

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company (U 902-E) for a Certificate Of Public Convenience & Necessity Valley-Rainbow 500kV Inter-Connect Project.

Application 01-03-036
(Filed March 23, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON TRANSCRIPT CORRECTIONS, REQUESTS FOR
OFFICIAL NOTICE, MOTIONS TO ACCEPT LATE-FILED
EXHIBITS, AND IDENTIFYING REFERENCE EXHIBIT F**

1. Summary

All transcript corrections requested by San Diego Gas & Electric Company (SDG&E) and the California Independent System Operator (ISO), Appendices A and B respectively, except as discussed herein, are adopted. The motions for official notice, except with respect to Securities and Exchange Commission (SEC) filings, are granted. The motions for acceptance of late-filed exhibits are granted. Reference Exhibit F is marked for identification. This ruling also confirms that opening briefs are due July 12, 2002 and reply briefs are due August 5, 2002 as previously communicated by electronic mail.

2. Discussion

SDG&E and ISO submitted transcript corrections to me by letter on July 2, 2002 and July 8, 2002, respectively. No objections to the requested corrections were received. The first correction identified by ISO (page 813, line 13) should

instead be to page 814, line 13. With that modification, the requested corrections, which are appended to this ruling as Appendices A and B, are accepted.

I instructed parties make formal filings if they intended to seek official notice of any materials not previously identified as exhibits or reference items during evidentiary hearings. Requests for official notice were filed by Save Southwest Riverside County, City of Temecula, and Pechanga Development Corporation (jointly, SSRC) on June 21 and 24, 2002, by SDG&E on July 1, 2002, and by ISO on July 2, 2002. Copies of the materials were attached to each filing, except for two items requested by SDG&E. Each request is further described below.

SSRC requests official notice of (1) California Energy Commission *Distributed Generation Strategic Plan* (June 2002), (2) United States Department of the Interior, Bureau of Indian Affairs-Notice of Decision (March 21, 2002), (3) United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Indian Appeals, Pre-Docketing Notice and Order Staying Proceedings and Requiring Position Statements on the Use of Alternative Dispute Resolution (April 30, 2002), and (4) United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Indian Appeals, Order Lifting Stay, Consolidating Appeals, Taking Motion to Intervene under Advisement, and Allowing Response to Tribe's Motions (June 4, 2002). Rule 73 of the Commission's Rules of Practice and Procedure provides that "[o]fficial notice may be taken of such matters as may be judicially noticed by the courts of the State of California." California Evidence Code §452(c) provides that judicial notice may be taken of matters including "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." The items for which SSRC requests official notice all meet these criteria, thus I grant the requests to take official notice of these documents.

ISO requests official notice of the pro forma Reliability Must Run Agreement between ISO and certain generators. This document meets the criteria of California Evidence Code §452(c), and I grant the request for official notice.

SDG&E seeks official notice of (1) United States Senate Bill S. 2588 (introduced on June 5, 2002), (2) United States General Accounting Office report *Restructured Electricity Markets: Three States' Experiences in Adding Generating Capacity* (May 24, 2002), (3) published stock prices of publicly-traded companies with generation proposed for California/Baja California development, and (4) Securities and Exchange Commission (SEC) filings of such companies. The first two items meet the criteria of California Evidence Code §452(c), and I grant the request for official notice of these two documents. SDG&E does not provide copies of any particular documents for which it seeks official notice with respect to stock prices or SEC filings, but appears to seek the general ability to refer to any stock prices or SEC filings. Here, SDG&E relies on California Evidence Code §452(h) to support its request for official notice of these items. SDG&E argues that such information is not reasonably subject to dispute, and is capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy, and therefore it meets the criteria of California Evidence Code §452(h). I agree that stock price citations are readily ascertained by parties and not reasonably subject to dispute and grant SDG&E's request for official notice of stock prices.

SDG&E's request for official notice of SEC filings is more troubling, in part because SDG&E appears to plan to rely on citations from SEC filings, made by non-governmental third parties, as facts. (See SDG&E July 1, 2002 Motion, p. 5.) In *People v. Thacker* (175 Cal. App. 3d 594, *; 1985 Cal. App. LEXIS 2861, **), the Court found that it could not take judicial notice of materials prepared by private

individuals, even though they are on file with governmental agencies. In addition, the Court found that it could not take judicial notice of hearsay allegations as being true, just because they are a part of a court record or on file with a governmental agency. Rather, the Court may take judicial notice of the existence of such a document on file, but not to the truth of the matters asserted therein. Based on my review of the relevant case law, I deny SDG&E's request for official notice of SEC filings. However, in *Thacker*, the Court allowed copies of documents on file with applicable governmental agencies to be presented to the Court under the applicable rules of evidence. If SDG&E wishes to cite to SEC filings, it may make a motion to submit late-filed exhibits, concurrent with its opening brief, including copies of the relevant portions of the SEC filings. Consistent with treatment of several other exhibits received during the course of the proceeding, if SDG&E makes such motion, we will consider the SEC filings, not for the truth of the matters asserted, but as a statement of what the particular company reported. The weight to be given such statements can be argued by parties in their briefs.

SSRC filed three motions for acceptance of late-filed exhibits. The June 24, 2002 motion pertains to an 8-page document that constitutes SDG&E's June 19, 2002 response to SSRC counsel's request for additional information relating to the status of Calpine's interconnection agreement with SDG&E. I will mark this document for identification as Exhibit 316 on June 24, 2002. In the June 26, 2002 motion, SSRC seeks receipt of a copy of a 2-page fax dated June 26, 2002 received by counsel for SSRC from the County of San Diego regarding the status of the Otay Mesa Power Plant. I will mark this document for identification as Exhibit 317 on June 26, 2002. SSRC's third request, on July 1, 2002, is for a 5-page document dated June 13, 2002, prepared by Calpine pursuant to its agreement

with the California Department of Water Resources. I will mark this document for identification as Exhibit 318 on July 1, 2002.

SDG&E did not object to the exhibits I have identified as Exhibits 316 and 318, but objected to receipt of Exhibit 317. SDG&E's objections to admission of Exhibit 317 go to the weight that the Commission should accord the exhibit, which should be argued on brief, not to its admissibility. SDG&E argues that if I grant SSRC's request with respect to Exhibit 317, I should allow it to file an additional exhibit to respond to Exhibit 317. As SSRC points out in reply to SDG&E's opposition, SDG&E could have prepared a responsive exhibit and made a motion for acceptance of a late-filed exhibit, prior to the cut-off for such requests that I had established, but it chose not to do so. All three of the exhibits submitted by SSRC will be admitted into evidence. I remind the parties that the simple fact that these documents have been admitted as late-filed exhibits does not go to the significance or weight that the Commission will accord these materials. Parties must still argue on brief the value that the Commission should place on these items.

On June 14, 2002, consistent with a request I made during evidentiary hearings, SDG&E submitted an English translation of relevant sections of the Mexican electricity dispatch rules. A Spanish language version was distributed to parties at the evidentiary hearings. SDG&E prepared the English translation and parties had an opportunity to contest the accuracy of the translation. No party commented on the accuracy of the translation. This document is identified as Reference Item F.

IT IS RULED that:

1. The first correction identified by ISO (page 813, line 13) should instead be to page 814, line 13. With that modification, the requested corrections, appended to this ruling as Appendices A and B, are accepted.

2. The SSRC requests for official notice are granted.
3. The ISO request for official notice is granted.
4. The SDG&E requests for official notice are granted, except with respect to the request for official notice of SEC filings, which is denied.
5. SDG&E may file a motion for acceptance of late-filed exhibits concurrent with its opening brief, including copies of the relevant portions of the SEC filings.
6. Exhibit 316, 317, and 318 are marked for identification as described herein and admitted as of the date of this ruling.
7. SDG&E's request to submit a late-filed exhibit in response to Exhibit 317 is denied.
8. Reference Item F is marked for identification as of June 14, 2002.

Dated July 11, 2002, at San Francisco, California.

/s/ MICHELLE COOKE
Michelle Cooke
Administrative Law Judge

APPENDIX A

APPENDIX B

July 8, 2002

VIA Electronic Mail and U.S. Mail

Administrative Law Judge
Michelle Cooke
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

RE: Transcript Corrections: Docket # A.01-03-036, Application of San Diego Gas and Electric Company for a Certificate of Public Convenience and Necessity for the Valley-Rainbow 500 KV Interconnect Project

Dear Judge Cooke:

I mistakenly read your direction on transcript corrections to require corrections from the parties by July 8, 2002 (rather than on July 2 with objections by July 8). Below are my corrections. I respectfully request that they be accepted late. Additions are underlined and deletions are set forth in strike through.

Page 813, line 13 "generation connected to Imperial Valley, you may be able to ~~use~~ lose"

831 lines 25-26 "And as such, ~~we didn't feel~~ if it could be justified based on reliability, ~~we~~ we didn't feel an economic study was necessary."

832 lines 10 "undertake all the economic studies we'd like to undertake for"

841 line 15 "of the west is not then subject to the same mitigation rules,"

842 line 18 "rate, the highest costing unit that we dispatched in our last"

843, line 26 "September 30th, FERC has indicated quite strongly to us that this"

844, lines 11-12 "we're dealing with a localized transmission constraint, and where Resources are uniquely situated to exercise market power"

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855, line 10 “~~is~~ has additional cost. And when you bypass the heat recovery”

903, line 10 “the amount of generation and load. So you have to decrease”

918, line 17, “So I think the Federal Energy Regulatory Commission is really”

920, line 21 “argued that even in a full network model, a PJM ~~normal~~ nodal type”

930, line 1 “the projected ability of suppliers in ~~MP~~ NP 15 to”

931, line 17 “ I think that’s a plant that would be very economic”

Sincerely,

Jeanne M. Solé

Cc: Service List
Lynn Stanghellin

END OF APPENDIX B

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge’s Ruling on Transcript Corrections, Requests for Official Notice, Motions to Accept Late-Filed Exhibits, and Identifying Reference Exhibit F on all parties of record in this proceeding or their attorneys of record.

Dated July 11, 2002, at San Francisco, California.

/s/ ERLINDA PULMANO
Erlinda Pulmano

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission’s policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

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[Cooke Ruling Attachment A](#)