

Decision 05-08-018 August 25, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U-902-E) for Adoption of an Advanced Metering Infrastructure Deployment Scenario and Associated Cost Recovery and Rate Design.

Application 05-03-015
(Filed March 15, 2005)

**DECISION APPROVING SETTLEMENT
ON PRE-DEPLOYMENT COSTS**

1. Summary

This decision grants the Motion to accept a settlement agreement between San Diego Gas & Electric Company (SDG&E) and several parties to this proceeding, finding it to be reasonable in light of the whole record, consistent with law, and in the public interest. The settlement agreement establishes a pre-deployment funding level of \$3.4 million for the period of September 2005 through March 2006 as reasonable and establishes the manner by which the costs will be recovered. The settlement also establishes a bridge funding level of \$5.9 million for the period after March 2006 through the end of 2006 as reasonable and establishes the manner by which the costs will be recovered.

2. Background

On March 15, 2005, SDG&E filed the instant application, seeking authorization to spend \$50.3 million for pre-deployment costs for its proposed Advanced Metering Infrastructure (AMI) Project. The application also requested approval of SDG&E's proposed deployment plan, associated cost recovery proposal, and estimated its expected full deployment costs at \$612 million. A

supplement was filed March 30, 2005 reflecting SDG&E's expected revenue requirement.

On May 9, 2005, Assigned Commissioner Grueneich issued a ruling laying out her approach to the case and describing the two-phase process that she expected to employ. She required supplemental testimony by SDG&E, who complied on May 25, 2005. Office of Ratepayer Advocates (ORA), Utility Consumers' Action Network (UCAN), and Hunt Technologies, Inc. (Hunt) served testimony on June 6, 2005. SDG&E and California Consumer Empowerment Alliance (CCEA) served rebuttal testimony on June 10, 2005.

At the June 15, 2005 prehearing conference the parties indicated an interest in settling the issue of the amount of pre-deployment costs that should be approved by the Commission in advance of its decision on deployment of the proposed AMI Project. Because all parties were present, the Administrative Law Judge (ALJ) waived the requirement for a seven day notice of settlement conference found in Rule 51.1(b) and the parties convened a settlement conference upon the close of the prehearing conference. All other issues in the application remain open as part of the second phase of the proceeding. All parties agreed that it was not necessary to hold evidentiary hearings on the pre-deployment cost recovery issues, regardless of whether a settlement was reached.

On July 1, 2005, SDG&E, UCAN, ORA, CCEA, and Hunt (Joint Parties) filed a Motion to approve a multiparty settlement. On July 8, 2005, the Joint Parties filed draft tariff sheets to implement the settlement. By agreement of all parties, only one round of comments was taken, on July 15, 2005. Joint comments were filed by The Utility Reform Network (TURN) and the Coalition of California Utility Employees (CCUE) in opposition to the settlement.

3. Outstanding Procedural Matters

The ALJ marked all of the proffered testimony for identification at the June 15, 2005 prehearing conference but did not receive any testimony into evidence at that time. The following exhibits are received into evidence as of July 1, 2005, the date the Settlement Agreement was filed: Exhibit 17, Exhibit 18, Exhibit 19, Exhibit 20, Exhibit 100, Exhibit 200, Exhibit 300, and Exhibit 400.

We affirm all rulings made by the ALJ up to this point in the proceeding. To the extent that any motions remain outstanding, all such motions are denied.

4. Settlement Agreement Provisions

The primary feature of the settlement is that a pre-deployment funding level of \$3.4 million for the period of September 2005 through March 2006 be adopted, found reasonable and recovered by the ratemaking accounts set forth in the July 8, 2005 supplemental filing by the Joint Parties. The Joint Parties also recommend approval of \$5.9 million in bridge funding that would be spent only in the event that a Commission decision on SDG&E's proposed AMI Project is delayed past March 2006. There are conditions on what types of activities can be included in the bridge funding and a reporting mechanism to ensure that bridge spending is consistent with the settlement provisions. The implementing tariffs filed on July 8, 2005 describe the types of costs that may be recorded in the memorandum account and the timing by which the balances in the account will be recovered annually.

As part of the settlement, SDG&E commits to hold at least one working group meeting to present a formal pre-deployment activity report and will hold more than one if requested by any party to the settlement. Part of the activity report will review the results of SDG&E's Broadband Over Powerline integration test. Other terms of the settlement commit the parties not to oppose certain

actions of the Commission related to coordination, AMI functionality, and open architecture. The settlement explicitly defers consideration of whether SDG&E's proposed AMI system meets the minimum functionality criteria set forth in Commissioner Grueneich's May 9, 2005 Assigned Commissioner's Ruling (ACR).

5. Opposition to the Settlement

TURN and CCUE oppose adoption of the settlement, in particular the requested findings that \$3.4 million in funding through March 2006 and \$5.9 million in bridge funding are reasonable. TURN and CCUE identify five primary reasons for their opposition: 1) the application admits that the AMI project is not cost-effective without tariff changes, 2) the settlement fails to meet any of the findings required by the Commission, 3) the settlement fails to establish that the project meets the functionality criteria set forth in Commissioner Grueneich's ruling establishing the standards by which pre-deployment funding would be authorized, 4) the settlement's authorization of pre-deployment funds is contrary to historical Commission practice, and 5) the settlement provides insufficient justification to spend ratepayer dollars on an admittedly not cost-effective project. TURN and CCUE did not serve testimony but instead rely on other parties' testimony to support their arguments. TURN and CCUE recommend that the Commission defer approval of pre-deployment funding until the cost-effectiveness of SDG&E's proposed AMI project is determined.

6. Evaluation of the Settlement Agreement

Because the proposed settlement agreement is not an uncontested "all-party" settlement, we evaluate it under the standards set forth in Rule 51.1(e) of the Commission's Rules of Practice and Procedure. Rule 51.1(e) requires that

the “settlement is reasonable in light of the whole record, consistent with law, and in the public interest.”

6.1 Reasonableness in Light of the Whole Record

The Settling Parties state that the settlement agreement is reasonable in light of the whole of the record. For example, they state that consistent with the request of Assigned Commissioner Grueneich in a ruling, SDG&E significantly reduced the scope of requested pre-deployment efforts in Phase 1 to a maximum of \$9.3 million, from the original request of \$50.3 million. The parties argue that by doing so, the risks from approving pre-deployment funding to ratepayers are minimized. Therefore, the settling parties (the utility, two ratepayer representatives and two technology companies) believe that the reduced pre-deployment scope and expenditures represent a genuine compromise of the litigation.

TURN and CCUE argue that it is not reasonable to approve the settlement because the Joint Parties have not demonstrated that SDG&E’s proposed AMI system meets the minimum functionality criteria set forth in Commissioner Grueneich’s May 9, 2005 ACR. TURN and CCUE point out that the settlement defers review of these criteria until later in the proceeding. TURN and CCUE also point to the testimony of SDG&E witness, Patrick Charles, identified as Exhibit 3, which concedes that although SDG&E’s meter specifications would meet the minimum functionality criteria, SDG&E still needs “to contract with both a meter vendor and an AMI communications supplier to

develop a metering product that meets SDG&E's specifications." (Exhibit 3, 3-5:11-12.)¹

Based on the tariff sheets submitted to implement the settlement, the costs booked to the memorandum accounts, a maximum of \$9.3 million, would be allocated 76% to electric customers and 24% to gas customers. In D.04-12-015, SDG&E's Phase 1 Cost of Service decision, the Commission approved an electric distribution revenue requirement of \$754.763 million and a natural gas distribution revenue requirement of \$204.721 million. If we were to assume that all of the pre-deployment funding recommended for approval in the settlement occurred in 2005, the \$7.068 million allocated to electric distribution would represent a 0.94% increase and the \$2.232 million allocated to gas distribution would represent a 1.09% increase to the revenue requirement. If we were to assume that \$3.4 million in pre-deployment funding recommended for approval in the settlement prior to March 2006 were to occur in 2005, the \$2.584 million allocated to electric distribution would represent a 0.34% increase and the \$0.816 million allocated to gas distribution would represent a 0.40% increase to the revenue requirement.

6.2 Consistent with the Law

The Joint Parties state that the settlement is consistent with the law because "the Settlement Agreement is consistent with the numerous Commission decisions endorsing settlements as an 'appropriate method of alternative ratemaking.' (See, e.g. D.88-12- 083 and D.91-05-029.)" (Motion, p. 6.) TURN and CCUE argue that the settlement is not consistent with the law because it fails to meet the minimum functionality criteria established in Commissioner

¹ Exhibit 3 was marked for identification but has not yet been received into evidence.

Grueneich's ACR and it is inconsistent with past Commission practice. TURN and CCUE point to an ACR/ALJ Ruling in A.04-02-026 that denied a request for pre-approval of costs incurred prior to a decision on whether the San Onofre Steam Generator Replacement Project should proceed. The Assigned Commissioner and ALJ in A.04-01-009 also denied a similar request for pre-approval of costs incurred while a decision was pending on whether another large capital project should proceed. TURN and CCUE argue that approving the instant settlement would be contrary to these prior rulings.

6.3 In the Public Interest

The Joint Parties represent that the public interest is served because the risk to ratepayers is minimized by limiting the pre-deployment pre-approval to a maximum of \$9.3 million, while at the same time judicial economy is maximized by consolidating litigation. The Joint Parties find there is a public interest in allowing pre-deployment work to continue, pending final resolution of whether to deploy AMI, because to proceed with litigation and briefing on pre-deployment issues would greatly tax the resources of the Joint Parties and impact the ability to move efficiently and expeditiously resolve the more important deployment question. The Parties "agree that the reduced pre-deployment scope and expenditures, along with the other elements of the Settlement Agreement, strike a correct balance such that regardless of the outcome of the Case In Chief, allowing SDG&E to proceed with pre-deployment activities pending resolution of the Case In Chief is in the public interest."

(Motion, p. 5.)

6.4 Discussion

For the reasons stated above, the Joint Parties urge the Commission to grant this Motion approving the Settlement Agreement by September 2005,

finding that it is reasonable in light of the whole of the record, consistent with law and in the public interest, and grant such other and further relief as the Commission finds just and reasonable.

Evaluating this settlement is difficult. Although the Joint Parties point out that the settlement represents a reduction of the requested ratepayer funding for pre-deployment activities from SDG&E's original request, SDG&E had already reduced its request to \$9.3 million prior to the parties entering into settlement discussions. In addition, by explicitly deferring a finding that the proposed project meets necessary minimum functionality criteria, it is difficult to assess the reasonableness of allowing pre-deployment costs to be borne by ratepayers without further reasonableness review. In addition, two parties oppose the settlement. On the other hand, the settlement does not contravene or compromise any statutory provision or prior Commission decision, although it does appear inconsistent with rulings by Assigned Commissioners within their assigned cases. Finally, there is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation. (D.88-12-083, 30 CPUC2d 189, 221.)

On balance, this settlement satisfies public policy objectives because it is in the public interest to resolve this litigation over a relatively small amount (a distribution revenue requirement increase of approximately 1% if all expenditures occurred in 2005, and 0.4% or less if spending occurs on the expected timing). Rather, limited resources of parties and the Commission can be devoted to matters with greater cost or policy effect. Although the settlement does not address the minimum functionality criteria established by ruling, the ruling of one Commissioner in the context of case management does not bind the full Commission's ability to consider an alternative approach. Moreover, unless

we expressly provide otherwise, adoption of a settlement “does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.” (Rule 51.8.) Should a dispute arise in another proceeding or a future case regarding whether or not recovery of similar costs are allowed, such issues may be resolved there without any implication of approval or precedent from this proceeding. In addition, the reporting requirements outlined in the Settlement Agreement will enable effective oversight of approved pre-deployment funding.

Thus, for these reasons and taken as a whole, the settlement agreement is in the public interest. The settlement and associated implementing tariffs meet all tests for Commission adoption, and it should be approved by the Commission as a fair resolution of the pre-deployment cost recovery issues.

7. Categorization and Need for Hearings

In Resolution ALJ 176-3150, dated April 7, 2005, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Also, on July 1, 2005, the Assigned Commissioner issued a scoping memo confirming the preliminary categorization of the proceeding as ratesetting. The record of the proceeding provides sufficient information for us to evaluate whether the settlement agreement meets our standards for approval. No hearing is necessary.

8. Comments on Draft Decision

The draft decision of the assigned administrative law judge (ALJ) 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 by SDG&E and jointly by CCUE and TURN. The comments by CCUE and TURN reiterate their

position on the settlement but do not convince us to modify the decision. Reply comments were filed by CCEA.

9. Assignment of Proceeding

Dian M. Grueneich is the Assigned Commissioner and Michelle Cooke is the assigned ALJ in this proceeding.

Findings of Fact

1. SDG&E, UCAN, ORA, CCEA, and Hunt entered into a voluntary settlement to resolve pre-deployment cost recovery issues.
2. TURN and CCUE oppose the settlement.
3. Implementation of the settlement would result in a maximum revenue requirement increase of approximately 1% if all authorized pre-deployment costs were recorded in 2005.
4. No hearing is necessary on the pre-deployment cost recovery issues.

Conclusions of Law

1. The settlement agreement satisfies the requirements of Rule 51.1(e).
2. The settlement agreement is reasonable in consideration of the whole record, consistent with law, and in the public interest.
3. No settlement term contravenes statutory provisions or prior Commission decisions.
4. The settlement agreement should be adopted.
5. This decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The July 1, 2005 Motion to accept the settlement agreement among San Diego Gas & Electric Company (SDG&E), Utility Consumers' Action Network,

Office of Ratepayer Advocates, California Consumer Empowerment Alliance, and Hunt Technologies, Inc. is granted and the settlement agreement is approved and adopted.

2. SDG&E shall file an Advice Letter to implement the tariff attached to the July 8, 2005 filing. The Advice Letter shall be effective immediately provided that the tariff language filed in the Advice Letter is the same as that set forth in Attachment A of the July 8, 2005 filing.

3. The parties shall comply with all provisions of the settlement agreement, as filed on July 1, 2005.

This order is effective today.

Dated August 25, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners