

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
Company

Docket No. ER99-3426-005

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS

(Issued April 5, 2006)

1. On January 31, 2006, San Diego Gas & Electric Company (SDG&E) filed an updated market power analysis. SDG&E also filed revisions to its market-based rate tariff to incorporate the Commission's change in status reporting requirement,¹ correct an erroneous designation in SDG&E's tariff and correct typographical errors in the market behavior rules.² As discussed below, in this order, we conclude that SDG&E satisfies the

¹ *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005), 110 FERC ¶ 61,097 *order on reh'g*, 111 FERC ¶ 61,413 (2005).

² On February 16, 2006, the Commission issued an order rescinding market behavior rules 2 and 6, effective February 27, 2006. *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 114 FERC ¶ 61,165 (2006). On that date, the Commission also adopted a final rule codifying market behavior rules 1, 3, 4 and 5 in the Commission's regulations, effective February 27, 2006. *Conditions for Public Utility Market-Based Rate Authorization Holders*, Order No. 674, 71 Fed. Reg. 9,695 (Feb. 27, 2006), 114 FERC ¶ 61,163 (2006). As a result, the market behavior rules no longer will be part of sellers' market-based rate tariffs.

Commission's standards for market-based rate authority. We also will accept the change in status and designation tariff revisions.³ SDG&E's next updated market power analysis is due within three years from the date of this order.

Background

2. SDG&E is a regulated utility that provides electric and natural gas service to retail customers in San Diego and Orange Counties in California. SDG&E is a wholly-owned subsidiary of Enova Corporation, which in turn is a wholly-owned subsidiary of Sempra Energy (Sempra). Through various subsidiaries and affiliates, Sempra provides electric, natural gas, and energy-related products and services to customers. SDG&E states that it conveyed operational control over its transmission facilities to the California Independent System Operator Corporation (CAISO) and is a Participating Transmission Owner in the CAISO.

3. On January 31, 2006, SDG&E submitted for filing an updated market power analysis pursuant to the Commission's orders granting SDG&E market-based rate authority.⁴

4. SDG&E states that its resources total 3,694 MW in the CAISO market, including a 20 percent ownership share (454 MW) in the SONGS nuclear power plant, a long-term contract to purchase 88 MW from Portland General Electric Company, California Department of Water Resources power supply contracts allocated to SDG&E by the California Public Utilities Commission (California Commission) totaling 2,747 MW, contracts with qualifying facilities totaling 230 MW and contracts with renewable

³ FERC Electric Tariff, Original Vol. No. 10, First Revised Sheet No. 1 (Supersedes Substitute sheet No. 1) and Original sheet No. 2A.

⁴ See, e.g., *San Diego Gas & Electric Co.*, Docket No. ER03-418-000 (April 17, 2003) (unpublished letter order).

resources totaling 175 MW.⁵ In addition, SDG&E states that its affiliates own a total of 1,223 MW in the CAISO market.⁶

Notice of Filings and Responsive Pleadings

5. Notice of SDG&E's January 31, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 8,296 (2006), with interventions or protests due on or before February 21, 2006. None was filed.

Discussion

Market-Based Rate Authorization

6. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers

⁵ SDG&E also identifies several affiliates that own generating facilities outside of the CAISO in the control areas of Nevada Power Company (the 480 MW El Dorado generating station), the Bonneville Power Administration (Moses Lake Generating LLC's 60 MW generation facility) and in Arizona (Mesquite Power, LLC's 1,250 MW generation facility). For purposes of SDG&E's market-based rate authority, it is not necessary at this time to consider these facilities because they are outside the CAISO market and each of these affiliates has market-based rate authorization granted by the Commission separate from the market-based rate authorization granted to SDG&E. We note that each of these affiliates has market-based rate authority and is on a separate schedule for filing updated market power analyses. *See El Dorado Energy, LLC*, 85 FERC ¶ 61,006 (1998) (next triennial review is due by August 17, 2007); *Moses Lake Generating LLC*, Docket No. ER01-1871-000 (June 22, 2001) (unpublished letter order) (next triennial review is due by August 17, 2007); *Mesquite Power, LLC*, Docket No. ER03-427-000, (April 3, 2003) (unpublished letter order) (triennial review filed January 10, 2006).

⁶ SDG&E's affiliate Termoeléctrica U.S., LLC received market-based rate authority for the 600 MW Termoeléctrica de Mexicali generating facility in *Termoeléctrica U.S., LLC*, 102 FERC ¶ 61,024 (2003). SDG&E's affiliate Elk Hills Power, LLC received market-based rate authorization for the 623 MW Elk Hills generating facility in *Elk Hills Power, LLC*, Docket No. ER03-394-000 (March 21, 2003) (unpublished letter order).

whether there is evidence of affiliate abuse or reciprocal dealing.⁷ As discussed below, the Commission concludes that SDG&E satisfies the Commission's standards for market-based rate authority.

Generation Market Power

7. In the Commission's order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), we adopted two indicative screens for assessing generation market power. SDG&E has prepared both the pivotal supplier and the wholesale market share screens for generation it and its affiliates own or control in the CAISO market. SDG&E states that it passes the pivotal supplier screen and the wholesale market share screen in the CAISO market.

8. The Commission has reviewed SDG&E's generation market power analysis and has determined that SDG&E passes the wholesale market share screen and the pivotal supplier screen in the CAISO market. Accordingly, the Commission finds that SDG&E satisfies the Commission's generation market power standard for the grant of market-based rate authority.

Transmission Market Power

9. SDG&E states that it conveyed operational control over its transmission system to the CAISO, which has an open access transmission tariff on file with the Commission.⁸ SDG&E states that neither it nor its affiliates own any transmission facilities other than limited generation interconnection facilities and therefore do not have the ability to exercise transmission market power.⁹ Further, no intervenors have raised transmission market power concerns. Based on SDG&E's representation, the Commission finds that SDG&E satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

⁷ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

⁸ *Pacific Gas and Electric Co.*, 81 FERC ¶ 61,122 (1997).

⁹ See *PJM Interconnection, L.L.C.*, 92 FERC ¶ 61,178 (2000).

Barriers to Entry

10. SDG&E states that it and its affiliates may own or control (for their own use) generation sites or resources for the development of new generation plants, but neither it nor its affiliates have the means to exclude others from the relevant markets and cannot monopolize the market for new generation. SDG&E states that it and its affiliate Southern California Gas Company (SoCalGas) own and operate intrastate natural gas pipelines and local distribution facilities, which can be and are used to deliver natural gas to customers throughout southern California, but this does not raise issues with regard to barriers to entry. SDG&E states that it also owns and operates a natural gas distribution system in the San Diego market. SDG&E states that both SoCalGas and SDG&E are required to operate their systems in accordance with the nondiscriminatory open-access requirements of the California Commission. SDG&E further states that the Commission and the California Commission have imposed strict conditions on interactions between regulated Sempra entities, such as SoCalGas and SDG&E, to prevent the exercise of vertical market power. Further, no intervenors have raised barrier to entry concerns. Based on SDG&E's representations, the Commission is satisfied that SDG&E cannot erect barriers to entry. However, should SDG&E or any of its affiliates deny, delay, or require unreasonable terms, conditions, or rates for natural gas service to a potential electric competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of SDG&E's authority to sell power at market-based rates.¹⁰

Affiliate Abuse

11. SDG&E states that in connection with the merger which formed Sempra, both the Commission and the California Commission required extensive conditions to protect competition and prevent potential affiliate abuse. SDG&E states that it and its market-based rate affiliates are subject to the Commission's code of conduct. SDG&E's tariff prohibits sales to an affiliate with a franchised service territory without first receiving Commission acceptance of the proposal, pursuant to a separate filing under section 205 of the Federal Power Act. SDG&E states that given these protections, along with the protections implemented by the Commission in Order No. 2004,¹¹ SDG&E cannot

¹⁰ See, e.g., *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

¹¹ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161 (2004), *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166

(continued...)

engage in affiliate abuse or reciprocal dealing. In addition, no intervenors have raised affiliate abuse concerns. Based on SDG&E's representations, the Commission finds that SDG&E satisfies the Commission's concerns with regard to affiliate abuse.

Reporting Requirements

12. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.¹² Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹³

13. In Order No. 664, the Commission stated that it no longer intends to grant waivers of the full requirements of Part 45 in its orders granting market-based rate authority. Rather, persons seeking to hold interlocking positions will be required henceforth to comply with the full requirements of Part 45.¹⁴ With respect to an individual who currently is authorized to hold interlocking positions, that individual will not need to refile under the full requirements of Part 45 to continue to hold such interlocking

(2004), *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, FERC Stats. & Regs. ¶ 31,155 (2005).

¹² *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

¹³ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2005). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

¹⁴ *Commission Authorization to Hold Interlocking Positions*, Order No. 664, 70 Fed. Reg. 17,219 (September 23, 2005), FERC Stats. & Regs. ¶ 31,194 at P 34 (2005), *order on reh'g*, Order No. 664-A, 114 FERC ¶ 61,142 (2006).

positions (unless and until that individual assumes different or additional interlocking positions).¹⁵ Thus, consistent with Order No. 664, SDG&E will be required to comply with the full requirements of Part 45.

14. SDG&E must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.¹⁶ Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. We will accept SDG&E's tariff revisions which include the change in status reporting requirement.

15. SDG&E states that, effective January 1, 2007, approximately 1,200 MW of the power supply contracts totaling 2,747 MW which are allocated to SDG&E by the California Commission will be reallocated from SDG&E to Southern California Edison Company. SDG&E requests that the Commission confirm SDG&E's understanding that it is obligated to submit a change in status filing reflecting additions to its generation portfolio only to the extent that such additions result in a net increase of 100 MW or greater to the portfolio encompassed by SDG&E's January 31, 2006 filing. SDG&E's understanding is correct.

16. SDG&E is directed to file an updated market power analysis within three years of the date of this order. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) SDG&E's updated market power analysis is hereby accepted, as discussed in the body of this order.

(B) SDG&E's tariff revisions reflecting the change in status reporting requirement are revised tariff designation hereby accepted, as discussed in the body of this order.

¹⁵ Order No. 664, FERC Stats. & Regs. ¶ 31,194 at P 36.

¹⁶ Order No. 652, FERC Stats. & Regs. ¶ 31,175 (2005).

(C) SDG&E's next updated market power analysis is due within three years from the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.