

141 FERC ¶ 61,265  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

December 31, 2012

In Reply Refer To:  
San Diego Gas & Electric Company  
Docket No. ER11-4318-002

San Diego Gas & Electric Company  
Attention: Georgetta J. Baker  
101 Ash Street, HQ12  
San Diego, CA 92101

Dear Ms. Baker:

1. On October 2, 2012, San Diego Gas & Electric Company (SDG&E) filed its compliance filing as directed in the Commission's August 3, 2012 order issued in this proceeding.<sup>1</sup> We accept SDG&E's compliance filing as discussed below.
2. On August 15, 2011, SDG&E filed its fifth annual Transmission Owner (TO3) formula rate mechanism informational filing as required by a previously approved settlement (TO3 Settlement).<sup>2</sup> SDG&E's filing included costs associated with several wildfires that occurred in SDG&E's service area. SDG&E's informational filing proposed that wildfire property costs<sup>3</sup> be treated as

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<sup>1</sup> *San Diego Gas & Elec. Co.*, 140 FERC ¶ 61,108 (2012) (August 3 Order).

<sup>2</sup> *San Diego Gas & Elec. Co.*, 119 FERC ¶ 61,169 (2007). 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 an annual informational filing that reflects adjustments to its transmission formula rate mechanism based on certain recorded and estimated costs. SDG&E refers to each annual informational filing as referring to a "Cycle." The August 15, 2011 annual informational filing is referred to as the Cycle 5 filing.

<sup>3</sup> Wildfire property costs are SDG&E's uninsured, wildfire-related, third-party property losses and legal expenses.

condemnation costs related to the acquisition of a limited-term interest in land, and capitalized as transmission and distribution utility plant in Account 350 (Land and Land Rights) and Account 360 (Land and Land Rights) of the Uniform System of Accounts (USofA).<sup>4</sup> SDG&E also proposed to amortize 100 percent of capitalized wildfire property costs in Account 404 (Amortization of Limited-Term Electric Plant) in the same month.

3. On October 14, 2011,<sup>5</sup> the Commission issued an order finding that SDG&E improperly capitalized wildfire property costs that should have been expensed to Account 925 (Injuries and Damages). The October 14 Order found that SDG&E had bypassed using the labor ratio allocation required by its current formula, and therefore failed to charge the rate on file with the Commission. In addition, the October 14 Order rejected SDG&E's proposed accounting treatment for its wildfire property costs, finding it inconsistent with the USofA. The October 14 Order directed SDG&E to file revised worksheets recording wildfire property costs in Account 925 instead of using Account 350, Account 360, and Account 404, as SDG&E proposed in its August 15, 2011 informational filing. The October 14 Order also directed SDG&E to allocate the wildfire property costs using labor ratios.

4. On November 14, 2011, SDG&E filed revised worksheets to comply with the October 14 Order. SDG&E recorded the wildfire property costs as an administrative and general (A&G) expense in Account 925 and capitalized \$4.8 million of the total \$44.5 million in wildfire property costs. SDG&E proposed to capitalize the wildfire property costs to future construction projects.<sup>6</sup>

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<sup>4</sup> 18 C.F.R. Part 101 (2012).

<sup>5</sup> *San Diego Gas & Elec. Co.*, 137 FERC ¶ 61,041 (2011) (October 14 Order).

<sup>6</sup> SDG&E stated that the reclassification of wildfire property costs as inverse condemnation from Accounts 350, 360, and 404 to Account 925 impacted the following cost statements: the Cost of Plant under Cost Statement AD was reduced by \$820,000; Accumulated Depreciation and Amortization under Cost Statement AE decreased by \$820,000; Operating and Maintenance expenses under Cost Statement AH increased by \$2.373 million; Transmission-related Depreciation and Amortization expenses decreased by \$19.687 million; Taxes Other than Income Taxes under Cost Statement AK increased by \$14,000; Working Capital under Cost Statement AL increased by \$297,000 (as a result of the increase to A&G expenses); and the transmission rate base increased by \$314,000 under Cost Statement AV (Rate of Return). Compliance Filing Attachment 1 at 2-3.

5. Thereafter, the Commission issued a deficiency letter on February 24, 2012 directing SDG&E to provide a written explanation supporting the capitalization of the wildfire property costs. The deficiency letter requested that SDG&E explain its rationale for capitalizing any portion of any wildfire costs under the Commission's accounting regulations. In addition, the deficiency letter sought information connecting the wildfire costs with specific construction projects to justify the capitalization of these costs. Finally, the deficiency letter requested information regarding the impact of capitalizing wildfire costs on retail rates.

6. On April 25, 2012, SDG&E provided a response to the February 24, 2012 deficiency letter. SDG&E asserted that its proposed accounting treatment complies with the USofA, the October 14 Order, and SDG&E's currently-effective TO3 formula rate. SDG&E explained that it did not interpret the Commission's finding in the October 14 Order – that SDG&E improperly capitalized costs to Account 350 and Account 360 and amortized those costs 100 percent to Account 404 in the same month – to mean that SDG&E was precluded from capitalizing a portion of its wildfire property costs. According to SDG&E, compliance with the Commission's directive required a portion of the total costs in Account 925 to be allocated to capital, because the extent to which SDG&E's labor force works on transmission capital projects is reflected in the labor ratio allocations provided in SDG&E's current formula.

7. The August 3 Order rejected SDG&E's compliance filing, finding that SDG&E's proposed accounting treatment to capitalize a portion of its wildfire property costs and wildfire insurance premiums was inconsistent with the Commission's accounting regulations, and directed SDG&E to make a further compliance filing.

8. As discussed above, SDG&E submitted another compliance filing on October 2, 2012. SDG&E's October 2, 2012 compliance filing stated that it followed the direction of the August 3 Order by expensing all wildfire insurance premiums and wildfire property costs to Account 925, without capitalizing any component of those costs. SDG&E further states that it adjusted the affected Cycle 5 settlement cost statements to: (1) restate and record all wildfire costs to Account 925, (2) remove all capitalized components of wildfire costs from its plant accounts, (3) allocate all wildfire costs between transmission service and distribution service on the basis of labor ratios, and (4) remove all capitalized components of wildfire costs from the forecast period.

9. Additionally, SDG&E requests any necessary waivers to permit SDG&E to recover \$918,000 of wildfire insurance premiums in future rates through its TO3 final true-up filing. SDG&E states that this amount has not been reflected in its compliance filing because the August 3 Order is limited to Cycle 5, and these

costs arise from the overlap of the Cycle 4 true-up period with the Cycle 5 base period. SDG&E seeks the Commission's authorization to make compliance adjustments for the last three months of the Cycle 4 true-up period in its TO3 final true-up.

10. Notice of SDG&E's compliance filing was published in the *Federal Register*, 77 Fed. Reg. 62,505 (2012), with interventions and protests due on or before October 23, 2012.

11. Timely comments were filed by the Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California (collectively, the Six Cities). SDG&E provided an answer on November 1, 2012.

12. Six Cities request the Commission to either (1) reject SDG&E's requested recovery of \$918,000 of insurance premium costs in the TO3 Cycle 4 true-up as impermissible retroactive ratemaking or (2) permit recovery but defer ruling now on the specific level of expense for wildfire insurance premiums that SDG&E may be authorized to reflect in its true-up filing. Six Cities argue that the cost related to SDG&E's TO3 Cycle 4 informational filing has already been subject to true-up. Six Cities also allege that, if the Commission permits SDG&E to re-open its TO3 Cycle 4 costs to reflect additional amounts as a future adjustment of rates, such an adjustment would constitute retroactive ratemaking. Therefore, Six Cities assert that, to the extent SDG&E is seeking a waiver of the doctrine of retroactive ratemaking, the Commission should not grant such a waiver.

13. Six Cities argue alternatively that, if the Commission determines SDG&E is permitted to go back and recalculate costs from the TO3 Cycle 4 true-up period, the Commission should deny SDG&E's request to recover \$918,000 as premature. Six Cities state that the \$918,000 cannot be verified and that the Commission and affected parties should determine the appropriate level that will be included in the rates. Therefore, Six Cities assert that the advance approval of amounts SDG&E proposes to collect in the future rates is premature and should be rejected.

14. In SDG&E's November 1, 2012 answer, SDG&E states that the Commission directed SDG&E to remove all capitalized components of wildfire costs from Cycle 5 and to expense such costs to FERC Account 925. As a result, SDG&E removed the wildfire costs, including capitalized components of wildfire insurance from both the base period and true-up period of Cycle 5. In addition, SDG&E states that it removed capitalized components of the wildfire insurance premiums from the last three months of the TO3 Cycle 4 true-up period to comply with the Commission order.

15. SDG&E explains that the Commission also directed SDG&E to restate applicable pages to its 2010 FERC Form 1. As a result, SDG&E states that it was

necessary to restate the last three months of the Cycle 4 true-up period to remove wildfire costs as a capital item and charge it directly to Account 925. The adjustment to Form 1 stranded \$918,000 of wildfire costs associated with the capitalized component of wildfire insurance premiums because it had never been allocated to transmission service in Cycle 5. SDG&E states that it seeks to close the gap and bring the wildfire costs back within the TO3 Formula consistent with the Commission's directive. SDG&E argues that the retroactive ratemaking doctrine does not prevent SDG&E from making this adjustment. SDG&E states that it does not dispute providing additional information on the specific level of costs to be recovered in the TO3 final true-up filing.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest and/or answers unless otherwise ordered by the decisional authority. We accept SDG&E's answer because it has provided information that assisted us in our decision-making process.

17. We accept SDG&E's compliance filing. Based on the data provided, we find that SDG&E has complied with the Commission's directive by removing all improperly capitalized wildfire costs from plant accounts and expensing all wildfire insurance premiums and wildfire property costs to Account 925, without capitalizing any component of those costs.

18. In addition, we disagree with Six Cities and find that correction of the Cycle 4 true-up period – to remove all wildfire costs, not just wildfire insurance premiums or third party wildfire costs from capital accounts – is permitted and does not constitute retroactive ratemaking, as formula rates are routinely subject to an annual true-up mechanism. While the true-up, in this instance, extends across two separate rate periods, that fact alone does not cause an otherwise permissible true-up of costs to violate the retroactive ratemaking doctrine.<sup>7</sup> Furthermore, the true-up in this instance was directed by the Commission to correct improperly recorded costs.

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<sup>7</sup> See, e.g., *Sea Robin Pipeline Co., LLC*, 130 FERC ¶ 61,191, at P 14 (2010), finding that the imposition of a proposed surcharge to recover hurricane damage costs did not constitute retroactive ratemaking. See also, *New England Power Co.*, 61 FERC ¶ 61,331, at 62,212 (1992), *reh'g den.*, 65 FERC ¶ 61,036 (1993), *aff'd sub. nom. Town of Norwood, Mass. v. Federal Energy Regulatory Commission*, 53 F.3d 377 (D.C. Cir. 1995), finding that recovery of transition costs associated with conversion to accrual accounting for post-retirement benefits other than pensions did not constitute retroactive ratemaking.

19. Finally, while we agree with SDG&E that the correction of Cycle 4 true-up does not constitute retroactive ratemaking, we also agree that by authorizing the correction, the Commission is not approving recovery for a specific level of costs. The specific level of costs available for recovery shall be determined in connection with the final TO3 true-up, as requested by SDG&E.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.