

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

San Diego Gas & Electric Co.

Docket No. ER05-1070-001

San Diego Gas & Electric Co.

Docket No. ER05-1071-001  
(not consolidated)

ORDER DENYING LATE MOTION TO INTERVENE AND  
DISMISSING REHEARING REQUEST

(Issued September 22, 2005)

1. In this order, we deny Imperial County, California's (Imperial County) motion for leave to intervene out-of-time and dismiss its request for rehearing of the Commission's July 29, 2005 Order in Docket Nos. ER05-1070-000 and ER05-1071-000.<sup>1</sup> That order accepted, in Docket No. ER05-1070-000, Amendment No. 1 (TDM Amendment) to the Interconnection Agreement between San Diego Gas & Electric Company (SDG&E) and Termoeléctrica de Mexicali S. de R. L. de C.V. and Termoeléctrica U.S., LLC (collectively TDM),<sup>2</sup> and in Docket No. ER05-1071-000, Amendment No. 1 (Baja

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<sup>1</sup> *San Diego Gas & Electric Co.*, 112 FERC ¶ 61,149 (2005) (July 29, 2005 Order).

<sup>2</sup> The TDM Interconnection Agreement is designated as Service Agreement No. 18 to SDG&E's FERC Electric Tariff, Second Revised Vol. No. 6. Service Agreement No. 18 was accepted for filing by Letter Order in Docket No. ER03-217-001, dated May 6, 2003.

Amendment) to the Interconnection Agreement between SDG&E and Baja California Power, Inc. (Baja).<sup>3</sup>

### **Background**

2. The TDM Amendment and Baja Amendment (collectively Amendments) reflected revised remedial action scheme (RAS) requirements as a result of the completion of the new 230 kV Miguel-Mission #2 transmission line. Specifically, SDG&E revised the Interconnection Agreements with TDM and Baja to provide for a revised list of contingencies related to RAS Requirements. SDG&E filed the Amendments on June 3, 2005. Notice of SDG&E's filing was published in the *Federal Register*, 70 Fed. Reg. 35,244 (2005), with comments, protests and interventions due on or before June 24, 2005. The Commission issued the order accepting the Amendments on July 29, 2005, which granted waiver of the sixty-day prior notice requirement to permit the proposed Amendments to become effective on June 4, 2005.

3. On August 1, 2004, Imperial County filed a motion to intervene out-of time in Docket No. ER05-1071-000.<sup>4</sup> On August 23, 2005, Imperial County filed a renewed motion to intervene out-of-time in Docket No. ER05-1071-000, a motion to intervene out-of-time in Docket No. ER05-1070-000 and a request for rehearing of the July 29, 2005 Order. In support of its motions to intervene out-of-time, Imperial County states that it does not frequently participate in proceedings before the Commission and had to familiarize itself with Commission procedures after it learned of the filing. It also contends that as soon as it became aware of the proceeding, it took the necessary steps to intervene in the proceeding.

4. Further, although Imperial County admits that the fact that its initial protest was filed after the Commission had approved the Amendments may cause some disruption to the proceeding, it contends that it has raised only one substantive issue in the motion and that the importance of the issue raised, along with Imperial County's unique interest in resolving the issue, should outweigh any disruption that may occur.

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<sup>3</sup> The Baja Interconnection Agreement is designated as Service Agreement No. 14 to SDG&E's FERC Electric Tariff, Second Revised Vol. No. 6. Service Agreement No. 14 was accepted for filing by Letter Order in Docket No. ER02-1180-000, dated April 17, 2002.

<sup>4</sup> Although the motion to intervene was dated July 29, 2005, and was filed electronically the same day, a Friday, it was officially accepted for filing by the Commission on August 1, 2005.

5. In its initial protest, as renewed in its request for rehearing, Imperial County states that energy sector sources, including the generators across the U.S.-Mexican border from Imperial County, are a noticeable source of air pollution in Imperial County and, because of the adverse effects of air pollution, requests that the Commission condition approval of the Amendments on SDG&E's agreement to cooperate with Imperial County to improve monitoring and reduction of pollutant emission from the Baja generating plant, to the extent that increased levels of generation are associated with the Amendments. Imperial County renewed this request in its request for rehearing.

### **Discussion**

6. We will deny Imperial County's motion to intervene out of time and dismiss the request for rehearing.

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), we will deny Imperial County's motion to intervene in this proceeding for failure to demonstrate good cause warranting late intervention. The Commission has found that parties seeking to intervene in a proceeding after issuance of a Commission determination bear a heavy burden. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for the granting of such late intervention. Imperial County has not met its burden of justifying late intervention.<sup>5</sup>

8. As previously noted, notice of SDG&E's June 3, 2005 filing was published in the *Federal Register*. Publication of notice in the *Federal Register* provides constructive, and adequate, notice.<sup>6</sup> Further, Imperial County, like all entities appearing before the Commission, is held responsible for being familiar with the agency's regulations.<sup>7</sup>

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<sup>5</sup> *Midwest Independent Transmission System Operator Inc.*, 102 FERC ¶ 61,250 at P 7 (2003).

<sup>6</sup> *Point Arguello Natural Gas Line Co.*, 31 FERC ¶ 61,257 at 61,501, *reh'g dismissed*, 32 FERC ¶ 61,130 (1985); *Pontook Operating Limited Partnership v. Public Service Company of New Hampshire*, 94 FERC ¶ 61,144 at 61,550 & n.6 (2001).

<sup>7</sup> *See, e.g., Dr. Daniel C. Merrill*, 43 FERC ¶ 61,264 (1988) (entities appearing before the Commission are charged with knowledge of its regulations); *Dunn & McCarthy, Inc.* 40 FERC ¶ 61,359 (1987); *Bluestone Energy Design, Inc.* 24 FERC ¶ 61,118 (1983). *See also Smith Falls Hydropower*, 66 FERC ¶ 61,085 (1994).

9. As Imperial County is not a party to this proceeding, it may not seek rehearing of the July 29, 2005 Order and its request for rehearing will be dismissed on that basis. Further, even if the Commission were to entertain Imperial County's request for rehearing, it would be denied. The potential environmental effects of the generators interconnected with SDG&E's transmission system are beyond the scope of this Commission's analysis under the Federal Power Act of the interconnection agreements or Amendments thereto.

The Commission orders:

(A) Imperial County's motion to intervene is hereby denied, as discussed in the body of this order.

(B) Imperial County's request for rehearing is hereby dismissed, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.