature sought to equalize the outcome, it could have done so by setting municipal surcharge equal to the franchise fee. Instead, it specified exactly how to calculate the municipal surcharge in § 6353. Thus, the franchise fee and the municipal surcharge are not meant to be identical, and the inequality is clearly permissible.

Finally, in interpreting statutes, specific provisions control over general provisions in any situation where it is not possible to harmonize different sections of the statute into a single interpretation. In our current situation, the specific provisions of § 6353 would control over the very general provisions of § 6350.⁷ Section 6350 states a general policy goal that the municipal surcharge should replace, but not increase, franchise fees paid to local governments. Section 6353, however, sets forth the express mechanism that the Legislature adopted to carry out its policy:

6353. For purpose of calculating the surcharge required in Section 6352, the energy transporter shall do all of the following:

(a) For each transportation customer, determine the volume of transported gas or electricity, in therms or kilowatt hours respectively, subject to the surcharge.

(b) Determine the weighted average cost of the energy transporter's gas or electricity. For gas, the energy transporter shall use its tariffed core subscription weighted average cost of gas (WACOG) exclusive of any California sourced franchise fee factor. For electricity, the energy transporter shall use that portion of the otherwise applicable utility rate or charge which, pursuant to commissioner order, is removed from the bill of a retail electric customer who has elected direct access to reflect the fact that the customer is purchasing energy from a nonutility

⁷ *Salazar v. Eastin* (1995) 9 Cal.4th 836, 857.

provider exclusive of any California sourced franchise fee factor. For an energy transporter that does not provide gas or electricity at a commission tariffed rate, the energy transporter shall use the equivalent tariffed rate of the commission regulated energy transporter operating in the same service area.

(c) Determine a product for each transportation customer by multiplying the volume determined pursuant to subdivision (a) by the weighted average cost determined pursuant to subdivision (b).

(d) Determine the surcharge applicable to each transportation customer by multiplying the product determined pursuant to subdivision (c) by the sum of the franchise fee factor plus any franchise fee surcharge authorized for the energy transporter as approved by the commission in the energy transporter's most recent proceeding in which those factors and surcharges were set. An energy transporter not regulated by the commission shall multiply the product determined in subdivision (c) by the franchise fee rate contained in its individual franchise agreement in effect in each municipality.

(e) The surcharge assessed pursuant to this chapter only applies to the end use point.

Thus, even if it were not possible to develop a unified interpretation of the statute, it is clear that this statutory section explicitly controls how to calculate the municipal surcharge.

In summary, we find that Advantage has failed to support its position with a preponderance of the evidence or to show that either § 6350 or a correct statutory interpretation of SB 278 requires SDG&E and/or the Commission to ensure that nonutility gas customers are not charged a higher rate than utility-procurement customers. We find that the differences between the franchise fee and the municipal surcharge are not only permissible under the statutory scheme, but are compelled by the statutory adoption of an explicit formula for

determining the municipal surcharge. Since there is no allegation by Advantage, and no evidence whatsoever, that either SDG&E or the Commission fails to follow the statutory scheme in setting the municipal surcharge, we find that the disparities of outcome between the franchise fee and the municipal surcharge are permissible under the statutory scheme. As a consequence, there is nothing that the Commission can or should do in the face of these disparate outcomes.

7. Does the Municipal Surcharge Lead to a Systematic Overcollection that Benefits SDG&E? What Could or Should the Commission Do?

A second charge raised in Advantage's complaint is that the current municipal surcharge leads to a systematic overcollection of funds that benefits SDG&E. Since such an overcollection is inconsistent with the proper functioning of a regulatory program, we investigate this matter to determine the veracity of this charge.

A. Advantage States that \$1.2 Million in the Gas Franchise Fee Equivalent Surcharge Account Benefits SDG&E

Advantage states that the current municipal surcharge rewards SDG&E by creating a surplus in an interest bearing Gas Franchise Equivalent Surcharge Account that currently stands at over \$1.2 million. Advantage believes that SDG&E should return these amounts to all of the self-procurement customers, who it believes were unfairly charged by the municipal surcharge.

B. SDG&E Responds that Law Controls Uses of the Gas Franchise Fee Equivalent Surcharge Account and that Overcollections are Transitory

In response, SDG&E states that under law and regulation, SDG&E has "no discretion over the funds in its Gas Franchise Fee Equivalent Surcharge Account." (Opening Brief, p. 9.) SDG&E notes that these funds are the property of the cities and counties, and SDG&E's role is limited to that of assessing,

collecting, and remitting the fees. (Exh. 1, pp. 5-6.) Nevertheless, SDG&E admits that it benefits from the interest earned by the amounts in the Gas Franchise Fee Equivalent Surcharge Account, but states that this benefit is contemplated by § 6354(b). (Tr., p. 27.) SDG&E further argues that since the municipal surcharge is mandated by statute and “not a rate, charge, or service of the utility, but rather a direct obligation of the individual customer, the Commission does not have jurisdiction to issue an order regarding the disbursement or distribution of those surcharges.” (Opening Brief, p. 9.)

Finally, SDG&E states that the evidence presented at hearing demonstrates that there has been no systematic accumulation of funds. SDG&E cites Exhibit 2, which shows that the April balance in SDG&E’s Gas Franchise Fee Equivalent Surcharge Account has ranged from -\$421,236 to \$1,204,411, depending on conditions in the gas marketplace, the timing of collections and disbursements, and the distribution of self-procuring gas customers within the various municipalities within the SDG&E’s territory. (Opening Brief, p. 9.) SDG&E further maintains that as gas prices are returning to lower levels this year, the current balance in this fund is expected to return from the current \$1.2 million to the range of \$16,000. (Tr., pp. 22-23.)

**C. Discussion—Account Balances Appear Transitory;
Law Permits Utility to Benefit from Interest Earned on
Balances in the Gas Franchise Fee Equivalent
Surcharge Account**

From reading the statute, it appears that SB 278 does not contemplate a situation under which large balances would accrue in the Gas Franchise Fee Equivalent Surcharge Account. Although the current balance in this account is over a million dollars, a review of Table 1 indicates that this large positive balance is a recent development, and likely a function of the large increases in gas prices witnessed in California last year. These increases in natural gas prices

led to surcharge revenues, taxes, and account balances far above those historically experienced. We note that current natural gas prices have returned to levels more consistent with historic experience, and thus we find credible SDG&E's assertion that this balance will return to historic levels. Therefore, we see no reason for action by the Commission at this time. If, however, large surpluses continue in this account, a statutory remedy would be warranted.

Advantage's second concern, that the utility benefits from interest earned on positive account balances, is no grounds for action. Indeed, § 6354(b) clearly specifies the uses that a utility may make of the funds in the Gas Franchise Fee Equivalent Surcharge Account. It states:

(b) Surcharges collected from the transportation customer shall be remitted to the municipality granting a franchise pursuant to this division in the manner and at the time prescribed for payment of franchise fees in the energy transporter's franchise agreement. In recognition of costs to be incurred by energy transporters in administering the surcharge established by this chapter, the energy transporter may retain interest earned on cash balances resulting from the timing difference between the monthly collection of the surcharge and the remittance thereof, as required by individual franchise agreements.

Thus, § 6354 makes it clear that a utility serves simply as a collection agency for the municipalities, on whose behalf it collects the funds. In return for this service, the statute permits the utility to offset costs incurred in the administration of the program by the interest it accrues on the sums in this account.

In summary, we find that the current balance in the Gas Franchise Fee Equivalent Surcharge Account does not require action at this time and that under the § 6354 SDG&E appropriately benefits from the interest that accrues on funds in this account.

8. Motion to Dismiss

As mentioned above, SDG&E requests that the Commission dismiss the complaint. Advantage opposes dismissal. Since we have decided the issues before us based on the merits, and since the actions we take are clearly envisioned by our statutory framework, SDG&E's arguments are either mooted by our decision or without merit. We therefore deny SDG&E's motion.

Findings of Fact

1. For non-core gas customers of SDG&E living outside the City of San Diego, a municipal franchise fee of 1.83% is embedded in gas rates.

2. For core gas customers of SDG&E living outside the City of San Diego, a municipal franchise fee of 2.0% is embedded in gas rates.

3. All gas customers living in the City of San Diego pay an additional 1% surcharge that goes to the City of San Diego.

4. Consumers who live outside the City of San Diego but within SDG&E's service territory and who acquire gas directly from a gas supplier pay a municipal surcharge of 2.16%.

5. SDG&E calculates the municipal surcharge consistent with Pub. Util. Code § 6353 and pursuant to Commission direction.

6. The municipal surcharge is collected by SDG&E consistent with statutes and paid to municipalities.

7. The municipal surcharge accrues to the Gas Franchise Equivalent Surcharge Account.

8. Pursuant to Pub. Util. Code § 6354, SDG&E benefits from the interest earned on positive balances in the Gas Franchise Equivalent Surcharge Account.

9. The Gas Franchise Equivalent Surcharge Account showed an April balance of \$16,856 in 1997, \$18,750 in 1998, and \$1,204,000 in 2001, and negative balances of \$421,236 in 1999 and \$292,326 in 2000.

10. There is no evidence that the high positive balance in the Gas Franchise Equivalent Surcharge Account will persist.

11. The disparity between the franchise fees embedded in SDG&E's gas rates and the municipal surcharge is consistent with Pub. Util. Code §§ 6350-6354.1 and is permissible.

12. Advantage has failed to show by a preponderance of the evidence that SDG&E has violated any provision of law or order of the Commission.

13. SDG&E filed a motion to dismiss Case 01-04-031.

14. Advantage has requested relief based on its allegation that SDG&E has failed to implement the municipal surcharge consistent with Pub. Util. Code §§ 6350-6354.1.

15. The Commission has jurisdiction to determine whether a utility has complied with the provisions of Pub. Util. Code §§ 6350-6354.1.

16. We have decided this matter based on the merits, thereby mooting many aspects of SDG&E's motion to dismiss Case 01-04-031.

Conclusions of Law

1. There is no corrective action consistent with Pub. Util. Code §§ 6350-6354 that the Commission should take concerning SDG&E's municipal surcharge.

2. The formula for calculating the municipal surcharge is set by Pub. Util. Code § 6353.

3. There is no corrective action that the Commission should take concerning current balances in SDG&E's Gas Franchise Equivalent Surcharge Account.

4. The Commission should deny SDG&E's Motion to Dismiss Case 01-04-031.

5. The burden of proof in a complaint case is with the complainant.

6. Case 01-04-031 should be denied with prejudice.

7. Case 01-04-031 should be closed.

O R D E R

IT IS ORDERED that:

1. Case 01-04-031, Advantage Energy, LLC v. San Diego Gas & Electric Company (SDG&E), is denied with prejudice.
2. SDG&E's Motion to Dismiss Case 01-04-031 is denied.
3. Case 01-04-031 is closed.

This order is effective today.

Dated January 15, 2002, at San Francisco, California.