

ALJ/MLC/avs

Decision 01-12-016 December 11, 2001

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

Application of San Diego Gas & Electric  
Regarding the Construction and Operation of a  
Second 230 kV Circuit on the Existing  
Transmission Line from Imperial Valley  
Substation to the International Border to  
Interconnect with the Commission Federal de  
Electricidad, Baja California Norte System.

Application 01-09-007  
(Filed September 4, 2001)

**INTERIM OPINION GRANTING SAN DIEGO GAS & ELECTRIC  
COMPANY'S REQUEST TO MODIFY THE TERMS OF DECISION 83-10-004**

**Summary**

This decision grants the request by San Diego Gas & Electric Company (SDG&E) to modify the terms of a certificate of public convenience and necessity (CPCN) granted in Decision (D.) 83-10-004. We do not approve SDG&E's request to relocate six support structures along the existing Imperial Valley-La Rosita transmission line to accommodate two proposed merchant transmission line projects at this time, but will reconsider the request upon receipt of adopted environmental documents from the federal government.

**Procedural Background**

On September 4, 2001, SDG&E served a petition to modify D.83-10-004, subsequently docketed as an application. SDG&E seeks to modify the terms of the certificate of public convenience and necessity to construct the Imperial Valley-La Rosita transmission line approved by this Commission in D.83-10-004. In addition, SDG&E seeks approval to move the location of six support structures along the Imperial Valley-La Rosita transmission line to accommodate

two proposed merchant transmission line projects. SDG&E requested expedited review of its application. Included with its application was a copy of the draft environmental assessment performed by the United States Department of Energy (DOE), in cooperation with the United States Department of the Interior (DOI) and the Bureau of Land Management (BLM).<sup>1</sup> DOE has not yet finalized its environmental assessment nor has DOE issued findings regarding the impacts of the project.

The assigned Administrative Law Judge (Administrative Law Judge) issued a ruling on September 12, 2001, shortening the protest period for the application. No protests were filed, but two parties filed Responses to the Application, Save Southwest Riverside County (SSRC) and Coral Power, L.L.C. (Coral).<sup>2</sup> SDG&E filed a reply to the responses.

**D.83-10-004**

D.83-10-004 authorized SDG&E to construct a single circuit 230 kilovolt (kV) transmission line between its existing Imperial Valley Substation and the La Rosita Substation in Mexico. Five miles of the line are on the United States side of the border and four miles on the Mexico side of the border. Although SDG&E was authorized to construct the transmission line on double circuit tower structures, D.83-10-004 prohibited SDG&E from adding a second circuit to the Imperial Valley-La Rosita transmission line until certain conditions were satisfied.

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<sup>1</sup> DOE, BLM, and DOI conducted an environmental review of the two merchant transmission projects. Relocation of the six SDG&E support structures was specifically included within the scope of environmental review.

<sup>2</sup> ALJ Resolution 176-3071 preliminarily determined that the application was expected to go to hearing. Because no formal protests were filed, hearings are unnecessary.

Finding of Fact 16 and Ordering Paragraph 5 of D.83-10-004 state that SDG&E was not to add a second circuit to the transmission line until a contract (or contracts) for purchase of an additional 220 megawatts (MW) of firm power between the Commission Federal de Electricidad (CFE) and SDG&E and/or Southern California Edison (SCE) was executed and provided to this Commission. SDG&E constructed the Imperial Valley-La Rosita transmission line as authorized and until this application, has not sought to modify this condition.

### **Relocation of Facilities**

Although SDG&E does not focus on the relocation of its facilities in great detail, it is clear from the application and associated environmental documents, that the relocation is not required in order to add a second circuit to the Imperial Valley-La Rosita transmission line, but rather to accommodate the interconnection of two new merchant transmission projects. Baja California Power, Inc. (Baja)<sup>3</sup> and Sempra Energy Resources (Resources) are each proposing to construct double circuit 230 kV transmission lines to the United States-Mexico border in order to connect transmission and generating facilities in Mexico with the electricity grid in California. Part of the proposed projects includes relocating approximately six poles of SDG&E's existing Imperial Valley-La Rosita transmission line in order to facilitate an easier interconnection of the Baja and Resources transmission lines to the Imperial Valley Substation.

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<sup>3</sup> Baja is a subsidiary of InterGen Aztec Energy III, B.V.

SDG&E's application addressed assignment of costs associated with relocation of its facilities in order to facilitate interconnection of the two merchant transmission and generation projects. In addition, there may be additional environmental mitigation costs required as a result of this relocation. SDG&E has clarified that any costs associated with relocation of SDG&E facilities, be they planning, engineering, design, construction, or mitigation related, shall not be borne by SDG&E ratepayers.

Authority to construct the two proposed transmission lines is subject to approval of a Presidential Permit by DOE.<sup>4</sup> The planned project route for both the Baja and Resources transmission lines lie entirely within land managed by BLM. DOE is conducting environmental review of the two projects as the lead agency under the National Environmental Policy Act of 1969 (NEPA), with BLM and DOI operating as cooperating agencies. As part of the review, DOE, BLM, and DOI are studying the environmental impacts of relocation of SDG&E's transmission facilities.

Construction of the merchant transmission projects and the related relocation of SDG&E's facilities were reviewed under the DOE's authority established in Executive Order No. 10485, and amended by Executive Order No. 12038, and 10 CFR § 205.320 *et seq.* (2000). Environmental review of the project is conducted in accordance with NEPA as codified at 10 CFR § 1021. In order to grant a Presidential Permit, DOE must determine if a proposed project is consistent with the public interest by assessing the environmental impacts and

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<sup>4</sup> A Presidential Permit is required for a company in the United States to connect an electrical transmission line with a transmission line from Mexico at the United States border.

the impacts of the project on the operating reliability of the United States electric supply system.

### **Discussion**

We have two separate and separable questions before us. First, should the condition imposed in D.83-10-004 be eliminated? Second, should SDG&E be granted authority to relocate certain facilities in order to accommodate merchant transmission facilities? We will discuss each question in turn.

The crux of SDG&E's application with respect to the first question is that the condition requiring execution of a contract between SDG&E or SCE and CFE has been superseded by time and market conditions. SDG&E argues that restricting the addition of the second circuit to the Imperial Valley-La Rosita transmission line to execution of a contract between a limited pool of buyers and sellers (SDG&E, SCE, and CFE) is not practical in today's market.

Coral supports SDG&E's application. Coral argues that evidence developed in Investigation 00-11-001 demonstrates that as much as 3,500 megawatts of new generation will be on-line in northern Mexico by 2005. Coral suggests that only some of the proposed new generation can be accommodated by the addition of a second circuit to the Imperial Valley-La Rosita transmission line. SSRC does not support or oppose SDG&E's application, but notes that SDG&E has provided little information to justify the addition of a second circuit to the existing line.

We agree with SDG&E that the structure of California's electric market today is very different from when the condition imposed in D.83-10-004 was adopted. SDG&E is no longer the exclusive power procurement agent for its ratepayers as contemplated by the 1983 condition. Addition of a second circuit to the Imperial Valley-La Rosita transmission line would assist the state by

allowing more flexible procurement choices and the potential to interconnect with generating facilities in Mexico. For these reasons, it is appropriate to eliminate the condition imposed by Finding of Fact 16 and Ordering Paragraph 5 based on changed market conditions.

At the time that SDG&E received its CPCN to construct the Imperial Valley-La Rosita transmission line, it was contemplated that a second circuit would be added to the line. The Final Environmental Impact Report prepared for the original CPCN request described the project as being constructed on double circuit steel lattice towers. Initial construction included a single circuit, with the second circuit to be added later, but environmental review of the project occurred for the project as a whole. D.83-10-004 explicitly rejected a request that SDG&E be required to seek further Commission approval to add the second circuit. Instead, the Commission adopted the condition SDG&E now seeks to modify. For this reason, no additional environmental review is required prior to the addition of a second circuit to the Imperial Valley-La Rosita transmission line. This conclusion is specific to the set of facts before us in this case and sets no precedent for future cases. SDG&E must abide by all mitigation and monitoring measures adopted in D.83-10-004 and obtain any necessary permits required by local, state, or federal agencies for installation of the second circuit prior to construction. A copy of this decision will be placed in the formal file of A.82-09-28 to reflect this modification.

Next we turn to the question of whether to allow SDG&E to relocate six transmission support structures to accommodate merchant transmission projects. SDG&E states that relocation of SDG&E's existing transmission facilities will facilitate the installation of additional transmission capacity to serve the state. Coral supports relocation of the SDG&E facilities to accommodate

construction and interconnection of the two merchant transmission lines. Coral believes that direct connection of the generators in northern Mexico to California's grid is necessary to allow additional power to flow to California. Coral points out that, even with the addition of another circuit to the existing SDG&E transmission line, not all of the planned generation in northern Mexico can be served by SDG&E's system. Coral argues that the Commission should not prejudge the allocation of relocation costs at this time.

State and local agencies are encouraged to use NEPA documents if the NEPA process is proceeding more quickly than California Environmental Quality Act (CEQA) review and the process complies with CEQA. (CEQA Guidelines § 15221.) In this case, DOE has prepared a Draft Environmental Assessment for the project, but has not yet adopted findings regarding the environmental impacts of the project. We will await finalized environmental documentation from DOE before we decide whether to allow SDG&E to relocate the poles as requested. SDG&E shall file the finalized environmental documents for the merchant transmission projects with the Commission.

### **Request for Protection**

SDG&E sought protection for Appendix D of the Draft Environmental Assessment. Appendix D contains detailed information containing the location and contents of historic and prehistoric sites within the project area. The protection request is consistent with that required of Native American graves, cemeteries, and sacred places under Government Code § 6254(r) and we will approve the requested protection. Unlike most information for which protection is sought, the information included in Appendix D will continue to remain sensitive over time. Therefore we will retain the material under seal in perpetuity without requiring SDG&E to renew its request for protection.

### **Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **Findings of Fact**

1. This proceeding does not require that hearings be held.
2. The structure of California's electric market today is very different from when Finding of Fact 16 and Ordering Paragraph 5 were adopted in 1983.
3. Addition of a second circuit to the Imperial Valley-La Rosita transmission line would assist the state by allowing more flexible procurement choices and the potential to interconnect with generating facilities in Mexico.
4. Government Code § 6254(r) exempts from public disclosure public records of Native American graves, cemeteries, and sacred places.

### **Conclusions of Law**

1. State and local agencies are encouraged to use NEPA documents if the NEPA process is proceeding more quickly than CEQA review and the process complies with CEQA.
2. It is appropriate to eliminate the condition imposed by Finding of Fact 16 and Ordering Paragraph 5 based on changed market conditions.
3. No additional environmental review is required prior to the addition of a second circuit to the Imperial Valley-La Rosita transmission line.
4. SDG&E should abide by all mitigation and monitoring measures adopted in D.83-10-004 and obtain any necessary permits required by local, state, or federal agencies for installation of the second circuit prior to construction.
5. Appendix D of the Draft Environmental Assessment should remain sealed and should not be disclosed to anyone other than Commission staff except upon



further order or ruling of the Commission, the Assigned Commissioner, the assigned ALJ or the ALJ then designated as Law and Motion Judge.

### **INTERIM ORDER**

**IT IS ORDERED** that:

1. Under Rule 6.6 of the Commission's Rules of Practice and Procedure, this order is a final determination that a hearing is not needed in this proceeding.
2. Decision (D.) 83-10-004 is modified to eliminate Finding of Fact 16 and Ordering Paragraph 5.
3. SDG&E shall abide by all mitigation and monitoring measures adopted in D.83-10-004 for installation of the second circuit on the Imperial Valley-La Rosita transmission line and shall obtain any necessary permits required by local, state, or federal agencies prior to construction.
4. Appendix D of the Draft Environmental Assessment shall remain sealed and shall not be disclosed to anyone other than Commission staff except upon further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ) or the ALJ then designated as Law and Motion Judge.
5. A copy of this decision shall be placed in the formal file for A.82-09-28 to reflect this modification.
6. SDG&E shall file a copy of the finalized environmental documents for the merchant transmission projects with the Commission in this docket.

This order is effective today.

Dated December 11, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners