

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN DIEGO GAS & ELECTRIC COMPANY for Authority Pursuant to Public Utilities Code Section 851 to Sell Certain Property in Its Transmission Corridor in the City of San Juan Capistrano in the County of Orange to Whispering Hills, LLC, to Realign Transmission and Distribution Lines Overhead on a Temporary Basis and Underground on a Permanent Basis and to Enter into Easements with Whispering Hills, LLC. (U 902-E)

Application 04-07-049
(Filed July 30, 2004)

**JOINT RULING OF ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE
REQUESTING ADDITIONAL INFORMATION**

Summary

This ruling directs San Diego Gas & Electric Company (SDG&E) to file and serve a copy of an agreement between SDG&E and Whispering Hills, LLC (Whispering Hills) that appears to be directly relevant to a contested issue in this proceeding, but is not presently part of the record. Parties are also provided an opportunity to comment on the significance of this agreement.

Background

In Decision (D.) 05-04-007, the Commission ordered SDG&E to renegotiate the sale price for certain utility property that SDG&E proposed to sell to Whispering Hills. SDG&E obtained a new appraisal for the property and used that new appraisal as the basis for a renegotiated sale price with

Whispering Hills. SDG&E submitted a Motion requesting the Commission approve the sale at a new price of \$287,967. Responses to SDG&E's Motion were filed by Whispering Hills, Mr. Mark Nielsen, Mr. Mike Mathewson, and the Commission's Office of Ratepayer Advocates.

In the new appraisal, the appraiser determined the market value of the land that SDG&E proposed to sell to Whispering Hills to be \$2,059,600, minus a deduction of \$961,228 for the cost of demolition and removal of the existing power lines on the land, for a total value of \$1,098,372. The appraiser also determined that the easements that SDG&E would receive from Whispering Hills have a market value of \$810,405. The difference between the value of the land (\$1,098,372) and the easements (\$810,405) is \$287,967. (SDG&E Motion, tab 2, pp. 26-27.)

Nielsen and Mathewson criticize the new appraisal submitted by SDG&E on a number of issues, including the deduction of \$961,228 for the cost of demolition and removal of the existing power lines and towers, arguing that the appraiser's deduction of the cost of removing the existing power lines shifts part of the cost of relocating the transmission lines from Whispering Hills to SDG&E's ratepayers.¹

SDG&E responds to Nielsen and Mathewson's criticism of the \$961,228 offset by offering this description of the transaction:

The appraisal clearly states that the Offset to the value of the SDG&E property arises from costs incurred by the Buyer to demolish and remove the improvements from the SDG&E property

¹ If Nielsen and Mathewson are correct, it would also shift part of the costs to SDG&E's shareholders, under the shared revenue allocation adopted in D.05-04-007.

(the “Removal Costs”). The purpose of the transaction is to sell the unimproved land to the Buyer. SDG&E could add the Removal Costs to the selling price and receive that added sum from the Buyer, but SDG&E would then pay out the Removal Costs to have the facilities removed. The net impact to SDG&E is the same as the transaction proposed here – SDG&E receives the value of the unimproved land. (SDG&E Reply, p. 2.)

Separate Agreement

In reviewing the record, we found the following language in the Purchase and Sale Agreement (Agreement) between SDG&E and Whispering Hills (attached as Tab 2 to the Application): “Buyer will pay Seller’s actual costs of this relocation pursuant to a *separate agreement not a part of this Agreement.*” (Agreement, Paragraph 16.1, emphasis added.)

Similar language appears in Paragraph 16.2: “After the Commission decision permitting the grading requested in Section 16.1 above and approving the sale of the Property (reserving the Reserved Easement to Seller), and *subject to the separate agreement between Buyer and Seller, not a part of this Agreement*, by which Buyer agrees to pay the total cost of the permanent relocation, Seller will relocate the Temporarily Relocated Facilities into the permanent underground and overhead Easement, attached as Exhibit C.” (*Id.*, emphasis added.)

Apart from this language, which on its face appears to be inconsistent with SDG&E’s position, we are concerned that the Agreement refers to a “separate agreement” between Buyer and Seller that does not appear to be a part of the record of this proceeding. We cannot properly evaluate the arguments of SDG&E, Nielsen, and Mathewson in the absence of a “separate agreement” that may directly address this contested issue.

IT IS RULED that:

1. San Diego Gas & Electric Company (SDG&E) shall file and serve the “separate agreement” referred to in Paragraphs 16.1 and 16.2 of the Purchase and Sale Agreement, no later than January 12, 2006.

2. All parties may file and serve comments on the meaning and significance of the “separate agreement” filed and served by SDG&E, no later than January 23, 2006.

Dated January 4, 2006, at San Francisco, California.

/s/ GEOFFREY F. BROWN
Geoffrey F. Brown
Assigned Commissioner

/s/ PETER V. ALLEN
Peter V. Allen
Administrative Law Judge

