

137 FERC ¶ 61,041
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

San Diego Gas & Electric Company

Docket No. ER11-4318-000

ORDER ON ANNUAL FORMULA RATE FILING, DIRECTING ACCOUNTING
CHANGE AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued October 14, 2011)

1. On August 15, 2011, San Diego Gas & Electric Company (SDG&E) filed its annual Transmission Owner (TO) formula rate mechanism informational filing as required by a previously approved settlement.¹ As discussed below, in this order we reject SDG&E's proposed accounting treatment for its Wildfire Property Costs. Additionally, because SDG&E's filing raises issues of material fact, we will accept the filing, effective September 1, 2011, subject to refund, and establish hearing and settlement judge procedures.

I. Background

2. Pursuant to the terms of SDG&E's TO3 Settlement, which is in effect from July 1, 2007 through August 31, 2013, SDG&E is required to file annually an informational filing that reflects adjustments to its transmission formula rate mechanism based on certain recorded and estimated costs.² The rates established under these annual filings take effect beginning September 1 of the current year and run through August 31 of the following year. Additionally, the approved settlement includes a rate moratorium on certain changes to the underlying transmission rate formula. Under Article I, section 1.4 of the approved settlement, SDG&E must demonstrate that the costs contained in its annual informational filing were prudently incurred, accurate, and are recovered

¹ See *San Diego Gas & Electric Company*, 119 FERC ¶ 61,169 (2007) (TO3 Settlement).

² SDG&E Explanatory Statement in Support of Offer of Settlement, Docket No. ER07-284-000, Article I, section 1.1 at 5 (March 28, 2007).

consistent with the TO3 formula rate mechanism.³ Details of SDG&E's August 15, 2011, TO3 Cycle 5 filing are discussed below.⁴

II. SDG&E's Filing

3. SDG&E states that its TO3 Cycle 5 formula rates include a revised base transmission revenue requirement reflecting the following components: (1) base period revenue requirements for the 12-month period ending December 31, 2010; (2) forecast period capital addition revenue requirement for the 17-month period April 2011 through August 2012; (3) true-up adjustment for the 12-month true-up period ending March 31, 2011; and (4) an interest true-up adjustment. SDG&E states that, for the 12-month rate effective period from September 1, 2011 through August 31, 2012, it will collect \$409.1 million in revenue from wholesale customers as compared to revenue of approximately \$317.8 million under currently effective rates. SDG&E explains that this represents an annual increase of \$96.3 million, or a 30.79 percent increase for the rate effective period.⁵

4. SDG&E states that the base transmission revenue requirement in its Cycle 5 filing includes, among other things, the inclusion in the forecast period of approximately \$518 million of weighted capitalized costs for its Sunrise Powerlink project; other transmission plant additions in both the Cycle 5 2010 base year and the forecast period (i.e., April 1, 2011 through August 31, 2012); the premium costs for new transmission-related wildfire liability insurance; an increase in the true-up adjustment reflecting inverse condemnation expenses associated with the Witch Fire uninsured third party property losses (Wildfire Property Costs); and an under-collection due to lower recorded sales in the true-up period.

5. SDG&E further states that the TO3 Cycle 4 formula currently in effect allows recovery of wildfire liability insurance premiums and associated costs, properly recorded in Account 925, and allocates these costs based upon labor ratios to its operating functions. In this filing SDG&E proposes a different account treating for its Wildfire Property Costs. SDG&E claims that its proposed accounting treatment for the Wildfire Property Costs reflects the nature of the inverse condemnation claims brought by the affected landowners. SDG&E contends that inverse condemnation and the resulting costs to SDG&E are appropriately classified under the Uniform System of Accounts as

³ *Id.* at 6.

⁴ SDG&E uses the term "Cycle" to refer to the number of annual filings made under the applicable formula. Cycle 5 is SDG&E's fifth annual filing under the TO3 formula.

⁵ SDG&E, August 15, 2011, TO3 Cycle 5 Filing, Vol. 3 Workpapers.

“condemnation proceedings” related to the acquisition of a “limited-term interest in land.”⁶ SDG&E therefore proposes to account for the transmission-related Wildfire Property Costs in the Cycle 5 filing through: (1) FERC Account No. 350, Land and Land Rights; (2) FERC Account No. 404, Amortization of Limited-Term Electric Plant; (3) FERC Account No. 111, Accumulated Provision for Amortization of Electric Utility Plant; and (4) Electric Plant Instructions at 7(H)-(I).

6. Further, SDG&E states that its forecast period includes numerous specific transmission projects that are being developed to meet transmission capacity and to maintain transmission reliability, as well as the Sunrise Powerlink project. Also, SDG&E explains that a number of pole to steel replacement projects to improve reliability in fire and wind-prone areas in San Diego County are included in the forecast period. SDG&E also states that the total transmission capital project costs in the forecast period, including the Sunrise Powerlink project, are equal to \$2.012 billion, and the total weighted High Voltage and Low Voltage transmission plant additions are equal to \$652.3 million, which will be trued-up to actual costs in future SDG&E filings.⁷

7. SDG&E explains that the Cycle 5 true-up adjustment of \$32.1 million to reflect a prior under-collection is based primarily on the \$19.7 million of inverse condemnation expenses, and \$4.8 million resulting from lower recorded revenues in the true-up period as compared to forecast sales from a prior cycle filing.

8. Finally, SDG&E states that although it has held three technical conferences and two settlement conferences in support of this informational filing, it has come to an impasse with certain of its customers. However, SDG&E comments that it may be able to negotiate a resolution of these issues with its customers if parties are permitted additional time through hearing and settlement procedures. Therefore, SDG&E requests that the Commission provide the parties additional time to pursue settlement by accepting its informational filing, effective September 1, 2011, subject to refund, and setting it for hearing and settlement judge.

III. Notice of Filing and Responsive Pleadings

9. Notice of the SDG&E TO3 Cycle 5 filing was published in the *Federal Register*, 76 Fed. Reg. 53,119 (2011), with interventions and protests due on or before September 6, 2011.

⁶ SDG&E, August 15, 2011, TO3 Cycle 5 Filing, Transmittal Letter at 3, citing 18 C.F.R. Part 101, Electric Plant Instructions (EPI) at 7(H)-(I) (2011).

⁷ SDG&E, August 15, 2011, TO3 Cycle 5 Filing, Vol. 3 Workpapers.

10. A notice of intervention and protest was filed by the California Public Utilities Commission (CPUC). Timely motions to intervene were filed by the Transmission Agency of Northern California, the Northern California Power Agency, Southern California Edison Company, and Pacific Gas and Electric Company. Timely motions to intervene including a comment or protest were filed by the M-S-R Public Power Agency (M-S-R) and the City of Santa Clara, California (Santa Clara), doing business as Silicon Valley Power (SVP) (collectively M-S-R/SVP); the Modesto Irrigation District, which joins M-S-R/SVP in its arguments; the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, Riverside, California (collectively, the Six Cities), and the California Department of Water Resources State Water Project (SWP). SDG&E filed an answer on September 21, 2011.

IV. Protests

11. As discussed below, the CPUC, Six Cities, M-S-R/SVP and SWP protest various aspects of SDG&E's proposal and request that the Commission set the matter for hearing and settlement judge proceedings.

A. Wildfire Property Costs and Inverse Condemnation

12. Six Cities and M-S-R/SVP assert that ratepayers should not incur the costs associated with SDG&E's settlement of claims in connection with the Wildfire Property Costs to the extent SDG&E's negligence contributed to the damage. Six Cities argue that the wholesale transmission revenue requirement (TRR) proposed by SDG&E is unjust and unreasonable to the extent that it includes these settlement costs.⁸ M-S-R/SVP request that the Commission direct SDG&E to submit a compliance filing with sufficient support to establish that SDG&E's actions (or inactions) did not contribute to the damage caused by the wildfires.⁹

13. In addition, Six Cities and M-S-R/SVP assert that even if there is sufficient evidence to support ratepayers bearing the costs of uninsured third-party property losses related to wildfires, the wildfires started on a lower voltage line and, therefore, customers who pay High Voltage transmission access charge rates under the California Independent System Operator Corporation (CAISO) tariff should not incur this cost.¹⁰ SWP argues that further information is necessary to determine the portions of payments that should be

⁸ Six Cities Protest at 2.

⁹ M-S-R/SVP Protest at 8-9.

¹⁰ *Id.* at 9.

allocated to transmission, and the appropriate allocation between High Voltage and Low Voltage transmission rates.¹¹

14. Moreover, M-S-R/SVP request that the Commission direct SDG&E to provide sufficient details regarding the number of outstanding inverse condemnation claims associated with the Wildfire Property Costs and the amount of each claim. M-S-R/SVP assert that this information is necessary for SDG&E to demonstrate that costs included for recovery were prudently incurred and to create proper incentives for SDG&E to contain the cost of these proceedings.¹²

15. Six Cities, M-S-R/SVP, and the CPUC protest various aspects of SDG&E's proposed accounting method for the inverse condemnation costs related to the Wildfire Property Costs. Six Cities and M-S-R/SVP argue that SDG&E fails to provide any support that the accounting method is consistent with the FERC Uniform System of Accounts, the TO3 settlement, and the filed-rate doctrine.¹³ Furthermore, M-S-R/SVP assert that SDG&E did not provide any precedent to support its proposed accounting method for these costs.¹⁴ The CPUC asserts that the Wildfire Property Costs should be amortized over a shorter period of time than SDG&E proposes by using Account 350 in the same month in which these costs are paid out through Accounts 404 and 111.¹⁵

16. Finally, Six Cities and M-S-R/SVP argue that SDG&E fails to clearly specify, explain or document its proposal to collect through its Base TRR costs for fire mitigation measures and for the financing of a taxable trust to manage these fire mitigation measures.¹⁶

B. The Sunrise Powerlink Project

17. SWP and the CPUC also oppose SDG&E's utilization of a taxable trust to fund the wildfire mitigation measures associated with the Sunrise Powerlink project. SWP argues that treating the fire mitigation expenses as annual payments is preferable to a taxable trust because this approach would eliminate federal taxation, earned rate of return on the expense, tax gross up, and minimal management fees. SWP argues that if a taxable trust

¹¹ SWP Protest at 7.

¹² M-S-R/SVP Protest at 10.

¹³ M-S-R/SVP Protest at 13-14; Six Cities Protest at 3-4.

¹⁴ M-S-R/SVP Protest at 13-14.

¹⁵ CPUC Protest at 4.

¹⁶ M-S-R/SVP Protest at 15; Six Cities Protest at 6.

is used the TRR for the trust would exceed the benefits over the life of the Sunrise Powerlink project.¹⁷ The CPUC supports a “pay-as-you-go” approach instead of a trust, which results in expenses being fully expensed in the year they occur and, according to the CPUC, is more beneficial to both ratepayers and fire agencies.¹⁸ The CPUC argues that the taxable trust fund approach would result in an increase in ratebase and depreciation of the trust monies over the 58 year life of the Sunrise Powerlink project.

C. Capital Addition Projects

18. M-S-R/SVP argue that SDG&E inappropriately includes projected forecasts in its Base TRR capital additions projects, including the Sunrise Powerlink project and its multi-year program for replacing wood poles with steel poles. M-S-R/SVP assert that three of the pole replacement-related transmission projects have not received required CPUC approval and two of the three projects are “very preliminary in process.”¹⁹ M-S-R/SVP argue that without regulatory approval, these projects should not have been included in this filing.

V. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept SDG&E's answer and will, therefore, reject it.

B. Commission's Determination

20. SDG&E proposes in the TO3 Cycle 5 filing to account for its Wildfire Property Costs using Electric Plant Instruction No. 7(I)(4), which governs condemnation proceedings, including court and counsel costs. We reject this accounting proposal for a number of reasons. First, we find that SDG&E improperly capitalized costs that should have been expense to Account 925. In so doing, SDG&E bypassed using the labor ratio allocation required by its current formula, and therefore failed to charge the rate on file

¹⁷ SWP Protest at 6-7.

¹⁸ CPUC Protest at 4-5.

¹⁹ M-S-R/SVP Protest at 16.

with the Commission.²⁰ Moreover, we note that SDG&E acknowledges that in its previous annual rate filings the Commission has required it to record wildfire-related costs in Account 925.

21. Second, we find that SDG&E's proposal to book the Wildfire Property Costs to Account 350 and Account 360, and amortize these costs through Account 404 and Account 111 in the same month is inconsistent with the Uniform System of Accounts (USofA). The Commission finds that the Wildfire Property Costs are properly recorded in Account 925. This account includes the cost of insurance premiums to protect the utility against injury and damage claims, losses not covered by insurance, and expenses incurred in the settlement of such claims. The inverse condemnation claims involve a liability imposed on SDG&E because of fires related to its ownership of transmission and distribution lines in California. As a result, third parties have filed claims against SDG&E for real property damage caused by wildfires originating from SDG&E's power lines. These types of costs fall squarely under Account 925.²¹

22. SDG&E has failed to provide any support or evidence that the proposed accounting treatment and the resulting rates are just and reasonable and in conformance with the Commission's accounting and financial reporting rules and regulations. Thus, SDG&E's recording of these costs in Account 350 and Account 360 is inconsistent with the Uniform System of Accounts and would result in wildfire-related expenses being improperly allocated. In addition, SDG&E's accounting would inappropriately combine these costs with many other costs in the account, thereby reducing transparency. Therefore, consistent with our accounting and financial reporting rules and regulations, and with the underlying settlement, we reject SDG&E's proposal to use Account No. 350 and Account 360 to record wildfire-related losses not covered by insurance and related expenses incurred in the settlement of such claims. Instead, we direct SDG&E to report the wildfire losses and related expenses in Account 925. Specifically, SDG&E is directed to file within 30 days of the issuance of this order, revised worksheets demonstrating the appropriate accounting for wildfire-related losses not covered by insurance and related expenses incurred in the settlement of such claims.

C. Suspension, Hearing, and Settlement Judge Procedures

²⁰ See, e.g., *Corporation Commission of the State of Oklahoma v. American Electric Power Company, et al.*, 130 FERC ¶ 61,120 (2010). (The Commission found that the company violated the filed rate doctrine by unilaterally changing the allocation formula under its system agreement.)

²¹ Administrative and general expenses are those operating expenses which are generally attributable to all operating functions and not directly associated with the provision of a service or production of goods.

23. All the parties request that the Commission set this matter for hearing and settlement proceedings. Our preliminary analysis indicates that SDG&E's proposed TO3 Cycle 5 formula rate filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Intervenor have raised a number of concerns regarding SDG&E's annual TO3 formula rate filing and argue that SDG&E has not justified its base transmission revenue requirement. We find that SDG&E's proposal raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Therefore, we will accept for filing SDG&E's TO3 formula rate informational filing, effective September 1, 2011, subject to refund, and set the filing for hearing and settlement judge procedures.

24. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²² If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.²³

25. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) SDG&E shall file revised worksheets related to the Wildfire Property Costs as discussed above, within 30 days of the date this order issues.

(B) SDG&E's filing is hereby accepted for filing to become effective September 1, 2011, subject to refund and conditions, as discussed in the body of this order.

²² 18 C.F.R. § 385.603 (2011).

²³ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning SDG&E's TO3 formula rate informational filing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(E) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.