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**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**RESOLUTION E-3838**

**July 10, 2003**

**R E S O L U T I O N**

Resolution E-3838. San Diego Gas & Electric requests expedited approval of its Gas Supply Plan for the period of May 1, 2003, through September 30, 2003, to be used in connection with its responsibilities related to certain California Department of Water Resources contracts which include gas tolling provisions. SDG&E's request is approved with modifications.

By Advice Letter 1489-E Filed on April 17, 2003.

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**SUMMARY**

This Resolution approves, with modifications, the San Diego Gas and Electric (SDG&E) Gas Supply Plan (GSP) covering the period May through September 2003. We order SDG&E to begin procurement operations for its three allocated contracts as soon as practicable [Redacted]. We order the utility to file its next GSP on August 15, 2003. We grant in part and deny in part the requests contained in comments by the Office of Ratepayer Advocates (ORA) and by the California Department of Water Resources (CDWR or DWR). For the small changes ordered herein which are not related to an augmented discussion of hedge products and the hedging decision process, we order the utility to refile this advice letter within ten (10) days of today incorporating these changes.

**BACKGROUND**

On October 25, 2001, the Commission opened Rulemaking (R.) 01-10-024 to establish mechanisms enabling SDG&E and the state's other major electric utilities to resume purchasing electricity to meet their customers' needs. The utilities were unable to procure electricity due to their financial situation and the market disruptions arising from the so-called "energy crisis". As a result, DWR was authorized to contract for electricity supplies on the utilities' behalf. The rulemaking was necessary because the agency's statutory authority to buy

electricity was set to expire December 31, 2002. Following is a discussion of various decisions issued in this rulemaking proceeding related to the subject of this resolution.

D.02-08-071 (see pages 24-25) established one of the entities figuring into this story – the Procurement Review Group (PRG). The PRG comprises such participants as the Commission’s Energy Division, the Office of Ratepayer Advocates, The Utility Reform Network, the California Energy Commission, and others. It is intended to act in a consultative fashion regarding the utility’s procurement activities and plans, and has not been given authorizing capacity.

In Decision (D.) 02-09-053, the Commission allocated DWR procurement contracts to the resource portfolios of each investor owned utility.<sup>1</sup> As of January 1, 2003, the utilities would be obligated to schedule and dispatch the contracts while DWR would retain legal and financial responsibilities. The utilities were also instructed to integrate the DWR contracts with their existing generation assets and new procurements and manage these resources under the operating rule of “least-cost” dispatch.

The decision also considered the utilities’ administration of the DWR contracts containing “gas tolling” provisions. These provisions provide DWR the option to accept the generator’s price for gas used in electricity production. Alternatively, the agency can make its own procurement arrangements. Since proper management of the gas tolling arrangements was a critical aspect of least cost dispatch, the Commission determined that the utilities operational and administrative responsibilities for the DWR contracts should extend to the implementation of the gas tolling provisions, with DWR holding financial and legal responsibility.

In D. 02-10-062, the Commission established the regulatory framework enabling the utilities to resume full procurement on January 1, 2003 consistent with their service obligation. Minimum standards of conduct were adopted governing the

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<sup>1</sup> For the three utilities, "these DWR contracts cumulatively represent an average annual capacity of 10,780 MWs over the next seven years. The contracts range in term from two to twenty years, although the contracted capacity and energy drops off significantly after 2009. Some of the contract quantities are exclusively "must-take," some are all dispatchable under the option of DWR, and others include a combination of both must-take and dispatchable purchases." (D.02-09-053 Contract Allocation Order, page 2)

behavior of utility employees and outlining acceptable procurement practices. Such standards included a prohibition against self-dealing to the benefit of an affiliate of the utility, and a requirement that the utilities prudently administer all contracts and dispatch energy in a least-cost manner. To implement these requirements, the utilities were directed to file updated plans detailing their 2003 short-term procurement strategies for further Commission consideration.

In D. 02-12-069, the Commission adopted an Operating Order memorializing the obligations DWR and the utilities would assume beginning January 1, 2003 regarding DWR long term power purchase contracts allocated to each utility in D. 02-09-053. The decision also established up-front standards of review governing the utilities' administration of the DWR contracts by adopting the standards previously set forth in D. 02-10-062.<sup>2 3</sup>

In addition, D.02-12-069 broadly outlined DWR's prospective responsibilities regarding the DWR contracts assigned to the utilities:

"In sum, as of January 1, 2003, DWR will: 1) retain legal and financial responsibility for the DWR contracts, 2) remain responsible for calculating the DWR revenue requirement and for submitting revenue requirements to the Commission, and 3) continue to service the bonds as issuer. DWR's responsibilities do not extend to conducting a reasonableness review of the utilities' portfolio dispatch decisions. That responsibility rests with the Commission." (D.02-12-069, page 14)

The purpose of the Gas Supply Plan was set forth in D.02-12-069 (the Operating Order):

"The utilities are responsible for preparing "Gas Supply Plans" detailing their strategies for procuring gas and proposed use of risk management instruments. These plans will set parameters under which the utilities will perform the various gas-related activities pursuant to the gas tolling provisions. The utilities shall file these plans for Commission approval through Advice Letter filings on a semi-annual basis. The Commission

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<sup>2</sup> D. 02-12-069, p. 61, " We adopt the standards previously adopted in D.02-10-062 with the explicit inclusion of a "least-cost" dispatch requirement."

<sup>3</sup> D. 02-12-074 granted in part PG&E's petition to modify several standards of behavior.

will review and approve these plans on an expedited basis. Following approval of the Gas Supply Plans, the utilities will negotiate with suppliers for gas supplies, transportation, and storage. Negotiated agreements will then be submitted to DWR for execution." (D.02-12-069, page 27)

Furthermore,

"In particular, with respect to gas purchasing, transportation, storage and risk management, we believe DWR should limit its involvement to the review of the utility's Gas Supply plans and that, following Commission approval of these plans, the utilities should be free to negotiate and present agreements for DWR execution without subsequent DWR approval." (D. 02-12-069, p. 28,)

Among the sections in the Operating Order is "Exhibit B, Fuel Management Protocols" specifying the operating relationship between DWR and the utilities concerning management of the gas tolling provisions. Under Exhibit B of the Operating Order, the utilities, acting as limited agent for DWR, are charged with conducting the administrative and operational aspects of the gas tolling provisions while DWR holds legal and financial responsibility. The exhibit provides specific guidelines governing the utilities' actions in cases where the gas tolling provision is exercised pursuant to DWR approval. Additionally, the exhibit specifies that the utilities are responsible for these activities: 1) determining types and lengths of gas contracts; 2) nominating deliveries; 3) contracting for gas transportation and storage; 4) managing imbalances; 5) reviewing gas invoices, and 6) determining and implementing hedge strategies, as appropriate.<sup>4</sup>

In addition to defining each party's roles, Exhibit B also requires the utilities to prepare Gas Supply Plans documenting their gas supply and risk management strategies. Following DWR review and Commission approval of the Gas Supply Plan, the utility may conduct certain activities with limited DWR involvement such as negotiating for pipeline or storage capacity. The utilities were directed to

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<sup>4</sup> In the case of gas hedging, D.02-12-069 directed the utilities to make the final decision related to the use of risk management tools and that they should work with DWR immediately to enter into any necessary forward hedges (see p. 28).

file their Gas Supply Plans semi-annually via an advice letter filing subject to an expedited approval process.

In D. 02-12-074, the Commission approved updated short-term procurement plans for each utility describing their methods for purchasing electricity to meet their customer's needs during 2003.

On April 3, 2003 the Commission issued D.03-04-029, adopting Operating Agreements between DWR and PG&E and San Diego Gas and Electric Company. As stipulated in the decision, if these utilities file executed Operating Agreements with the Commission the Operating Order will no longer govern their activities with respect to the DWR allocated contracts.

According to the Operating Agreement in the decision, the limited duties of SDG&E, acting as CDWR's limited agent, include performing day-to-day scheduling and dispatching, performing billing and settlement functions, buying (or selling) gas, gas transmission services, gas storage, and financial hedges, and performing "operational and administrative responsibilities for such purchases under gas tolling provisions under the Allocated Contracts, including the review of fuel plans, and consideration of alternative fuel supply..."<sup>5</sup>

Under the Operating Agreement, CDWR is obligated to remain legally and financially responsible for each contract, to assume legal and financial responsibilities and enter into or facilitate SDG&E's entering into transactions, as CDWR's limited agent, for the purchase of gas, gas storage, financial hedges, and timely consent to or approve SDG&E's performance of the operational and administrative responsibilities for such purchases, paying invoices to suppliers, and performing all necessary verification.<sup>6</sup>

PG&E and SDG&E have submitted Operating Agreements for Commission approval via advice letter.<sup>7</sup> SCE, however, still opts to be governed by the

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<sup>5</sup> D.03-04-029, Attachment A – SDG&E Operating Agreement, Section 4.01.

<sup>6</sup> D.03-04-029, Attachment A – SDG&E Operating Agreement, Section 5.01.

<sup>7</sup> Submission of Executed Operating Agreements for Commission review and approval: PG&E Advice Letter 2374-E filed on April 17, 2003, and SDG&E Advice Letter 1490-E filed on April 17, 2003.

Operating Order with respect to DWR contract administration. With regard to the Gas Supply Plans, the Commission stated that it will attempt to resolve any conflicting Commission-DWR mandates. However, the Commission determined that the utilities are to operate within Commission-defined boundaries, yet also adhere to specific DWR requirements:

"In response to SCE's concerns regarding how the Commission intends to resolve any conflicts between what the Commission approves and what DWR is willing to implement, we note that we expect the utilities to prepare and file comprehensive Gas Supply Plans describing their proposed methods of meeting gas supply needs. The Commission will approve or disapprove these methods and plans. We expect DWR to file comments on the utilities' Advice Letter filings as necessary to identify any concerns they may have regarding the plans. These concerns will be taken into account in the Commission's decision, however, in the event that DWR only authorizes a subset of what the Commission has approved, the utilities must operate within the limitations of DWR's approval. Similarly, if the Commission rejects portions of the Gas Supply Plans that DWR would otherwise authorize, we expect the utilities to operate within the limitations of the Commission's decision. (D.03-04-029, pages 24-25, emphasis added)

The Commission also noted the similar but differing objectives of the Commission and DWR:

"Although the Commission's and DWR's objectives are very closely aligned, it is not reasonable to expect their objectives to be perfectly aligned due to the fact that the Commission and DWR have differing jurisdictions and responsibilities. For example, DWR is in the best position to determine the level of credit support available for utility purchases under the gas tolling agreements, and the Commission will not second-guess DWR's determination in this regard. We request that DWR provide written notification to the Commission regarding its approval or rejection of the utilities' Gas Supply Plans. (D.03-04-029, pages 24-25)

The goals and guidelines covering implementation of the gas tolling agreements are somewhat modified in the Operating Agreement and apply as follows:

1. Utility shall use reasonable commercial efforts to secure delivery of gas in a reliable manner and consistent with gas requirements for producing scheduled energy.
2. Utility shall develop a portfolio of gas supply for the Contracts that contain Fuel Options. Consistent with the approved Utility Gas Supply Plans, Utility is to supply gas, acting as limited agent on behalf of DWR. Such portfolio should be diversified in terms of price mechanism, period of performance, and gas suppliers.
3. Utility shall develop a portfolio of supply which is reasonably priced relative to the market and in accordance with an approved Utility Gas Supply Plan.

D.03-04-029 required the three utilities to file their respective Gas Supply Plans on April 17, 2003. The decision also directed the utilities to circulate unredacted copies of their proposed Gas Supply Plans to their Procurement Review Groups for review and comment.<sup>8</sup>

On April 17, 2003 SDG&E filed advice letter (AL) 1489-E, in which it included redacted (public) and unredacted (confidential) versions of its proposed gas plan, to cover gas procurement activities for the period of May 1 through September 30, 2003. The period of SDG&E's initial plan is only five months, in order that subsequent gas supply periods might coincide with quarterly breaks, i.e., subsequent plans would alternate between summer periods (Q2, Q3) and winter periods (Q4, Q1).

In the GSP, SDG&E outlines the default fuel plans currently in place for the three allocated contracts – CalPeak Power, Williams Energy & Trading Company, and Sunrise Power Company. These contracts for fuel management and fuel supply are all tied to a California border index, plus some amount of service fee.

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<sup>8</sup> "In addition, in the interest of minimizing protests on the initial Advice Letter filings, we recommend that the utilities provide advance, unredacted copies of the Gas Supply Plans to the "Procurement Review Groups" identified in D.02-08-071 for review and discussion. We also recommend that utilities file advance copies with DWR." (D.03-04-029, page 24)

SDG&E then describes the approach that it would take, were it given authorization to engage in procurement activities. **[Redacted]**

## **NOTICE**

Notice of AL 1489-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

## **PROTESTS**

ORA and CDWR filed timely non confidential comments on April 28, 2003. CDWR filed a public and a confidential second set of comments on May 2. SDG&E filed a public response to CDWR's first comments on May 5 and filed a public and a confidential response to ORA and to CDWR's second comments on May 9. These comments and responses are summarized below.

In its April 28 comments, CDWR notes that Decision 03-04-029 recommends that utilities supply CDWR with advance copies of the GSP. CDWR notes that it did receive an advance copy of SDG&E's GSP on April 8, but did not receive a copy of SDG&E's April 17 filing until April 23. CDWR argues that utilities should provide unredacted copies of their filings contemporaneously with submission to the CPUC. Given the delay in delivery and given the short ten-day turn-around for comments, CDWR requests additional time to file comments. CDWR also asks that it be supplied an advance copy of the GSP at least 30 days prior to filing.

In its May 5 response, SDG&E states it has no objection to CDWR's request for a time extension, but maintains that CDWR is in error, that in fact the filing was delivered to CDWR contemporaneously with the submission to the CPUC, and refers to Federal Express records. Regarding the 30-day advance filing request, SDG&E maintains that this is excessive, and would result in the review of a premature document which would entail extensive subsequent changes. SDG&E maintains that CDWR has already shown itself capable of previewing the GSP within the ten-day window. SDG&E maintains that instituting a 30-day preview period would require a formal Petition for Modification of D.03-04-029.

On April 28, 2003 ORA filed comments seeking approval of the advice letter, with two modifications. ORA (1) asks that the CPUC encourage CDWR to provide SDG&E with limited power of attorney and (2) recommends that SDG&E not use the Commission-approved risk tolerance to establish a “do not hedge” zone. In the event that CDWR accedes to the first request, ORA recommends that SDG&E elaborate in the GSP regarding the conditions under which it will hedge, how it will decide which physical or financial tools to use, and in what markets it will participate.

In its response on May 9, 2003, SDG&E concurs that enduing it with limited power of attorney “would provide SDG&E, in its role as limited agent for DWR, the necessary flexibility to efficiently execute trades for the benefit of customers.”  
**[Redacted]**

**[Redacted]**

On May 2, 2003 CDWR filed comments of a more extensive nature, listing 17 issues. SDG&E’s May 9 letter responded to CDWR’s May 2 comments as well as to ORA’s April 28 comments. To facilitate the presentation of these issues, we will handle the issues one at a time, first as raised by CDWR and then as responded to by SDG&E, before moving on to the next issue. To keep track of the issues, we will use the same numbering system below as was used by CDWR in its comments.

To meet its own legal obligations, CDWR proposes to develop a set of Protocols (to be inserted after Section 1), in the form of instructions from principal to agent, to be provided at a later date. CDWR’s proposal would further formalize its authority with respect to the utilities’ GSPs and gas procurement activities. Pursuant to the Protocols, all gas transactions would need to be signed by CDWR. The Protocols would be subject to revision by CDWR from time to time.  
**[Redacted]**

- (1) CDWR asks that CPUC approval of the GSP should explicitly constitute prior consultation with CDWR for purposes of the definition of Priority Long Term Power Contracts as that term is used in the Rate Agreement.
- (2) **[Redacted]**.

- (3) CDWR points out that, contrary to what the GSP states on page 6, there is a Fuel Manager for the Williams contract, and that Fuel Manager is Williams. This is acknowledged by SDG&E in its response.
- (4) **[Redacted]**
- (5) **[Redacted]**
- (6) CDWR disagrees with the GSP's statement (in Section 3) that SDG&E requires "power of attorney" prior to trading financial products. CDWR maintains that the Operating Order and Operating Agreement already supply SDG&E with the needed authorization. CDWR adds the caveat of conformance to the above-mentioned Protocols.  
**[Redacted]**
- (7) **[Redacted]**

CDWR objects to a statement in the GSP (in Section 5(c)) that places an obligation on CDWR to have an adequate number of qualified counterparties and to maintain a minimum level of credit acceptable to suppliers, citing the Operating Order in D.02-12-069. CDWR maintains that it is not bound by the Operating Order. Notwithstanding the foregoing, CDWR notes that it is currently increasing its credit with suppliers. **[Redacted]**

- (8) **[Redacted]**.
- (9) CDWR requests that the following phrase should be added at the end of Section 5(d)(4) on page 11 – "as well as obtain DWR's prior approval." SDG&E has not specifically responded to this request.

CDWR requests that a caveat be added at the end of Section 6(a)(3), to the effect that all invoices and document verification, as well as all rejected invoices along with explanations for the rejection, must be presented to CDWR no later than five business days prior to the due date of the invoice. **[Redacted]**  
CDWR contends that, under the Operating Order and the Operating Agreement, SDG&E is required to verify fuel invoices, even in cases where SDG&E is not the fuel manager. CDWR points out that the GSP's Section 6(b) appears to exempt SDG&E from this responsibility in cases where it is not the fuel manager.  
**[Redacted]**

- (10) **[Redacted]**.

- (11) **[Redacted]**.
- (12) **[Redacted]**
- (13) CDWR maintains that all SDG&E gas procurement activities referred to in Section 8(c) must be consistent with the portions of the Protocols that address utility self-dealing. **[Redacted]**.

## **DISCUSSION**

Energy Division has reviewed the comments and the responses. In addition, Energy Division has a number of other issues to raise with the filings.

Procedural Issues:  
**[Redacted]**.

Timing of the Gas Supply Plan and its Filing:  
SDG&E filed this Gas Supply Plan on April 17, 2003, with the intention that it cover the five-month period May through September. SDG&E desires that each of its subsequent GSPs coincide with quarterly breaks. We agree with SDG&E that it would be useful for GSPs to coincide with quarterly breaks and grant this request. We will also ask the other utilities to synchronize their GSPs with quarterly breaks.

On a going-forward basis, we will also ask the utilities to file their GSPs earlier in the cycle in order for them to be able to receive timely regulatory. We will ask the utilities to file with the Commission their proposed GSPs 45 days before the beginning of the period covered by the GSP. For the next GSP, we ask that the utilities file their GSPs by August 15, 2003.

Prior Consultation, for Purposes of the Rate Agreement:  
Commission approval of the utilities' GSPs constitutes "prior consultation" between CDWR and the Commission for purposes of complying with D.02-02-051, Appendix C, the Rate Agreement, Article 1, Section 1.1, Definitions, "Priority Long-Term Power Contracts."

Power of Attorney:  
**[Redacted]**.

Protocols Proposed by CDWR:

CDWR has not yet fleshed out its proposed Protocols. As a result, we consider their proposal to be incomplete, and so we deny it. CDWR is welcome to offer a complete proposal for possible inclusion in later GSPs. In its comments on the draft resolution, CDWR has informed the Commission that it will provide the Commission a final copy of its Fuels Protocols once they are complete. To the extent that CDWR's Fuels Protocols only authorize a subset of what the Commission has authorized, utilities must operate within the limitations of CDWR's authorization.

Authorization for Procurement Activities:

**[Redacted]**

In the seventh issue it raises in its comments, CDWR argues that the GSP incorrectly states that SDG&E requires "power of attorney" prior to entering into trading for financial products. SDG&E responds by accepting CDWR's assertion. We will ask that the language of the GSP be altered to remove this requirement.

In the eleventh issue it has raised in its comments, CDWR requests for the addition of language that would require that SDG&E receive its approval prior to contracting for storage. As noted in D.02-12-069 (see p.28, cited above), "...with respect to gas purchasing, transportation, storage and risk management, we believe DWR should limit its involvement to the review of the utility's Gas Supply plans and that, following Commission approval of these plans, the utilities should be free to negotiate and present agreements for DWR execution without subsequent DWR approval." Consequently, we will deny CDWR's request.

At the same time, we have recognized in D.03-04-029 (see pages 24-25, cited above) that "...in the event that DWR only authorizes a subset of what the Commission has approved, the utilities must operate within the limitations of DWR's approval. Similarly, if the Commission rejects portions of the Gas Supply Plans that DWR would otherwise authorize, we expect the utilities to operate within the limitations of the Commission's decision." Thus, while we will not authorize the changes to the draft GSP requested by CDWR, we recognize that the utility is bound by both the GSP as well as the approval of CDWR. As a result, it will be up to the utility to consult with CDWR prior to entering into storage agreements, if CDWR indicates it wishes to impose this requirement.

Following the issuance of GSP, it behooves CDWR to indicate what additional restrictions, outside of the GSP, it wishes to place on the utility.

**[Redacted]**.

Approval of Forward Purchases (beyond 6 months):

**[Redacted]**.

GSP's Presentation of Analytical Approach:

We agree with SDG&E that it is unrealistic and overly constricting to require that its GSP contain the exact decision rules for when, how, and how much it will hedge. Overall, however, we do however find the SDG&E GSP risk mitigation discussion to be inadequate. We would like to understand better SDG&E's thinking regarding the kinds of circumstances in which these tools would be more, or less, apt. **[Redacted]**.

**[Redacted]**

Storage Planning:

**[Redacted]**

The Commission is very concerned about the recent upward trend in natural gas prices, and the increasing volatility in natural gas prices. One of the reasons for these high prices and increasing volatility is the low level of natural gas in storage nationally. The lack of natural gas in storage by noncore customers was one of the contributing factors to high natural gas prices in California in 2000-2001. We believe that storage should be considered for use by the state's electric utilities as a hedge against high natural gas prices, particularly during the summer. The use of storage may be beneficial not only for a particular utility's customers, but for the state as a whole. It may help to lower the volume of flowing supplies that will be purchased during the summer, and thus help keep prices in check for the state as a whole.

At this point in time, we are already well into the summer, and we do not have an adequate record to determine in this resolution what would be an appropriate amount of storage for this summer. Nor do we have adequate information to say exactly how much storage capacity should be obtained. However, we will order

SDG&E and the other electric utilities to prepare a proposal and develop a strategy for their next Gas Supply Plans, due August 15, 2003, for possibly obtaining natural gas storage capacity as of April 1, 2004. This may include a proposal for minimum storage targets as of May 31, 2004.

Allocation of the Williams Gas Supply Contract:

**[Redacted]** In the GSP, SDG&E has asked the Commission to determine the allocation of the Williams contract, as this will have an impact on SDG&E's gas supply plans. We have not yet made this determination, but are currently reviewing the matter.

Invoices:

In the twelfth issue raised in its comments, CDWR maintains that SDG&E should be obligated to provide to CDWR invoices not more than five days before they are due. SDG&E points out that this may not always be possible. Recognizing the exigencies of both parties, we order that the GSP be modified to include a statement that the utility shall make a good faith effort to provide CDWR with invoices as early as possible and, whenever feasible, no later than five days before the payment due date. We invite the parties to report on their experience with respect to the processing of invoices in the next GSP filing.

In the thirteenth issue raised in its comments, CDWR supports, and SDG&E opposes, GSP language that affirms that SDG&E has the responsibility to verify invoices, even if the utility is not the Fuel Manager. As we do not have before us enough information to rule on this question, we will not at this time order an alteration to the GSP to reflect this change. But we will invite the parties to report on their experience with respect to the processing of invoices in the next GSP filing

Other Issues Raised by CDWR:

**[Redacted]**

In the ninth issue it has raised in its comments, CDWR objects to a statement in the GSP citing its obligations regarding credit establishment, pursuant to the Operating Order in D.02-12-069. CDWR maintains that it is not subject to the Operating Order. We will not at this time change the GSP with respect to this issue.

Affiliate Transactions:

In D.02-10-062 (on p.49) the Commission placed the utilities under a two year moratorium in dealing with affiliates with respect to procurement of energy related to the CDWR contracts. In procuring gas storage and transportation, SDG&E will need to deal with its affiliate SoCalGas. For purposes of this and other GSPs, a reasonable interpretation of the prohibition in D.02-10-062 is against dealings with affiliates not regulated by the CPUC. For gas procurement activities, the utilities may transact with their affiliates which are regulated by the CPUC. The affiliate transaction rules provide an appropriate and workable framework for these transactions.

Non-Tariffed Transactions:

**[Redacted]**

Evaluation of the Proposed Plan:

**[Redacted]**

Therefore, we will order SDG&E to undertake the procurement activities it has described as soon as practicable, with the understanding that much of the period to which the GSP applies has already passed.

Next Steps:

This resolution has called for substantially more description of the analytical approach to be taken by the utility in its decision-making process for gas procurement. Rather than asking that SDG&E incorporate the augmented analysis when it refiles this advice letter, we will ask that SDG&E incorporate the requested changes in its next GSP filing, on August 15, 2003. We will, however, order the utility to refile this advice letter incorporating the other changes ordered herein. For the remainder of this GSP cycle, we order the utility to commence, as soon as practicable, procurement activities, subject to the guidelines previously published by this Commission.

**COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(3) provides that this 30-day period may be reduced/waived by Commission adopted rule.

The 30-day comment period has been reduced per the directive issued in D. 02-12-069 and D.03-04-029, wherein we stated that, "the Energy Division will

prepare a resolution for Commission approval on an expedited basis.” (pp. 23-24, *mimeo*)

Timely comments on the Draft Resolution were submitted on July 3, 2003 by CDWR and by SDG&E. CDWR’s comments are generic and apply to the draft resolutions for each of the IOUs. CDWR is concerned about discrepancies between the various draft resolutions and would like to see common positions on five key issues.

First, CDWR asks that the resolutions include uniform language that recognizes that CDWR may impose additional requirements on the IOUs as CDWR’s limited agents. CDWR is satisfied that the language included in this draft resolution (E-3838) accurately describes its position on this matter. As copied and edited from pages 14 and 15 of the draft resolution, here is CDWR’s proposed language.

We have recognized in D.03-04-029 that "...in the event that DWR only authorizes a subset of what the Commission has approved, the utilities must operate within the limitations of DWR’s approval. Similarly, if the Commission rejects portions of the Gas Supply Plans that DWR would otherwise authorize, we expect the utilities to operate within the limitations of the Commission’s decision."... We recognize that the utility is bound by both the GSP as well as the approval of DWR... DWR is at liberty to impose additional restrictions and requirements outside the scope of the GSP.

Since this recommendation has been based on what already was included in the draft resolution, no further changes are required.

Second, CDWR seeks uniform treatment of its proposed Protocols as described in the following paragraph.

The Commission is not adopting DWR’s Fuels Protocols as part of the utilities’ Gas Supply Plan approval process. The Department has informed the Commission that it will provide the Commission a final copy of its Fuels Protocols once they are complete. To the extent that DWR’s Fuels Protocols only authorize a subset of what the Commission has authorized, utilities must operate within the limitations of DWR’s authorization.

Since it is not yet clear how the proposed Protocols will be handled, we have omitted the first sentence and added the last two in the discussion on Protocols in this final resolution.

Third, CDWR asks that the resolutions state that approval of the GSPs constitutes prior consultation between CDWR and the Commission for purposes of the Rate Agreement (included as an appendix to D.02-02-051). This draft resolution (E-3838) was silent on this issue. CDWR recommends the following language.

Commission approval of the utilities' GSPs constitutes "prior consultation" between DWR and the Commission for purposes of complying with D.02-02-051, Appendix C, the Rate Agreement, Article 1, Section 1.1, Definitions, "Priority Long-Term Power Contracts".

We agree with this assertion and have inserted the proposed language into the final resolution.

Fourth, CDWR asks that an erroneous statement regarding responsibility for paying invoices be corrected. We appreciate CDWR's observation and have corrected this error in the final resolution.

Fifth, CDWR reiterates its request to include language in the GSPs requiring that the utilities provide invoices at least five days prior to the payment due date. Recognizing the exigencies of both the utility and CDWR, we will order that the GSP be modified to include a statement that the utility shall make a good faith effort to provide CDWR with invoices as early as possible and, whenever feasible, no later than five days before the payment due date.

In general SDG&E supports the draft resolution, but recommends certain revisions. First, **[Redacted]**

Second, SDG&E asks for clarification of the discussion of the Williams Gas Supply Contract. This has been done in the final resolution.

Third, SDG&E asks that the final resolution reconsider the prohibition against affiliate dealings proposed in the draft resolution. In D.02-10-062 (p.50), the Commission had placed a two-year moratorium on dealings with affiliates. The draft resolution had interpreted this to include a prohibition of SDG&E dealings with its affiliate SoCalGas, while noting that such dealings were necessary for gas storage and transportation. As a way out of this dilemma, the draft

resolution proposed that SDG&E request a special waiver of the affiliate rules for purposes of the GSP. In its comments, SDG&E requests that the final resolution reinterpret the prohibition to be against unregulated affiliates, noting again its belief that it is essential to deal with SoCalGas in procuring gas storage and transportation. SDG&E notes that the currently-in-place affiliate transaction rules provide an appropriate and workable framework. In the event that the Commission were to continue to require a waiver, SDG&E asks that its comments be considered a formal request for a waiver. We agree with SDG&E that a reasonable interpretation of the prohibition in D.02-10-062 is against dealings with affiliates not regulated by the CPUC, and have reflected this in the final resolution.

### **REPLY COMMENTS**

Timely reply comments were submitted on July 8, 2003 by SDG&E and by CDWR.

In its reply comments, SDG&E first requests that the Commission reject the language proposed by CDWR dealing with the proposed Protocols. SDG&E believes that the original language in the draft resolution, denying mention of the Protocols in the GSPs because of their incompleteness, is adequate, sound, and should be retained. SDG&E points out what are apparently different visions for the place of the Protocols – SDG&E foresees the Protocols as embedded in the GSPs, while CDWR sees the Protocols as a separate, stand-alone document. We have retained the original language denying the Protocols, while adding two sentences offered by CDWR.

Second, SDG&E requests that the Commission reject the language proposed by CDWR which would require that SDG&E provide CDWR invoices no later than five days prior to the date on which payment is due. We have resolved this issue through compromise language, noted in the Comments section above.

In its reply comments, CDWR raises several points. First, CDWR explains that, by suggesting in earlier comments that approval of the GSP is not a pre-requisite for a utility to engage in gas procurement for CDWR contracts, it did not intend to undermine the purpose of the GSPs. CDWR is nevertheless concerned that SDG&E be authorized to engage in gas procurement for this procurement period as well as future ones, and proposes language to that effect. Since this resolution authorizes SDG&E to engage in gas procurement, and since D.03-04-029 (p.25)

already addresses the question of procurement between GSPs, we consider this issue moot and the proposed language unnecessary.

Second, CDWR argues that SDG&E's requests regarding **[Redacted]**

Third, CDWR objects to the clarification suggested in its comments by SDG&E regarding the Williams Gas Supply contract. We fail to understand why this matter should not be clarified, and consequently have done so in this final resolution.

In its fourth issue, CDWR addresses a concern with the draft resolution for the SCE GSP.

## **FINDINGS**

1. SDG&E filed Advice Letter 1489-E on April 17, 2003 requesting expedited approval of its Gas Supply Plan (GSP) for CDWR contract gas tolling provisions for the period of May 1, 2003 through September 30, 2003.
2. ORA filed comments on April 28, 2003 in support of the AL, with two requested modifications – that the CPUC encourage CDWR to provide SDG&E with limited power of attorney, and that SDG&E not interpret the Commission-approved CRT to be a “do not hedge zone.”
3. CDWR filed comments on April 28, 2003 on the procedures for serving the draft and pre-draft GSPs on parties, and also asking for more time to file additional substantive comments.
4. CDWR filed additional comments on May 2, 2003 addressing a variety of issues, including its proposed Protocols to further formalize the working relationship between SDG&E and CDWR, authorization requirements for gas procurement actions, and elaborated discussion in the GSP of SDG&E's hedging analysis.
5. On May 5, 2003, SDG&E filed a response to ORA's comments and to CDWR's first comments for the most part opposing their requests.
6. Since no party opposed CDWR's request to file additional comments, it is reasonable to accept CDWR's comments filed on May 2, 2003.
7. On May 9, 2003 SDG&E filed a response to CDWR's second set of comments. SDG&E opposed the bulk of CDWR's requests for changes to the GSP.
8. D.02-09-053 ordered SDG&E to administer several CDWR power contracts, some of which contain gas tolling provisions.

9. D.02-11-062 established minimum standards of behavior governing the utilities' administration of its generation resource portfolio, includes CDWR contracts.
10. SDG&E's GSP filed in AL 1489-E contains most of the elements specified in the Operating Order and the Operating Agreement.
11. CDWR's proposal for additional Protocols is incomplete and cannot be considered for addition to this GSP.
12. CDWR's proposed requirement that the utility seek CDWR approval **[Redacted]**, following the approval of this GSP, is inconsistent with D.02-12-069 at page 28.
13. As acknowledged by D.03-04-029 (at pages 24-25), the utility is bound by both the GSP and the direction of CDWR, and so it behooves CDWR, following the publication of the GSP, to notify the utility of any additional requirements it intends to impose upon the utility regarding its gas procurement activities.
14. Commission approval of the utilities' GSPs constitutes "prior consultation" between CDWR and the Commission for purposes of complying with D.02-02-051, Appendix C, the Rate Agreement, Article 1, Section 1.1, Definitions, "Priority Long-Term Power Contracts".
15. It is reasonable that the utility shall make a good faith effort to provide CDWR with invoices as early as possible and, whenever feasible, no later than five days before the payment due date.
16. For purposes of this and other GSPs, a reasonable interpretation of the prohibition in D.02-10-062 is against dealings with affiliates not regulated by the CPUC. For gas procurement activities, it is reasonable that the utilities may transact with their affiliates which are regulated by the CPUC. The affiliate transaction rules provide an appropriate and workable framework for these transactions.
17. It is reasonable for SDG&E to provide an augmented discussion and evaluation of the various available hedging tools, and an elaborated discussion of the analysis leading to a hedging decision.
18. It is reasonable to require SDG&E to modify its GSP to conform to the terms and conditions of the Operating Order and Operating Agreement, as interpreted in the discussion part of this resolution.
19. **[Redacted]**, it is reasonable for the utility to begin procuring gas for the allocated contracts as soon as practicable.

**THEREFORE IT IS ORDERED THAT:**

1. The SDG&E GSP, as proposed in Advice Letter AL 1489-E, is approved with modifications.
2. SDG&E shall undertake the procurement activities it has described in the GSP as soon as practicable, and no later than 30 days from today.
3. SDG&E is ordered to refile its GSP within ten (10) days of today.
4. The refiled GSP shall remove language in Section 3 of the GSP stating that SDG&E needs “power of attorney” prior to trading financial products.
5. The refiled GSP shall be modified to include a statement that the utility shall make a good faith effort to provide CDWR with invoices as early as possible and, whenever feasible, no later than five days before the payment due date.
6. For the GSP covering the period October 1, 2003 through March 31, 2004, SDG&E shall include an augmented discussion and evaluation of the various available hedging tools, and an elaborated discussion of the analysis leading to a hedging decision. This discussion shall also include a more in-depth consideration of storage.
7. Consonant with SDG&E’s proposal in its Advice Letter, subsequent GSPs shall cover six-month periods corresponding to quarterly breaks.
8. Subsequent GSPs shall be filed with the Commission six weeks prior to the period which they are intended to cover.
9. Subsequent GSPs shall be vetted with CDWR and the PRG at least ten days prior to their being filed with the Commission.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on July 10, 2003; the following Commissioners voting favorably thereon:

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WILLIAM AHERN  
Executive Director

MICHAEL R. PEEVEY  
President  
CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners