

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 VARIOUS MOTIONS AND MODIFYING SCHEDULE**

On November 30, 2001, I issued a ruling setting a schedule for this proceeding. That schedule identified that the Draft Environmental Impact Report (DEIR) was expected in August 2002. Due to the complexity of the alternatives analysis and issues surrounding the timeliness of data responses, this schedule will not be met. Rather than attempt to set a schedule at this time, once the DEIR is issued, I will establish the schedule for the second phase of this proceeding.

On July 24, 2002, the California Independent System Operator filed a motion for acceptance of a 2-page late-filed exhibit entitled "Actual and Projected ROA-RUM Flow Between 7/1/2001 and 7/2/2002." I will mark this document for identification as Exhibit 107 on July 24, 2002. No objections to admission of this document were raised and I will admit it.

On July 11, 2002, San Diego Gas & Electric Company (SDG&E) filed a motion for acceptance of a 2-page late-filed exhibit, a letter from Robert L. Lamkin of Calpine to James P. Avery of SDG&E. I will mark this document for identification as Exhibit 32 on July 11, 2002. On August 2, 2002, SDG&E filed a motion for acceptance of three late-filed exhibits. The first exhibit is a 5-page

document which includes a fax cover page, a 2-page letter dated August 1, 2002 from James E. Macias of Calpine to James P. Avery of SDG&E, and a copy of the letter marked as Exhibit 32. I will mark this document for identification as Exhibit 33 on August 2, 2002. The second exhibit is a 2-page letter dated August 2, 2002 from James P. Avery of SDG&E to Jim Macias of Calpine. I will mark this document for identification as Exhibit 34 on August 2, 2002. The third exhibit is a multi-page news release from Calpine dated August 1, 2002 titled "Calpine Reports Second Quarter 2002 Fully Diluted EPS of \$0.19." I will mark this document for identification as Exhibit 35 on August 2, 2002. SDG&E argues that these late-filed exhibits are relevant to our evaluation of whether or not the Otay Mesa project will be available to serve SDG&E customers.

Save Southwest Riverside County, the City of Temecula, and the Pechanga Development Corporation (collectively, SSRC) object to SDG&E's motion to admit Exhibit 32 because SDG&E's motion was made on July 11, 2002, the day before opening briefs were filed and after the deadline I established for submission of motions. SSRC argues there will be prejudice to parties other than SDG&E, because other parties were unable to address the exhibit in their opening briefs. In its August 2, 2002 motion SDG&E argues that because the proffered exhibits are specific statements by the Otay Mesa developer and an SDG&E witness, these late exhibits are appropriate.

I will grant the motion to accept late-filed Exhibits 33 and 35. Both exhibits are statements by the Otay Mesa project developer, Calpine, about the project status and financing situation. Because Exhibit 32 is attached to Exhibit 33, I will not separately admit Exhibit 32. I note, however, that the timing of both of SDG&E's motions was extremely prejudicial to other parties. I received the motion regarding Exhibits 33, 34, and 35 electronically after the close of business on Friday, August 2, 2002. Reply briefs were filed Monday, August 5, 2002.

Thus parties, with the exception of SDG&E, did not have the opportunity to address the proffered exhibits in their reply briefs. 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.

However, I will not admit Exhibit 34. Exhibit 34 is a response by an SDG&E witness to the Calpine letters identified as Exhibits 32 and 33. Exhibit 34 constitutes argument by SDG&E regarding the proper interpretation of the evidence in this case and how that evidence should be weighed in assessing whether Otay Mesa will be constructed. The proper place for SDG&E to make such argument is in its briefs not through a late-filed exhibit. SDG&E's motion for acceptance of late-filed Exhibit 34 is denied.

On August 5, 2002, the Electric Generator Alliance (Alliance) filed a petition to intervene. The Alliance is an ad hoc association of companies with interests in electric generation in California and for purposes of this proceeding, consists of Duke Energy North America and Dynegy Marketing and Trade. They seek to intervene in order to file a reply brief. I will grant the Alliance's motion to intervene.

On August 13, 2002, SDG&E filed a motion for acceptance of errata to citations in its August 5, 2002 Reply Brief. No opposition to motion was filed and I will grant the motion.

IT IS RULED that:

1. The Phase 2 schedule for this proceeding is suspended and a new schedule will be established following release of the Draft Environmental Impact Report.
2. Exhibit 107, 33, and 35 are marked for identification as described herein and admitted as of the date of this ruling.

3. Exhibit 32 and 34 are marked for identification as described herein but are not admitted.

4. The following entity is granted Interested Party status:

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5. SDG&E's motion for acceptance of errata to citations in its August 5, 2002 Reply Brief is granted.

Dated September 3, 2002, at San Francisco, California.

/s/ MICHELLE COOKE

Michelle Cooke

Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge’s Ruling on Various Motions and Modifying Schedule on all parties of record in this proceeding or their attorneys of record.

Dated September 3, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

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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.