

Decision 12-03-014 March 8, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902E) for Approval of:
(i) Contract Administration, Least Cost Dispatch and Power Procurement Activities, and (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account, Incurred During the Record Period January 1, 2009 through December 31, 2009, and (iii) the Entries Recorded in Related Regulatory Accounts.

Application 10-06-001
(Filed June 1, 2010)

DECISION APPROVING SETTLEMENT AGREEMENT

1. Summary

By this decision, the Commission approves an all party Settlement Agreement entered into by San Diego Gas & Electric Company's (SDG&E) and the Division of Ratepayer Advocates.¹ The two parties reflect the affected interests in this proceeding. The Settlement Agreement which we adopt herein includes a disallowance of \$368,802 in SDG&E's Energy Resource Recovery Account, to account for the December 28, 2008 San Onofre Nuclear Generating Station Unit 2 outage.

¹ <http://docs.cpuc.ca.gov/published/proceedings/A1006001.htm>

2. Background

The Commission established the Energy Resource Recovery Account (ERRA) balancing account mechanism in Decision (D.) 02-10-062 to track fuel and purchased power billed revenues against actual recorded costs of these items. In the same decision, the Commission required regulated electric utilities in California to establish a fuel and purchased power revenue requirement forecast, a trigger mechanism (to address balances exceeding certain benchmarks), and a schedule for semiannual ERRA applications. Since that time, subsequent decisions regarding the ERRA balancing account have adopted minimum standards of conduct that regulated energy utilities must follow in performing their procurement responsibilities and requires that the Commission perform a compliance review as opposed to a reasonableness review of these items.² A compliance review looks at whether a utility has complied with all applicable rules, regulations, opinions, and laws, while a reasonableness review looks at not only a utility's compliance, but also whether the data or actions resulting from, for example, the calculation of a forecasted expense, are realistic, based on the methods and inputs used.

In the first application each year, the utility requests adoption of the utility's forecast of what it expects its annual fuel and purchased power costs for the upcoming 12 months to be, while in the second a utility requests a determination of whether it is in compliance with applicable rules governing energy resource contract administration and least cost dispatch and, therefore,

² See D.05-01-054, D.05-04-036, and Public Utilities (Pub. Util.) Code § 454.5(d)(2).

able to address any over- or under-collection in its ERRA balancing account. This decision resolves that second application.

On June 1, 2010, San Diego Gas & Electric Company (SDG&E) filed Application (A.) 10-06-001, in which it requested: 1) approval of its contract administration, least cost dispatch and power procurement activities, 2) approval of entries to its ERRA and Transition Cost Balancing Account³ (TCBA) during the period January 1, 2009 through December 31, 2009, and authority to refund in the year-end balances in the ERRA and TCBA; 3) recovery of the amounts recorded in selected balancing and memorandum accounts; and 4) revisions to selected memorandum accounts.

The *Scoping Memo and Ruling of the Assigned Commissioner* (Scoping Memo) was issued on August 13, 2010, which confirmed the categorization and need for hearings, ruled on the scope and schedule, and addressed other procedural items. In part, the assigned Commissioner ruled that the question of whether to bifurcate consideration of recovery from the Market Redesign Technology Upgrade Memorandum Account (MRTUMA) is outside the scope of the current proceeding, referencing our recent denial of a similar request from the Division of Ratepayer Advocates (DRA) in D.10-07-049.⁴ We confirm the assigned

³ Eligible above market power costs, Competition Transition Charge revenues, and the applicable interest on any under or over collection are recorded in the TCBA.

⁴ In D.10-07-049, which addressed Southern California Edison's request for recovery from its 2008 ERRA and other regulatory accounts, the Commission denied DRA's request to address MRTUMA and non-ERRA regulatory accounts in a separate proceeding consolidated with Pacific Gas and Electric Company and SDG&E. Examination of whether the recovery from selected regulatory accounts should be separated or consolidated into unique proceedings is a generic issue that would affect other energy utilities. Given the Commission's recent order, and since the purpose of

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Commissioner's ruling, except as noted below. This proceeding was originally assigned to Commissioner Nancy E. Ryan, but has since been re-assigned to Commissioner Michel Peter Florio. A prehearing conference (PHC) took place on August 2, 2010. On November 22, 2010, DRA served its direct testimony.

On December 16, 2010, SDG&E filed a motion requesting that the current proceeding either be bifurcated or stayed to address the same San Onofre Nuclear Generating Station (SONGS) outage issues in Southern California Edison Company's (SCE) A.10-04-002. SCE and SDG&E are joint owners of SONGS. DRA filed a response on December 20, 2010. SDG&E filed a reply on December 21, 2010. On December 23, 2010, the assigned Administrative Law Judge (ALJ) issued a ruling, granting SDG&E's request, that this proceeding is bifurcated to separately address DRA's concerns regarding the effect of outages at SONGS, on recovery from the ERRA balancing account. All other issues remained in the first phase of this proceeding, and were resolved by D.11-10-029.⁵ Since this same SONGS issue was being litigated in SCE's ERRA

the current proceeding is to address the recovery of balances in regulatory accounts of SDG&E only, questions of bifurcation are outside the scope of this proceeding.

⁵ The Commission ruled that:

1. The current schedule in A.10-06-001 remains intact in order to address all remaining issues, other than the DRA's recommended disallowance due to outages at SONGS. In this way, the Commission will have all the information it requires to make a determination regarding these remaining issues in the first phase of A.10-06-001;
2. The determination in A.10-04-002 of whether the outages at SONGS were reasonable or not will not be re-litigated in A.10-06-001;
3. DRA's recommended disallowance due to outages at SONGS in A.10-06-001 will be addressed in the second phase of A.10-06-001;

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proceeding, it was most efficient to delay consideration of the SONGS issue in the current proceeding until after we made a decision in the SCE proceeding. With D.11-10-002, the Commission adopted, among other things, that SCE's actions with respect to the December 28, 2008 SONGS Unit 2 outage were not reasonable.⁶ Accordingly, SCE was ordered to reflect a \$1,442,200 disallowance associated with the December 28, 2008 SONGS Unit 2 outage in its ERRAs.⁷ No other SONGS outages were found to be unreasonable. With that, the parties in the current proceeding met in order to resolve the SONGS issue as it affects SDG&E. As a result, on November 18, 2011, the parties noticed a Settlement Conference in A.11-06-001, and on December 19, 2011, the parties filed a *Joint Motion of San Diego Gas & Electric Company and Division of Ratepayer Advocates for*

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4. After issuance of a decision in A.10-04-002, SDG&E, DRA, and all other parties that may be granted party status subsequent to December 21, 2010, in A.10-06-001, must meet and confer regarding the joint motion referenced in Item 5 below;
 5. Within 30 days after issuance of a decision in A.10-04-002, SDG&E, DRA, and all other parties that may be granted party status subsequent to December 21, 2010 in A.10-06-001, must file a joint motion, to request adoption of a proposed schedule to address the SONGS issue, including dates for a second PHC, service of testimony, evidentiary hearings, and filing of briefs; and
 6. A second PHC will be held to determine how to proceed in the second phase of A.10-06-001.

⁶ See D.11-10-002 at Conclusion of Law 3 "The evidence supports DRA's position that SCE's actions, with respect to the 18 day extension of the December 28, 2008 SONGS Unit 2 planned outage, were not reasonable."

⁷ See D.11-10-002 at Ordering Paragraph 1 " Southern California Edison Company shall appropriately reflect a \$1,442,200 disallowance associated with the December 28, 2008 San Onofre Nuclear Generating Station Unit 2 outage, in its Energy Resource Recovery Account."

Approval of Settlement Agreement (Joint Motion). No protests or comments were filed regarding the Joint Motion.

3. DRA's Requested Adjustment for SONGS Outages

DRA reviewed SDG&E's Utility Retained Generation (URG) operations and fuel procurement activities from January 1, 2009 to December 31, 2009. DRA also reviewed generation outage information, including the underlying factors for certain outages, and SDG&E's internal audit program for its URG facilities. DRA found that, except for two outages at the SONGS, SDG&E's fuel procurement activities as well as its audit program for its URG facilities were not unreasonable. Based on its review, DRA recommended that the Commission disallow \$950,000, which it estimates is the total replacement energy cost of what it considers two unreasonable outages at the SONGS. As discussed in her ruling dated December 23, 2010, the assigned ALJ bifurcated the current proceeding in order to address this one issue regarding outages at SONGS in Phase 2 of the current proceeding.

4. The Settlement Agreement

The proposed Settlement Agreement is an all party settlement and resolves the remaining issue raised in the current proceeding. No protests or comments were filed in response to the Joint Motion. Rather than summarize every term of the Settlement Agreement attached to the Joint Motion, we summarize the key portions of the Settlement Agreement as follows.

In light of the unreasonableness finding in SCE's ERRA compliance proceeding and in accordance with ALJ Wilson's December 23, 2010 Ruling, Joint Parties met and conferred regarding next steps in this proceeding. As noted above, other than the December 28, 2008 Unit 2 outage, no other outages were found to be unreasonable at SONGS during the relevant record period. In its

original testimony in this proceeding, DRA had based its SONGS disallowance request on two SONGS outages. However, in the course of litigating the SONGS outages in SCE's ERRA compliance proceeding (A.10-04-002), DRA withdrew its request as to one outage. As a result, the only remaining SONGS outage at issue in this proceeding is the December 28, 2008 Unit 2 outage. As described in D.11-10-002, the December 28, 2008 outage involved the extension of an outage by two days.⁸

In an effort to avoid the costs and burden of continuing to litigate SDG&E's liability for the December 28, 2008 Unit 2 outage at SONGS (including further discovery, testimony, hearings and briefing), Joint Parties have agreed to settle the issue. Specifically, Joint Parties have agreed that SDG&E will reflect a \$368,802 disallowance associated with the December 28, 2008 SONGS Unit 2 outage in its ERRA.⁹ This amount reflects the replacement energy and avoided costs associated with the two additional outage days. It also corresponds to SDG&E's 20% minority ownership of SONGS and is based on the disallowance methodology used by SCE and approved by the Commission in D.11-10-002.¹⁰

5. Discussion

5.1. Standard of Review

We review this uncontested settlement pursuant to Rule 12.1(d) which provides that, prior to approval, the Commission must find a settlement

⁸ See D.11-10-002 at 16.

⁹ Joint Motion at 4.

¹⁰ Joint Motion at 5.

“reasonable in light of the whole record, consistent with the law, and in the public interest.” We find the settlement agreement meets the Rule 12.1(d) criteria, and discuss each of the three criteria below.

Initially, we note that the circumstances of the settlement, particularly its endorsement by all parties, generally support its adoption. DRA, which represents ratepayer interests, initially protested the application. DRA actively participated in the proceeding and in the settlement negotiations. In addition to SDG&E’s application, testimony, and exhibits, DRA served testimony on all issues raised in the application. Thus, the Settlement Agreement was reached after careful analysis of the application by parties representing a broad array of affected interests. The record also shows that the Settlement Agreement was reached after substantial give-and-take between the parties which occurred at settlement conferences. This give-and-take is demonstrated by the positions initially taken by parties in the application and testimony, and the final positions agreed upon in the Settlement Agreement.

The Settlement Agreement is also consistent with Commission decisions on settlements, which express the strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record.¹¹ This policy supports many worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.¹² As long as a settlement taken as a whole is reasonable in light of the record,

¹¹ See D.05-03-022 at 9.

¹² See D.05-03-022 at 9.

consistent with law, and in the public interest, it may be adopted. We next analyze these criteria with specific reference to the Settlement Agreement.

5.2. Settlement Agreement is Reasonable in Light of the Whole Record

Ordinarily, a question about utility rates is measured by whether the price is “just and reasonable.” (See Pub. Util. Code § 451.)¹³ The documents filed in this proceeding, including but not limited to, the Application, DRA’s protest, testimony and exhibits served by the various parties, the Joint Motion, and Settlement Agreement, as well as D.11-10-002, (in which we ordered a disallowance for one outage at SONGS) contains the information necessary for us to find that the disallowance agreed to in the Settlement Agreement is justified.

The Settlement Agreement is also reasonable. Prior to the settlement, parties conducted extensive discovery, and served detailed testimony on the issues related to revenue requirement and rate design. The proceeding record contains sufficient information for us to conclude the Settlement Agreement represents a reasonable compromise of the parties’ positions.

5.3. Settlement Agreement is Consistent with Law

The Joint Parties believe that the terms of the Settlement Agreement comply with all applicable statutes. These include, e.g., § 451, which requires that utility rates must be just and reasonable, and § 454, which prevents a change in public utility rates unless the Commission finds such an increase justified. We agree that the required showings under §§ 451 and 454 have been made.

¹³ All references are to the Public Utilities Code unless otherwise noted.

Further, nothing in the Settlement Agreement contravenes statute or prior Commission decisions.

5.4. Settlement Agreement is in the Public Interest

The Settlement Agreement is in the public interest and in the interest of SDG&E's customers. The agreed-upon disallowance in the Settlement Agreement resolves the only remaining issue in the current proceeding.

Approval of the Settlement Agreement avoids the cost of further litigation, and reduces the use of valuable resources of the Commission and the parties. Finally, we note that the settling parties comprise all of the active parties in this proceeding, and we do not know of any party who contests the Settlement Agreement. Thus, the Settlement Agreement commands the unanimous sponsorship of all active parties in this proceeding, who fairly represent the interests affected by the Settlement Agreement. We find that the evidentiary record as well as D.11-10-002, contains sufficient information for us to determine the reasonableness of the Settlement Agreement and for us to discharge any future regulatory obligations with respect to this matter. For all these reasons, we approve the Settlement Agreement as proposed.

6. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Pub. Util. Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

7. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

Findings of Fact

1. On December 19, 2011, SDG&E and DRA filed an Joint Motion requesting the Commission to adopt an all party Settlement Agreement.
2. All remaining issues in this proceeding are encompassed by, and resolved in, the Settlement Agreement.
3. The parties to the Settlement Agreement are all of the active parties in this proceeding.
4. The parties are fairly reflective of the affected interests.
5. No term of the Settlement Agreement contravenes statutory provisions or prior Commission decisions.
6. The Settlement Agreement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.
7. The Settlement Agreement is reasonable in light of the record, is consistent with law, and is in the public interest.
8. The disallowance as set forth in the Settlement Agreement is reasonable.

Conclusions of Law

1. The Settlement Agreement is reasonable in light of the whole record, consistent with law, in the public interest and should be approved.
2. This decision should be effective today so that the Settlement Agreement may be implemented expeditiously.
3. A.10-06-001 should be closed.

O R D E R

IT IS ORDERED that:

1. *The Settlement Agreement between San Diego Gas & Electric Company and Division of Ratepayer Advocates, as set forth in the Attachment to the Joint Motion of San Diego Gas & Electric Company and Division of Ratepayers Advocates for Approval of Settlement Agreement is approved.*
2. Within 30 days of today's date, San Diego Gas & Electric Company must file a Tier 1 advice letter with tariff changes and new rates. The tariffs shall become effective, subject to the Energy Division's determination that they are in compliance with this decision.
3. Application 10-06-001 is closed.

This order is effective today.

Dated March 8, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners