

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

San Diego Gas & Electric Company

Docket No. ER07-284-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING TARIFF SHEETS,  
AND ESTABLISHING SETTLEMENT JUDGE AND HEARING PROCEDURES

(Issued January 31, 2007)

1. On December 1, 2006, San Diego Gas & Electric Company (SDG&E) filed under section 205 of the Federal Power Act (FPA),<sup>1</sup> new tariff sheets to implement a new Transmission Owner (TO3) formula rate mechanism<sup>2</sup> to replace the currently effective TO2 formula rate mechanism. The terms of the TO2 formula expire on June 30, 2007 pursuant to an uncontested Offer of Settlement (TO2 Settlement)<sup>3</sup> accepted by the Commission.<sup>4</sup> The TO3 rate formula replaces the existing TO2 rate formula and makes several changes to the formula structure, including adding a new provision to recover costs associated with investment incentives that SDG&E claims qualify under Order No. 679.<sup>5</sup> The proposed rates also increase the California Independent System Operator Corporation (CAISO) wholesale base transmission revenue requirement, as well as the transmission component of SDG&E's retail rates. In this order, the Commission conditionally accepts and suspends the revised tariff sheets, to be effective July 1, 2007, as discussed below. Additionally, we establish hearing and settlement judge procedures with respect to the non-incentive inputs into the formula.

---

<sup>1</sup> 16 U.S.C. § 824d (2000).

<sup>2</sup> See Appendix.

<sup>3</sup> San Diego Gas & Electric Company October 9, 2003 Offer of Settlement, Docket No. ER03-601-000 (TO2 Settlement).

<sup>4</sup> *San Diego Gas & Electric Company*, 105 FERC ¶ 61,301 (2003).

<sup>5</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43,294 (July 31, 2006), FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006).

## I. Background

### A. Current TO2 Formula and Settlement

2. In March 2003, SDG&E proposed revisions to its TO tariff to provide for formula transmission rates. The Commission set the issues raised by SDG&E's filing for hearing, and subsequently SDG&E submitted the TO2 Settlement, which proposed an effective term for the formula of October 1, 2003 through June 30, 2007. The TO2 Settlement proposed that the formula rates expire as of July 1, 2007 unless the Commission accepted or approved an extension under section 205 or 206 of the FPA.<sup>6</sup> The TO2 Settlement further provided that neither SDG&E nor any of the other parties to the settlement would file under section 205 or section 206, respectively, for modification of the rate formula to take effect during the moratorium period.<sup>7</sup> On December 18, 2003, the Commission approved the TO2 Settlement.<sup>8</sup>

### B. Proposal

3. SDG&E proposes to increase the transmission rates from its TO2 Cycle 4 filing to reflect additions and upgrades to SDG&E's transmission system and other increases in the cost of providing transmission service.<sup>9</sup> The proposed increases appear to include project-specific incentives, such as an incentive return on equity (ROE). SDG&E proposes a 24.3 percent increase in its wholesale base transmission revenue requirement to \$227.6 million (from \$180 million) based on total gross load of 21,273 gigawatt-hours, for an overall unit rate equal to \$10.7 per megawatt-hour. SDG&E also proposes to increase its end-use base transmission revenue requirement by 22.7 percent to \$233.6 million for the twelve month period beginning July 1, 2007, from the currently effective revenue requirement of \$190.3 million. SDG&E states that its TO3 tariff and the CAISO tariff are designed to specify the means by which each utility is to calculate its charges for end use customers and for wholesale transmission purposes.

4. The proposed TO3 rate formula is composed of four components: (1) a base period cost of service, which reflects recorded expenses from the most current calendar year; (2) a true-up or reconciliation adjustment, which is the difference between the forecasted revenue and the actual recorded revenues; (3) a forecast period beginning at the end of the true-up period and ending through the last month of the rate effective

---

<sup>6</sup> TO2 Settlement at 3.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *San Diego Gas & Electric Company*, 105 FERC ¶ 61,301 (2003).

<sup>9</sup> SDG&E states that the term "Cycle" refers to the number of annual filings made under the applicable formula. Cycle 1 is the initial annual filing under the TO3 formula.

period. SDG&E also proposes to make annual filings (Cycles) to update the three components of the formula; and (4) an adjustment mechanism to permit recovery of authorized Order No. 679 incentives for transmission projects.

5. SDG&E states the current TO2 formula also has the same first three components, but the proposed TO3 differs in several ways. First, under the TO2 formula, plant held for future use is only recovered in the base period. However, the TO3 formula allows plant held for future use to be recovered in the forecast period as well. Second, with the TO2 formula, there is no interest true-up adjustment. But, with TO3, there will be an interest true-up. Third, unlike TO2, the TO3 formula has no termination date. Finally, TO3 includes an adjustment mechanism to permit recovery of authorized Order No. 679 incentives for transmission projects.

6. SDG&E describes the types of Order No. 679 incentives it plans to seek approval for as pertaining to the cost of construction work in progress (CWIP), accelerated depreciation, and ROE incentives for transmission projects that ensure reliability or lower the cost of congestion. SDG&E's filing and answer to protests appear to reflect contradictory statements as to whether it is seeking incentive rate treatment for any specific transmission project at this time. On the one hand, SDG&E appears to state in the transmittal letter with its initial filing that it is seeking this incentive rate treatment for its Silvergate substation project, commencing on July 1, 2007, the first day after the expiration of the current TO2 period (TO3 Cycle 1). On the other hand, its proposed tariff language and answer to protests indicate that it is not seeking project-specific incentives in this proceeding, but will only seek Order No. 679 rate incentives in future individual, case-specific filings. SDG&E states that it plans to implement a number of incentive projects<sup>10</sup> in TO3 Cycles 1 and 2 and will seek such incentives by making the appropriate section 205 or declaratory order authorization filings. Furthermore, with respect to transmission projects, SDG&E requests that the Commission approve a 100 basis point incentive return allowance for specific transmission projects that in the future are determined by the Commission to meet the requirements of Order No. 679. However, again, SDG&E's answer indicates that specific transmission projects will be submitted for approval in the future, leaving the 100 basis point incentive to be determined in the future as well. Nevertheless, SDG&E proposes a 50 basis point incentive to the base ROE for its transmission owner participation in the CAISO, which would be applicable to both non-incentive and incentive rate base.

### **C. Notices of Filing, Interventions, and Protests**

7. Notice of SDG&E's filing was published in *Federal Register*, 71 Fed. Reg. 75,531 (2006), with interventions and protests due on or before December 22, 2006. California

---

<sup>10</sup> Silvergate, Miguel Mission, Otay Metro Loop, and Path 49 projects.

Public Utilities Commission (CPUC) and California Electricity Oversight Board (CEOB) filed notices of intervention and protest. Southern California Edison Company (SoCal Edison) and Pacific Gas and Electric Company (PG&E) filed timely motions to intervene. Six Cities,<sup>11</sup> Transmission Agency of Northern California (TANC), Modesto Irrigation District (Modesto), Northern California Power Agency (NCPA), and M-S-R Public Power Agency (Cities/MSR)<sup>12</sup> filed timely motions to intervene and protest. SDG&E filed an answer to the protests.

## **II. Discussion**

### **A. Procedural Matters**

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>13</sup> the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>14</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept SDG&E's answer because it has provided information that assisted us in our decision-making process.

### **B. Comments and Protests**

#### **1. Revenue Requirement**

10. Six Cities and the CPUC object to various cost allocations in SDG&E's proposed tariff filing. Six Cities argues, among other things, that SDG&E has failed to support certain operation and maintenance expenses; administrative and general expenses; cash working capital; and accumulated deferred income taxes. These parties argue that the unsupported inclusion of these costs has resulted in a dramatic increase in the end-use base transmission revenue requirement and CAISO wholesale base transmission revenue requirements. Protesting parties state that the charges included in SDG&E's proposal may result in rates that are unjust, unreasonable and unduly discriminatory, and should be set for hearing.

---

<sup>11</sup> Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.

<sup>12</sup> M-S-R Public Power Agency filed on behalf of itself and the cities of Redding and Santa Clara, California.

<sup>13</sup> 18 C.F.R. § 385.214 (2006).

<sup>14</sup> 18 C.F.R. § 385.213(a)(2) (2006).

11. Six Cities, CPUC and CEOB also object to SDG&E's proposed base level ROE, arguing that it is excessive and may be unjust, unreasonable, and unduly discriminatory. In particular, Six Cities states that SDG&E's discounted cash flow (DCF) analysis incorrectly used the midpoint to determine the 12.5 percent ROE. Six Cities argues that SDG&E's DCF analysis should use the median in determining the ROE.<sup>15</sup> The CPUC also argues that SDG&E's DCF analysis is flawed, and argues that SDG&E's ROE should not be greater than 9 percent.

## 2. Incentives

12. TANC, CPUC, CEOB and Six Cities state that the Commission should reject SDG&E's request for incentives for the Silvergate, Miguel Mission, Otay Metro Loop, and Path 49 projects because they are excessive and are based on an inaccurate interpretation of Order No. 679. For example, TANC argues that SDG&E has not explained the nexus between the investments made in the various transmission projects, and the incentives requested. TANC explains that the Silvergate project should be excluded from incentive consideration because it is routine construction and SDG&E has not shown why cash flow from accelerated depreciation is necessary to complete the project.

13. Parties, such as TANC, also argue that SDG&E does not have the appropriate risk profile to warrant consideration of incentives and the proposed ROE incentives are excessive. The CPUC maintains that SDG&E's participation in the CAISO and use of a formula rate decreases SDG&E's risk and removes the need for CWIP, accelerated depreciation and incentive ROE. CEOB contends that SDG&E's legal obligation to seek permits to build approved projects eliminates the risk involved in undertaking such projects. CEOB also points out that under Order No. 679-A<sup>16</sup> SDG&E must demonstrate that the total package of incentives is tailored to address the demonstrable risks or challenges arising from SDG&E's projects. CEOB asserts that SDG&E has failed to present sufficient probative evidence to meet the requirements of Order No. 679-A.

14. TANC and the CPUC argue that SDG&E should not receive an ROE incentive for CAISO participation. TANC and the CPUC assert that Order No. 679 did not guarantee a 50 basis point ROE incentive for participating in the CAISO to all transmission owners, and that the Commission has, in fact, rejected previous requests such as this.<sup>17</sup> These protestors contend that SDG&E's arguments for the 50 basis points are not compelling, and do not indicate that its participation in the CAISO increases SDG&E's financial risk.

---

<sup>15</sup> *Southern California Edison Co.*, 92 FERC ¶ 61,070 (2000).

<sup>16</sup> Order No. 679-A, 117 FERC ¶ 61,345.

<sup>17</sup> *See Southern California Edison Co.*, 114 FERC ¶ 61,018 at P 15 (2006).

### 3. Other Issues

15. Several protestors object to SDG&E's proposed formula rate mechanism. Modesto states that the formula approved in the TO2 Settlement was non-precedent setting and therefore the TO3 proposal must be evaluated *de novo*. Modesto joins the CPUC in objecting to SDG&E's proposal to operate under the TO3 formula for an indefinite term. CPUC notes that there is a four year limit on the TO2 formula rates. The CPUC also states that the proposed term is problematic because it could only be challenged pursuant to a section 206 filing. The CPUC maintains that this places the onus on the complainant to prove that the utility's costs are unjust and unreasonable, rather than the applicant having to show the costs are just and reasonable. The CPUC contends that this change would represent a dramatic shift away from the procedures used in TO rate cases for other California transmission owners, and therefore should not be accepted. In addition, TANC<sup>18</sup> raises concerns regarding SDG&E's proposals for plant held for future use. TANC argues that the inclusion of this new aspect in the formula requires further investigation in order to ensure that SDG&E does not over procure land without a corresponding use for transmission expansion at a later period. TANC asserts that safeguards are necessary to prevent land purchased under plant held for future use from being sold, or otherwise not used for purposes of transmission expansion.

16. Six Cities argue that the beginning-of-year and end-of-year average rate base balances for various base components in the TO3 formula rate mechanism are inconsistent with section 35.13(h)(4) of the Commission's regulations,<sup>19</sup> and should instead be based on thirteen-month average balances. Six Cities argue that the thirteen-month average balances is preferred because they better reflect the commitment of capital over a twelve-month period to serve the transmission load during that same period. TANC and Six Cities also argue that the splits between high voltage and low voltage projects will result in some TANC members paying higher CAISO tariff charges. TANC requests that SDG&E be required to provide adequate support and explanation that will establish a reasonable basis for the percentage assignment between high voltage and low voltage transmission projects.

### 4. Suspension, Hearing and Settlement Judge Procedures

17. Six Cities maintain that SDG&E's proposed effective date of February 1, 2007 should not be accepted because the TO2 Settlement specifically precludes SDG&E from doing so. Six Cities argue that *Public Service Company of New Mexico (PSNM)*,<sup>20</sup>

---

<sup>18</sup> Modesto, Cities/M-S-R, and NCPA stated in separate protests that they concur with the issues raised by TANC in its Protest.

<sup>19</sup> 18 C.F.R. § 35.13(h)(4) (2006).

<sup>20</sup> 23 FERC ¶ 61,297 (1983).

prohibits SDG&E from requesting an effective date for new rates prior to the moratorium date in order to run the suspension period to the actual effective date without explicitly reserving that right. Six Cities contend that the earliest permissible effective date SDG&E could seek for the proposed revisions to the tariff is July 1, 2007, and that the proposed rates should be suspended for five months *after* that date, *i.e.*, until December 1, 2007.

18. Six Cities argue that SDG&E's proposed TO3 should not only be suspended for five-months but also set for hearing in accordance with the Commission's *West Texas* policy.<sup>21</sup> Six Cities explain that the purpose of the *West Texas* policy is to mitigate the impact on ratepayers of a rate increase that is likely to yield substantially excessive revenues. Six Cities maintain that allowing a suspension to run concurrently with the months February through June 2007, during which a rate increase could not take effect pursuant to the TO2 Settlement, would force ratepayers to absorb the full impact of the rate increase immediately following the termination of the moratorium period set forth in the TO2 Settlement. CPUC and CEOB also request that the Commission establish hearing procedures for SDG&E's entire TO3 filing to determine disputed issues of material fact; TANC adds that the Commission should direct the Chief Judge to order a Track II schedule<sup>22</sup> for the hearing.

### C. SDG&E's Answer

19. SDG&E disputes protestors' arguments that SDG&E is prematurely proposing to modify its TO2 rate formula to receive other incentives when the transmission projects that would receive the incentives have yet to be formally submitted for Commission review. SDG&E asserts that it "is only specifying how the TO3 formula would accommodate the authorized incentives and related formula equations relative to incentives that may be authorized during the term of the TO3 formula."<sup>23</sup> SDG&E acknowledges that it must make separate filings under section 205 or petitions for declaratory orders to actually request incentive rates. In fact, SDG&E states that "[w]hether and to what extent the Commission ultimately authorizes SDG&E to receive incentives for specified transmission projects will be determined in appropriate

---

<sup>21</sup> *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982) (*West Texas*). See also Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 386-89; Order No. 679-A, 117 FERC ¶ 61,345 at P 133-34.

<sup>22</sup> A Track II case is a Complex Case in the "Summary of Procedural Time Standards for Hearing Cases," available at <http://www.ferc.gov/legal/admin-lit/time-sum.asp> (updated May 27, 2005).

<sup>23</sup> SDG&E Answer at 8.

transmission project-specific proceedings, consistent with the directives of Order Nos. 679 and 679-A.”<sup>24</sup>

20. In response to Six Cities’ protest regarding the effective date of the proposed formula rate, SDG&E points out that the Commission has previously allowed suspension periods for new rate filings that coincided with a rate moratorium in a prior settlement. In support of its argument, SDG&E also cites *PSNM*,<sup>25</sup> but for the proposition that the Commission has previously allowed suspension periods for new rate filings to coincide with a rate moratorium arising from a prior settlement.

21. SDG&E also argues that nothing in the TO2 Settlement precludes SDG&E from making a filing during the moratorium to implement new rates on July 1, 2007, the day after the TO2 formula expires. Moreover, SDG&E maintains that the TO2 settlement also does not preclude the suspension period from running concurrently with the moratorium period, so long as the effective date of the new TO3 formula is after the moratorium period. In support of this argument, SDG&E cites *Portland Natural Gas Transmission System (Portland Suspension Order)*,<sup>26</sup> stating that in that case, “the Commission permitted the suspension period to be calculated during the running of the rate increase moratorium without any express reservation of rights.”<sup>27</sup> SDG&E argues that the Portland Suspension Order would support a Commission decision to allow the suspension for the TO3 formula rate to run concurrently with the last months of the TO2 rate moratorium.

### **III. Commission Determination**

#### **A. Revenue Requirement**

22. SDG&E’s filing raises issues of material fact related to non-incentive inputs of the formula, which include, among other things, the proposed return on equity, administrative and general expenses, cash working capital, accumulated deferred income taxes, discounted cash flow analysis, and cost allocation. These issues cannot be resolved on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. However, the Commission will make summary determinations as to the other issues discussed below.

---

<sup>24</sup> *Id.*

<sup>25</sup> 23 FERC ¶ 61,297 (1983).

<sup>26</sup> *Portland Natural Gas Transmission System*, 97 FERC ¶ 61,131 (2001).

<sup>27</sup> SDG&E Answer at 6.

## **B. Incentives**

### **1. Project-Specific Incentives**

23. In light of SDG&E's Answer, the Commission disagrees with protestors' claim that SDG&E is seeking incentive treatment for the Silvergate, Miguel Mission, Otay Metro Loop, and Path 49 projects. However, we understand the protestors' confusion because SDG&E's filing presents statements that are unclear and in places seem contradictory about its intentions for recovery of incentives through this or future proceedings. For example, SDG&E's filing appears elsewhere to request incentive treatment for at least the Silvergate project. In the tariff sheets attached to its filing, the proposed language states that "[f]or Incentive Projects, to the extent SDG&E seeks to recover in rates revenues for incentives permitted by FERC Order No. 679, SDG&E shall make a separate project-specific filing under section 205...explicitly requesting the incentive treatment being sought."<sup>28</sup> Moreover, SDG&E's Answer states that its formula rate proposal "only specif[ies]...*how* the TO3 formula would accommodate authorized incentives and related formula equations relative to incentives that may be authorized during the term of the TO3 Formula."<sup>29</sup> SDG&E also acknowledges in its filing that the determination as to whether to grant the incentives will be made when SDG&E makes subsequent project-specific section 205 filing or petition for declaratory order. When SDG&E files for incentive rate treatment for specific projects, it will at that time need to justify which incentives it believes that project is eligible for. This means that the incentive portion of SDG&E's formula rate will need to have the capability of tracking eligible incentive projects on a case-by-case basis to the extent those projects do not all receive Commission approvals for the same incentives.

24. Since SDG&E's answer has clarified that it is not requesting any project-specific incentives in this formula rate proceeding, the Commission is not authorizing SDG&E to recover any project-specific Order No. 679 incentives in its formula rates at this time. SDG&E is therefore directed to revise its filing to eliminate any costs (including ROE) associated with project-specific incentives, and to remove all references in its tariff that quantify the level of ROE incentive the Commission-approved projects are eligible to receive.

---

<sup>28</sup> San Diego Gas and Electric Company, FERC Electric Tariff, Original Vol. No. 11, Second Revised Sheet No. 140, at 6, 7. Note that SDG&E incorrectly paginated its tariff sheets. Therefore, the numbers that appear at the end of the citation are the page numbers inserted on the tariff sheets. This order requires SDG&E to repaginate the sheets in compliance with Order No. 614.

<sup>29</sup> SDG&E Answer at 8, 9.

## 2. Transmission Organization Incentive

25. SDG&E is seeking a transmission organization incentive as a non-project specific incentive. SDG&E proposes an incentive return allowance for being a participating transmission owner in the CAISO. Specifically, SDG&E requests to add 50 basis points to its ROE in recognition of its status as a participating transmission owner in the CAISO. The Commission will grant up to 50 basis points of incentive ROE for participation in the CAISO, subject to suspension and the outcome of a hearing to establish the zone of reasonable returns.<sup>30</sup>

26. The Commission's decision to grant SDG&E an incentive ROE for participation in the CAISO is consistent with the stated purpose of section 219 of the FPA<sup>31</sup> - that the incentive applies to all utilities joining the transmission organization - and is intended to encourage SDG&E's continued involvement in the CAISO. We find that there are considerable benefits, associated with a utility's membership in a transmission organization such as the CAISO. However, SDG&E is required to modify its proposed tariff language to eliminate all references to SDG&E's use of the term "ISO Adder." The Commission stated in Order No. 679 at P 93 that it would not create specific ROE adders because it has always considered a range of returns in determining the appropriate ROE, and found no reason to depart from this practice. Therefore, we direct SDG&E to revise its proposed tariff language to eliminate all references to "ISO Adders" as defined in its formula rate mechanism.

### C. Other Issues

#### 1. Plant Held for Future Use

27. SDG&E proposes to include transmission plant held for future use in the forecast period rate base.<sup>32</sup> The testimony of SDG&E's witness Mr. Lucero states that SDG&E has begun to purchase land for future transmission projects. We accept SDG&E's modification to its formula for transmission plant held for future use in rate base for the

---

<sup>30</sup> The amount of the 50 basis point incentive that SDG&E could receive may be limited by the top of the zone of reasonableness that the Commission ultimately adopts in this proceeding after the hearing. Accordingly, we grant SDG&E the full 50 basis point ROE incentive for participation in the CAISO so long as the additional 50 basis points do not result in a final ROE above the zone of reasonableness as determined in the hearing ordered below.

<sup>31</sup> 16 U.S.C. § 824 (2000).

<sup>32</sup> Section I.B.44. of Appendix VIII to SDG&E's TO tariff states that:  
*Transmission Plant Held for Future Use* shall equal SDG&E's balance recorded in FERC Account No. 105.

forecast period, subject to the conditions noted below. We note that Mr. Lucero's testimony indicates that SDG&E will only include plant held for future use-land in the formula after the CPUC has issued the relevant certificate of public convenience and necessity. We find that CPUC approval will alleviate the concerns raised by TANC that SDG&E may over-acquire land for plant held for future use without having to specify a corresponding use. We therefore condition the inclusion of plant held for future use-land on SDG&E acquiring the relevant certificate of public convenience and necessity from the CPUC.

28. The Commission also notes that SDG&E's proposed formula rate does not include the appropriate accounts under the Commission's regulations Part 101, Account 105<sup>33</sup> to address plant held for future use-land that is not used and is sold at a gain or loss. Therefore, we direct SDG&E to modify the proposed formula to include Accounts 411.6 and 411.7<sup>34</sup>. This further addresses TANC's concern that there should be some safeguard in place in the event that unused land is sold.

## **2. Beginning and End-of-Year Plant Balances**

29. We agree with Six Cities protest regarding the use of beginning-of-year and end-of-year average rate base balances. SDG&E proposes to use the average of beginning and end of year balances and depreciation reserve balances to calculate rate base. Therefore, SDG&E's filing does not comply with section 35.13 of the Commission's regulations<sup>35</sup> which requires an average of thirteen monthly balances for transmission plant-related items, including CWIP. We direct SDG&E to modify its formula consistent with our regulations.

## **3. High Voltage vs. Low Voltage**

30. With respect to the percentage splits between high voltage and low voltage projects, we find that SDG&E's testimony<sup>36</sup> provides an adequate explanation of how

---

<sup>33</sup> 18 C.F.R. pt. 101, Account 105 (Electric plant held for future use) (2006).

<sup>34</sup> 18 C.F.R. pt. 101, Account 411.6 (Gains from disposition of utility plant) (2006); 18 C.F.R. pt. 101, Account 411.7 (Losses from disposition of utility plant) (2006).

<sup>35</sup> 18 C.F.R. § 35.13 (2006).

<sup>36</sup> Lucero Test., Exh. No. SDG-2 at 38-42; Farinas Test., Exh. No. SDG-3 at 40-46.

SDG&E's percentage splits follow the requirements detailed in Appendix F of the CAISO Tariff.<sup>37</sup>

#### **4. Indefinite Term of Agreement**

31. With respect to the protestors' arguments regarding the indefinite rate term requested by SDG&E, we will not require a finite term for the TO3 formula. As discussed herein, subject to certain modifications, we are accepting SDG&E's formula rate mechanism as being just and reasonable, and setting only non-incentive inputs for hearing.<sup>38</sup> We cannot make a determination that SDG&E's TO3 formula will become unjust and unreasonable at some specified period in the future. If the CPUC or others believe SDG&E's TO3 formula is no longer just and reasonable in the future, nothing prohibits that party from filing a complaint under section 206 with the Commission.<sup>39</sup> Lastly, the term for the TO2 formula rates was established as a consideration in settlement negotiations, and the parties may choose to address this issue in settlement negotiations.

#### **5. Tariff Sheet Designations**

32. SDG&E's proposed tariff sheet designations shown on the Appendix to this order, do not fully comply with Order No. 614<sup>40</sup> or with the identification and numbering of tariff and rate schedules as required under section 35.9(a) of the Commission's regulations. SDG&E is directed to re-file its tariff sheet submittal with designations as required by Order No. 614 and under section 35.9(a) of the Commission's regulations (18 C.F.R. § 35.9 (2006)) within thirty (30) days of the date of this order.

#### **D. Suspension, Hearing and Settlement Judge Procedures**

33. SDG&E cites *PSNM* and the Portland Suspension Order to support its contention that the effective date for the formula rate should be February 1, 2007, with a July 1,

---

<sup>37</sup> CAISO Tariff, FERC Electric Tariff, First Replacement Vol. No. 1, Second Revised Sheet Nos. 379-87B.

<sup>38</sup> We find that SDG&E's proposed formula is transparent and allows interested parties to review and comment on the results of the annual formula prior to filing the formula rates with the Commission. Furthermore, the formula provides for quarterly reports to the CPUC and allows for CPUC engineering audits of sizable transmission projects.

<sup>39</sup> 16 U.S.C. § 824e.

<sup>40</sup> *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221 (Apr. 7, 2000), FERC Stats. & Regs. ¶ 31,096 (2000).

2007 implementation date, which includes a five-month suspension running concurrently with the moratorium period. The Commission agrees with SDG&E that the TO2 Settlement does not specifically preclude SDG&E from making a rate filing during the moratorium period for rates to be implemented at the end of the moratorium, and that SDG&E's rates can be suspended concurrently with that period so that the effective date of the new rates will be July 1, 2007, the day after the TO2 rates expire pursuant to the terms of the TO2 Settlement. However, the Commission disagrees with SDG&E's analysis regarding the two cited cases and their applicability to its case.

34. We find that *PSNM* can be distinguished from SDG&E's situation based on the facts. In *PSNM*, two contemporaneous agreements existed regarding the rates. One stipulated explicitly that the utility could file for an effective date prior to the end of the effective period, so that the suspension period would run concurrently with the last months of the rate moratorium period. The other agreement was silent on the issue. A protestor had argued that because one was silent and the other contemplated an early effective date, the utility had waived its right to have an effective date prior to the end of the moratorium period. In *PSNM*, the Commission agreed, and suspended the new rates after the rate moratorium, holding that without an express reservation of the right to have a suspension period run concurrently with a moratorium period, a party cannot seek to have its rate suspension period run prior to the actual effective date – the earliest date on which the rates could otherwise go into effect – or the end of the moratorium period.

35. Even though the TO2 Settlement lacks an express reservation provision like that in *PSNM*, the Commission finds that the TO2 Settlement does indicate an intent on the part of the parties to have their rates terminate on June 30, 2007. This intent is evidenced by the language stating that the rates would terminate on that date unless one of the parties filed under section 205 or 206 to continue the rates.<sup>41</sup> Therefore, the TO2 Settlement demonstrates that SDG&E intended to file for new rates in such a way that there would be a seamless transition between the expiring TO2 rates and any new rate.

36. To the extent that SDG&E's case is similar to *PSNM* because in both cases the settlement agreements did not have an explicit provision reserving the right of the utility to file for an effective date prior to the end of the moratorium period, we exercise our discretion and overrule that decision. We direct that the rates be suspended, and made effective July 1, 2007, subject to refund and the outcome of a hearing. To the extent this requires reversal of the suspension policy in *PSNM*, we do so here. Going forward, our policy shall be to review future rate filings on a case-by-case basis to determine what the intent of the parties is regarding the effective date and suspension periods, and will not hold parties to the strict rule of interpretation in *PSNM*, which would require parties to

---

<sup>41</sup> *But see* 18 C.F.R. § 35.15(b)(1) (2006) which provides that transmission contracts do not expire absent a filing and a Commission order.

explicitly reserve the right to have the suspension period run concurrently with an expiring rate moratorium.

37. The Portland Suspension Order can also be distinguished from SDG&E's case even though in that case, the Commission did allow the suspension period to coincide with the effective period of the rates. In the Portland Suspension Order, the Commission addressed the general section 4 filing that it had directed Portland to make as part of its initial certificate authorization pursuant to Natural Gas Act (NGA) section 7. In granting that section 7 authorization, the Commission directed Portland to refile its rates under section 4 so that the new rates would be in place no later than three years after the initial rates were certificated. Accordingly, in the Portland Suspension Order, the Commission found that the suspension period could run concurrent with the final months of the three year effective period of the initial rates. The Commission determined that this was also consistent with the agreement that Portland had with its shippers, under which it would not file to change its rates earlier than the Commission's required expiration date for the initial rates. Since the Commission had previously directed in a certificate proceeding on Portland's initial rates<sup>42</sup> that Portland "should make its section 4 rate filing 'within three years' of its service date so that the rates may be effective no later than the third anniversary of its in-service date,"<sup>43</sup> the Commission intended for the initial rates to be replaced within the three year period. Thus, when Portland made its new rate filing, in the Portland Suspension Order the Commission accepted Portland's request to have the suspension run currently with the initial rate.

38. Both the certificate proceeding and the shipper agreement point to an effective date of the day after the three year period. At the very least, it shows the intent of the Commission to have the new rates effective immediately after the third anniversary of the rates. Another distinguishing fact is that the rates in the Portland Suspension Order, unlike the rates in SDG&E's case, were initial rates. Therefore, the Commission had a greater interest in the second set of rates being effective as soon as possible. Accordingly, the rationale behind the Commission's decision in the Portland is not directly applicable to SDG&E's case. Thus the Commission's decision here is not based on the Portland Suspension Order, but on the facts of the SDG&E formula rate proceedings which are distinguishable from *PSNM*, as well as our intent to decide such suspension issues on a case-by-case basis.

39. Our preliminary analysis indicates that SDG&E's proposed transmission rates have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly

---

<sup>42</sup> *Portland Natural Gas Transmission System*, 80 FERC ¶ 61,345, at 62,147 (1997) (Portland Certificate Rehearing).

<sup>43</sup> *Id.*

discriminatory or preferential or otherwise unlawful. In *West Texas*,<sup>44</sup> the Commission explained that when our preliminary analysis indicates that the proposed rates may be unjust, unreasonable, and may be substantially excessive, the Commission would generally impose a five-month suspension. In the instant proceeding, our preliminary analysis indicates that the proposed rates may be substantially excessive. Therefore, we will conditionally accept SDG&E's filing, suspend it for five months to be effective July 1, 2007, subject to refund, and set it for hearing and settlement judge procedures.

40. While we are setting these matters for a trial-type evidentiary hearing, we encourage parties to make every effort to settle their dispute before hearing procedures commence. 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 to the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.603 (2006). 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>45</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide 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 proposed tariff sheets, listed in the Attachment to this order, are conditionally accepted and suspended to be effective July 1, 2007, subject to refund and the hearing established by this order.

(B) SDG&E is hereby directed to file compliance tariff sheets in response to this order within thirty (30) days of the date of this order, to remove any project-specific incentive cost inputs from the new TO3 formula; all references to "ISO Adders" as defined in the formula rate mechanism; modify the proposed formula to include Accounts 411.6 and 411.7; modify descriptions of the formula to be consistent with section 35.13 of the Commission's regulations; and change the tariff sheet designations to comply with Order No. 614, as discussed in the body of this order.

---

<sup>44</sup> *West Texas*, 18 FERC ¶ 61,189.

<sup>45</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone (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](http://www.ferc.gov) --click on Office of Administrative Law Judges).

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and 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 the issues of material fact that are being set for hearing. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2006), the Chief Judge is hereby directed to appoint a settlement judge within fifteen (15) days of the date of this order. Such settlement judge shall have all 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 being appointed by the Chief Judge, the settlement judge shall file an initial 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 every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If the 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 these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such 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 )

Magalie R. Salas,  
Secretary.

**Appendix**

San Diego Gas & Electric Company  
Docket No. ER07-284-000

Proposed Tariff Sheets to FERC Electric Tariff, Original Volume No. 11  
Accepted, effective July 1, 2007, Subject to Refund and Conditions

- Second Revised Sheet No. 136 (Pages 1 through 4)
- Third Revised Sheet No. 137 (Page 5)
- Second Revised Sheet No. 140 (Pages 6 through 9)
- Third Revised Sheet No. 146 (Pages 10 through 25)
- Second Revised Sheet No. 156 (Pages 26 through 31)
- First Revised Sheet No. 171 (Pages 32 through 56)