

141 FERC ¶ 61,273  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company

Docket Nos. ER12-2454-000  
ER12-2454-001

ORDER ON ANNUAL FORMULA RATE FILING AND ESTABLISHING HEARING  
AND SETTLEMENT JUDGE PROCEDURES

(Issued December 31, 2012)

1. On August 15, 2012, San Diego Gas & Electric Company (SDG&E) filed its annual Transmission Owner (TO) formula rate informational filing as required by a previously approved settlement.<sup>1</sup> As discussed below, because SDG&E's filing raises issues of material fact, we will accept the filing, effective September 1, 2012, 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.<sup>2</sup> 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 TO3 Settlement includes a moratorium on certain changes to the underlying transmission rate formula. Under Article I, section 1.4 of the TO3 Settlement, SDG&E must demonstrate that the costs contained in its annual informational filing were prudently incurred, accurate, and are recovered consistent with

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

<sup>2</sup> 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).

the TO3 formula rate mechanism.<sup>3</sup> Details of SDG&E's August 15, 2012, TO3 Cycle 6 Filing (August 15, 2012 Filing) are discussed below.<sup>4</sup>

3. SDG&E proposed a bifurcated process to make its annual formula rate informational filing, consisting of the August 15, 2012 Filing and the October 2, 2012 supplemental filing (October 2, 2012 Supplemental Filing) (collectively, the TO3 Cycle 6 Filing), primarily to comply with the Commission's August 3, 2012 Order<sup>5</sup> pertaining to TO3 Cycle 5. The Commission directed SDG&E in the August 3 Order to make a compliance filing by October 2, 2012 expensing all wildfire insurance premiums and wildfire-related, third-party property losses and legal expenses at issue in Cycle 5, to Account No. 925, Injuries and Damages, that were improperly capitalized to utility plant accounts (Wildfire Capitalized Amounts). SDG&E explains that given the short time period between the issuance of the August 3 Order and the August 15 filing due date for the TO3 Cycle 6 Filing, SDG&E was unable to perform the various analyses and calculations needed to reflect the necessary changes to various accounts for the affected prior year and true-up period cost statements to be included in the August 15, 2012 Filing.

4. SDG&E states that as part of its bifurcated Cycle 6 process, the August 15, 2012 Filing includes rates and cost statements expensing 100 percent of the wildfire-related costs to Account No. 925 and an estimate of the Wildfire Capitalized Amounts. The October 2, 2012 Supplemental Filing provides actual Wildfire Capitalized Amounts and reflects the 100 percent elimination of wildfire-related costs from transmission plant accounts and adjustments to the affected Cycle 6 cost statements.

## **II. SDG&E's August 15, 2012 Filing**

5. SDG&E states that its TO3 Cycle 6 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, 2011; (2) forecasted capital addition revenue requirement for the 17-month period April 2012 through August 2013; (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, 2012 through August 31, 2013, it will collect \$614.5 million in revenue from retail end use customers, which is a 54.2 percent increase over current

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<sup>3</sup> *Id.* at 6.

<sup>4</sup> SDG&E uses the term "Cycle" to refer to the number of annual filings made under the applicable formula. Cycle 6 is SDG&E's sixth annual filing under the TO3 formula.

<sup>5</sup> *San Diego Gas & Elec. Co.* 140 FERC ¶ 61,108 (2012) (August 3 Order).

revenue requirements.<sup>6</sup> SDG&E explains that this represents an annual increase of \$608.8 million, or a 52.33 percent increase for the rate effective period.<sup>7</sup>

6. SDG&E states that the base transmission revenue requirement in its TO3 Cycle 6 Filing includes, among other things, approximately \$1.617 billion of weighted capitalized costs for its Sunrise Powerlink project; approximately \$439.2 million of other transmission plant additions in Cycle 6; an approximately \$100 million increase in the 2011 Prior Year rate base; and expensing wildfire-related costs in Account No. 925, where approximately \$159.2 million of Wildfire Property Costs and \$72.5 million of wildfire insurance premiums are expensed to Account No. 925 for the true-up period and approximately \$34.6 million and \$70.7 million, respectively, are expensed to Account No. 925 for the base period.

7. SDG&E also explains that, in approving the Sunrise Powerlink project, the California Public Utilities Commission (CPUC) imposed a fire mitigation requirement on SDG&E. SDG&E states that the costs associated with this requirement are approximately \$3 million per year. SDG&E states that it will pay this amount each year in April to a trust account, similar to a checking account at a bank. In turn, each year those homeowners and entities who qualify to use the money will receive disbursement from the account for carrying out fire hardening and other fire mitigation measures. SDG&E contends that from a ratepayer's perspective, these annual costs will be treated as annual pay-as-you-go capitalized costs. SDG&E indicates that each year it will capitalize these amounts to transmission plant. SDG&E views these costs as environmental permitting costs and as such, it contends that they should be capitalized. SDG&E states it will charge these costs to Account No. 107, Construction Work in Progress.

8. Further, SDG&E explains that its forecast period includes numerous specific transmission projects that are being developed to meet transmission capacity needs and to maintain transmission reliability, as well as the Sunrise Powerlink project. 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 un-weighted transmission capital project costs in the forecast period, including the Sunrise Powerlink project, are equal to \$2.056 billion, and the total weighted costs equal to \$1.824 billion, which will be trued-up to actual costs in future SDG&E filings.<sup>8</sup>

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<sup>6</sup> SDG&E, August 15, 2012 Filing, Vol. 1 Statement BK-1 and Statement BG.

<sup>7</sup> SDG&E, August 15, 2012 Filing, Vol. 3B Workpapers.

<sup>8</sup> SDG&E, August 15, 2012 Filing, Vol. 3B Workpapers.

9. SDG&E states that the CPUC also imposed post-construction environmental obligations on SDG&E as a permitting condition. SDG&E claims that some of the environmental obligations pertain to developing and implementing: (1) a Raven Control Plan to protect the flat tailed horned lizard habitat; (2) a long term plan to protect National Register of Historic Places from impacts such as erosion; and (3) a long-term plan to control invasive plant species that are disruptive to Peninsular Bighorn Sheep. SDG&E states that it has capitalized \$3.5 million of costs associated with these post-construction environmental obligations and included the costs in the Forecast Capital Additions in Volume 3B under the tab entitled "Forecast Plant Additions."

10. Lastly, SDG&E explains that the TO3 Cycle 6 true-up adjustment of \$9.6 million to reflect a prior under-collection is primarily caused by the expensing, rather than capitalizing, of wildfire-related costs.<sup>9</sup>

### **III. SDG&E Supplemental Filing**

11. As stated above, on October 2, 2012, SDG&E filed a supplemental filing to incorporate into its TO3 Cycle 6 Filing 100 percent elimination of the Wildfire Capitalized Amounts from transmission plant accounts (from the Cycle 5 filing), in full compliance with the August 3 Order.<sup>10</sup> In addition to removing all capitalized components of wildfire-related costs from its base period, true-up period plant accounts, and removing all capitalized components of wildfire-related costs from the forecast period, the October 2, 2012 Supplemental Filing makes conforming changes to the forecast period associated with: (1) allowance for funds used during construction; (2) the sale date of a helicopter; and (3) the in-service dates for two plant additions. Moreover, the October 2, 2012 Supplemental Filing reduces the increase in base transmission revenue requirement by \$3.730 million, or from \$608.815 million to \$605.085 million.

### **IV. Notice of Filings and Responsive Pleadings**

12. Notice of the August 15, 2012 Filing was published in the *Federal Register*, 77 Fed. Reg. 51,988 (2012), with interventions and protests due on or before September 5, 2012. Notice of the October 2, 2012 Supplemental Filing was published in the *Federal Register*, 77 Fed. Reg. 62,505 (2012), with interventions and protests due on or before October 23, 2012.

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<sup>9</sup> SDG&E, August 15, 2012 Filing, Vol. 2A True-Up Adjustment Report.

<sup>10</sup> 140 FERC ¶ 61,108.

13. In response to SDG&E's August 15, 2012 Filing, a notice of intervention and protest was filed by the CPUC. Timely motions to intervene were filed by the Transmission Agency of Northern California, the Northern California Power Agency, Southern California Edison Company, Trans Bay Cable LLC, the State Water Contractors, and Modesto Irrigation District. A late motion to intervene was filed by Pacific Gas and Electric Company. Timely motions to intervene including comments or protests were filed by the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, Riverside, California (collectively, Six Cities), the California Department of Water Resources State Water Project (SWP), the M-S-R Public Power Agency and the City of Santa Clara, California, doing business as Silicon Valley Power (collectively M-S-R/SVP). SDG&E filed an answer on September 19, 2012. In response to SDG&E's October 2, 2012 Supplemental Filing, Six Cities and SWP filed additional comments.

#### **V. Procedural Matters**

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), 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) (2012), 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.

#### **VI. Protests**

15. 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. California Public Utilities Commission**

16. The CPUC raises three issues. First, the CPUC argues that SDG&E has violated a 2007 settlement agreement requiring it to submit its capital projects to both the CPUC and an independent engineer for review. The CPUC argues that by commencing or completing construction before submitting projects for review, SDG&E has rendered the mandatory review moot. The CPUC also argues that some of the projects included in this filing are not needed within the timeframe proposed by SDG&E and should be excluded from recovery in the TO3 Cycle 6 Filing.

17. The CPUC next argues that SDG&E has inappropriately proposed to capitalize certain expenses associated with fire mitigation. The CPUC states that it has directed SDG&E to collect fire mitigation dollars on an "as needed and expensed" basis and that such moneys should never be capitalized.

18. Finally, the CPUC argues that uninsured fire expenses are not adequately supported in SDG&E's filing and should be set for an evidentiary hearing. The CPUC explains that under the 2007 settlement, it was agreed that the CPUC or its staff retains the right to litigate issues related to the uninsured fire expenses before SDG&E is allowed to recover them from ratepayers. In light of the agreement, the CPUC contends that the uninsured fire expenses are not adequately justified at this time.

**B. Other Intervenors**

19. M-S-R/SVP does not object to SDG&E's proposal to supplement its TO3 Cycle 6 Filing as requested, but it notes that SDG&E's estimated adjustment associated with eliminating 100 percent of Wildfire Capitalized Amounts appears to be "very conservative." By way of example, M-S-R/SVP argues that SDG&E has not justified as reasonable its wildfire insurance premiums. M-S-R/SVP specifically argues that SDG&E fails to identify the specific insurance policy, describe the process by which the policy was acquired, or allocate the insurance premium between SDG&E's gas and electric divisions.

20. M-S-R/SVP, Six Cities, and SWP argue, along with the CPUC, that SDG&E has not demonstrated that its fire mitigation costs are reasonable. Intervenors also disagree with SDG&E's proposal to capitalize certain fire mitigation costs.

21. Intervenors object to SDG&E's proposal to capitalize post-construction environmental costs. M-S-R/SVP and Six Cities further argue that SDG&E has failed to provide a complete list of environmental conditions imposed in connection with permitting and should be required to provide additional information that would allow M-S-R/SVP to assess rate impacts. M-S-R/SVP requests that the Commission adopt a cost cap in connection with SDG&E's Sunrise Powerlink Project.

22. Finally, M-S-R/SVP argues that SDG&E has overstated its base transmission revenue requirement by including in its filing certain under-performing pension plan investments and seeking to recover the under-earned amounts from ratepayers.

**C. Supplemental Comments**

23. In response to SDG&E's October 2, 2012 Supplemental Filing, Six Cities and SWP reiterate their objection that fire mitigation costs and post-construction environmental costs should not be capitalized. Six Cities argues that if the Commission declines to rule summarily on any of the issues raised in initial filings by the CPUC, M-S-R/SVP, and SWP, the matter should be set for hearing and settlement judge procedures. Six Cities also requests that any such hearing and settlement judge procedures should consider both the August 15, 2012 Filing, as well as the modifications incorporated in the October 2, 2012 Supplemental Filing.

## **VII. Commission Determination**

24. SDG&E's TO3 Cycle 6 Filing raises issues of material fact that cannot be resolved based upon the record before us, and are more appropriately addressed in the hearing and settlement judge proceedings ordered below. Our preliminary analysis indicates that SDG&E's proposed TO3 Cycle 6 Filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we accept for filing SDG&E's TO3 Cycle 6 Filing, effective September 1, 2012, subject to refund, and set the filing for hearing and settlement judge procedures. The hearing and settlement judge procedures ordered below should address all issues raised by SDG&E's August 15, 2012 Filing, as amended by SDG&E's October 2, 2012 Supplemental Filing.

25. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before the 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.<sup>11</sup> 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.<sup>12</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, 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's August 15, 2012 Filing, as amended by its October 2, 2012 Supplemental Filing, is hereby accepted for filing to become effective September 1, 2012, subject to refund and conditions, as discussed in the body of this order.

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<sup>11</sup> 18 C.F.R. § 385.603 (2012).

<sup>12</sup> 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 the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(B) 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 (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), 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.

(D) 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.

(E) 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.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.