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DEC 17, 1995

Decision 95-12-008 December 6, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SAN DIEGO GAS & ELECTRIC COMPANY: (1) for Authority to Increase its Electric Rates Effective May 1, 1994; and (2) for a Commission Order Finding the Company's Gas and Electric Operations and Expenses Reasonable for the Applicable Record Periods. (U 902-E)	Application 93-09-049 (Filed September 29, 1993)

ORIGINAL

(See Decision 94-04-078 for List of Appearances.)

Additional Appearances

Keith Melville, Attorney at Law, for San Diego Gas & Electric Company, applicant; Carol Dumond, Attorney at Law, for the Division of Ratepayer Advocates; and Adrian Hudson, for California Natural Gas Bulletin, interested party.

I N D E X

1. Summary

In this phase of an annual Energy Cost Adjustment Clause (ECAC) proceeding filed by San Diego Gas & Electric Company (SDG&E), the Commission reviews the reasonableness of SDG&E's recorded gas and electric energy costs and operations. The Commission finds that with the exception of power transactions with Washington Water Power Company (WWP), SDG&E's operations and expenses were reasonable for the applicable record periods. The Commission adopts a Division of Ratepayer Advocates (DRA) recommendation that SDG&E be ordered to credit the ECAC balancing account by a $1.8 million plus interest associated with the WWP transactions.

2. Background

By this application SDG&E requested an electric rate increase for the forecast period beginning May 1, 1994 and an order finding that its gas and electric operations and expenses were reasonable during applicable record periods. Forecast issues were decided by Decision (D.) 94-04-078 dated April 20, 1994. This decision resolves reasonableness issues and closes the proceeding.

Pursuant to the Commission's generic plan for reasonableness reviews, this proceeding generally covers the period August 1, 1992 through July 31, 1993. Except where otherwise noted, "record period" means this time frame. To coordinate with reasonableness reviews of the nuclear operations of Southern California Edison Company (Edison), SDG&E's nuclear operations are reviewed for the period April 1, 1992 through March 31, 1993. Also, WWP transactions which occurred before August 1, 1992 and after July 31, 1993 as well as during the record period are reviewed in this proceeding.

D.93-06-092 authorized SDG&E to implement experimental performance-based ratemaking (PBR) mechanisms for gas procurement

and for electric generation and dispatch (G&D). The mechanisms were adopted for the two-year period that began August 1, 1993. The G&D mechanism substantially reduces the scope of SDG&E's reasonableness reviews except when recorded ECAC costs vary from the forecast by more than 6%. By D.95-04-051 dated April 26, 1995, the PBR mechanisms were continued in effect on an interim basis with the recognition that they may be continued with or without modifications on a permanent basis. Thus, this may be SDG&E's last full reasonableness review.

3. Uncontested Issues

3.1 Introduction

SDG&E and DRA were the only parties in the reasonableness phase. SDG&E filed its reasonableness report with the application. DRA reviewed SDG&E's report as well as SDG&E's responses to DRA's Master Data Request and 18 other data requests. In addition, DRA independently investigated the reasonableness of SDG&E's energy expenses and plant operations for the record period.

With the exceptions noted below, DRA found the areas of its review to be reasonable. Also, with the exception of the WWP transactions and the related disallowance recommendation, the contested issues were resolved during the proceeding. As to these uncontested issues, we find that SDG&E's request for a finding of reasonableness should be granted. DRA recommended that:

a. SDG&E's nuclear facility operations for the period April 1, 1992 through March 31, 1993 be found reasonable. Nuclear operations for the remaining four months of the record period will be reviewed in an Edison ECAC proceeding and reflected in SDG&E's next ECAC proceeding.

b. SDG&E's nuclear fuel costs be found reasonable.

c. At $570,060 reward requested by SDG&E under the Nuclear Unit Incentive Procedure be allowed for SONGS Unit 1, Incentive Period II.

d. SDG&E's decisions regarding economy energy purchases be found reasonable, including decisions rejecting economy energy when justified by minimum load conditions. However, DRA recommended that SDG&E develop a system to record all of its economy energy rejection data. This recommendation is discussed in Section 3.2.

e. SDG&E's short-term firm contractual arrangements other than the WWP transactions, i.e., arrangements between SDG&E and Western Area Power Administration (WAPA), Bonneville Power Administration (BPA), and Puget Sound Power & Light Company (PSPL), be found reasonable.

f. SDG&E be directed to credit the ECAC balancing account by $1.8 million plus interest in connection with the WWP transaction. This contested issue is discussed in Section 4. (for 1992) pursuant to a United States District Court

g. SDG&E's administration of long-term firm contracts with Portland General Electric Company (PGE), Arizona Public Service Company (APS), Public Service Company of New Mexico (PNM), Century Power Company (Century), and Comision Federal de Electricidad (CFE) be found reasonable.

h. SDG&E's participation in PGE coal and railroad settlements be found reasonable.

i. SDG&E provide economic analyses to DRA prior to renewing its contract with CFE.

j. SDG&E provide in its next reasonableness review an economic analysis of the remaining life of a contract with PNM, presenting options in administering the contract.

k. SDG&E's purchases from Qualifying Facilities (QFs) be found reasonable.

l. SDG&E's fuel oil inventory levels and associated carrying costs be found reasonable.

m. SDG&E be directed to test each fossil steam unit over the next two years to eliminate negative heat rate deviations; DRA notes that SDG&E agreed to perform these tests;

n. SDG&E's natural gas supply and storage operations be found reasonable;

o. SDG&E's accounting for capacity costs associated with off-system sales be found unreasonable; and SDG&E be ordered to credit the ECAC account by $6,133,050 plus interest. As discussed in Section 3.3, DRA withdrew this recommendation.

p. SDG&E's Preliminary Statement be revised to clarify the booking of off-system sales to the ECAC balancing account;

q. SDG&E's recovery of $8,430,422 plus interest (for a total of $8,512,462 as of September 1992) pursuant to a United States District Court Summary Judgment (C-89-3551-MHP) be found reasonable.

In addition to the foregoing recommendations, DRA indicated that it did not object to SDG&E's request to recover revenue requirement amounts associated with tax changes which were retroactively applied to the record period. DRA reserved the right to audit SDG&E's implementation of those tax changes in the next reasonableness review.

In Sections 3.2 through 3.5 we discuss matters which were initially at issue but are now resolved. We also address (in Sections 3.6) DRA's recommendations that certain issues be addressed in future reasonableness reviews or in other forums.

3.2 Rejected Economy Energy Monitoring

DRA reviewed SDG&E's practices regarding economy energy purchases with the objectives of determining if SDG&E purchased economy energy at reasonable prices and if SDG&E maximized such purchases given operational constraints. DRA found that the prices paid by SDG&E compared favorably with purchases by Pacific Gas and

Electric Company and Edison, and were therefore reasonable. However, DRA initially found SDG&E's rejection of economy energy purchases to be problematic.

Minimum load conditions exist in SDG&E's system when the total of base load resources, minimum output of gas/oil units, minimum energy purchase obligations, and regulating margin exceeds load requirements. To minimize costs under minimum load conditions, SDG&E must sell, store, or reduce purchases or the output of its base load resources, whichever is most cost effective. Also, SDG&E rejects available energy when its gas/oil resources are operating at the minimum output needed to maintain required regulating margin. Because of such conditions, SDG&E lost opportunities to purchase economy energy which was competitive with its gas/oil resources. SDG&E reported that this occurred during 3,851 hours of the record period, and that potentially as much as 2,193 gigawatt hours of economy energy was rejected.

SDG&E's report of 3,851 minimum load hours appeared to DRA to be very high. By comparison, from 1983 to 1992 Edison's annual minimum load hours ranged from 4 to 2,927 and averaged 810. DRA felt that based on recorded minimum load hours, SDG&E might have kept its thermal units running more than necessary and left too much regulating margin. Consequently, DRA was concerned that SDG&E might have unnecessarily rejected economy energy purchases.

Following a series of DRA data requests, SDG&E discovered that some of the reported minimum load hours were recorded incorrectly due to miscoding by SDG&E. A large portion of "minimum load condition" hours should have been coded to indicate that economy energy was not available. After the coding errors were discovered by SDG&E, DRA examined additional data from SDG&E's transaction logs. Based on the examination, DRA generally found SDG&E's economy energy transactions reasonable. However, DRA found it troublesome that SDG&E did not have a complete record of rejected economy energy.

DRA stated that it had no way of judging conclusively if SDG&E made prudent choices to run its own units or purchase economy energy. DRA recommended that SDG&E develop a system to better compile and store information on rejected economy energy and make such information available to the Commission to monitor. SDG&E countered that it has previously considered recording economy energy offered by other utilities and rejected by SDG&E. SDG&E concluded that doing so would interfere with the ability of system operators to canvass the energy market and negotiate prices. In addition, as DRA acknowledged, the G&D mechanism provides a strong incentive for SDG&E to purchase the lowest cost energy, and at the same time it provides that there will be no reasonableness review for DRA to review economy energy purchases. SDG&E believes that the G&D mechanism is likely to be continued, and that it is unlikely that DRA will need the detailed information it requests. SDG&E also disagreed with DRA's contention that recorded data on rejected economy energy would be useful in developing forecasts in ECAC proceedings. During the hearings SDG&E and DRA reached an agreement providing that SDG&E will record rejected economy energy amounts in the company's Transaction Schedulers' running logs. This information is in addition to the offer's name and price, which are currently recorded. These logs will be available for DRA's review upon request. Additionally, if reasonableness reviews are reinstated for SDG&E's electric operations, SDG&E agrees to provide additional documentation for DRA to confirm the reasonableness of SDG&E's economy energy purchases.

We will approve the agreement reached by SDG&E and DRA as an appropriate resolution of this issue. In Section 3.6 we further address this and other recommendations that provide for future actions to be taken by SDG&E.

3.3 Off-System Sales

In its reasonableness report DRA recommended that SDG&E's practice for accounting for the capacity costs associated with off-system sales be found unreasonable, and that SDG&E be ordered to credit the ECAC balancing account by $6,133,050 as of July 31, 1993 plus interest. DRA withdrew the recommendation and supporting testimony based on the presentation of further data by SDG&E and discussions between the parties. (Late-filed Exhibit 24.) In view of DRA's decision to do so, we need not further address this issue.

3.4 Preliminary Statement Revisions

DRA recommended a text change in Section 9.(j)(2) (subsequently renumbered as E.10.b.(2)) of SDG&E's Preliminary Statement, which describes SDG&E's accounting of revenue billed for off-system sales. DRA and SDG&E later agreed upon revised language, submitted in Late-filed Exhibit 24, which is intended to clarify the rule for firm energy sales. SDG&E also proposed adoption of the same revised language in A.94-10-023, its 1994-95 ECAC proceeding. D.95-04-076, issued in the forecast phase of that proceeding, approved a settlement agreement which, among other things, provided for adoption of SDG&E's proposed revision. Accordingly, this issue is moot.

3.5 Tax Law Change

In the forecast phase the parties agreed to the inclusion of a 1993 federal tax change of $5,838,000 in SDG&E's revenue requirement, subject to review in the reasonableness phase of this proceeding. (D.94-04-078, p. 9.) DRA stated in its reasonableness report that it did not object to SDG&E's request to recover amounts associated with the change. DRA reserved the right to audit SDG&E's implementation of tax changes in the next reasonableness review.

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1 We note that the CPE contract was subject to extension if SDG&E provided notice to CPE by September 1, 1994, apparently making this recommendation moot.

DRA subsequently agreed that the amount should be found reasonable, although it did not withdraw its asserted right to review implementation in the next reasonableness review. We will adopt DRA's recommendations, which are uncontested.

3.6 Future Actions

Although this proceeding reviews the record period ending July 31, 1993, DRA made several recommendations that certain matters be taken up in future SDG&E reasonableness reviews or that SDG&E be directed to take other specified actions. For example, DRA recommended that SDG&E provide an economic analysis of the remaining life of the PNM contract in its next reasonableness review. Similarly, DRA recommended that SDG&E provide DRA with an analysis comparing the CFE contract with alternative resources prior to deciding whether to extend the CFE contract.[1] As discussed earlier, SDG&E agrees to record additional data on rejected economy energy purchases for review by DRA and possible introduction in future reasonableness reviews. DRA recommended, and SDG&E agrees, that SDG&E be directed to test each fossil steam unit over the next two years to eliminate negative heat rate deviations. Finally, DRA asserts the right to audit SDG&E's implementation of federal tax changes in a future reasonableness review.

It is not unusual for DRA to recommend such future actions in reasonableness reviews. In our experience, such recommendations do not represent attempts by DRA to have the Commission micromanage utility operations. Rather, by making such recommendations, DRA alerts the utility and other parties to pending issues, preserves its right to examine issues when a

1 We note that the CFE contract was subject to extension if SDG&E provided notice to CFE by September 1, 1994, apparently making this recommendation moot.

complete record can be developed, and makes more effective and efficient use of future reasonableness reviews. However, since this may be the last conventional reasonableness review of SDG&E's electric energy costs and operations, the administrative law judge (ALJ) requested that DRA clarify its recommendations for future reasonableness reviews in its brief. (Tr. 1479.) DRA indicated that its recommendation regarding data collection for rejected economy energy purchases would be applicable for possible reasonableness review if the G&D mechanism is removed. The G&D mechanism was adopted on an experimental basis, and the possibility remains that traditional reasonableness reviews will be reinstated. Also, SDG&E agrees to, or does not contest, DRA's recommendations for future actions. Accordingly, we see no reason to reject them at this time. However, to the extent that the G&D mechanism is made permanent and reasonableness reviews are eliminated, we encourage parties to avoid initiating reporting requirements and similar practices that may be appropriate for reasonable reviews but may not otherwise be necessary or appropriate in a regime of PBR regulation.

4. WWP Transactions

4.1 Background

4.1.1 Overview of Agreements

From time to time SDG&E enters into short-term purchased power and power exchange arrangements with other utilities. Such arrangements are generally no more than a year in duration, and their terms can be as short as a few days. They allow SDG&E to reduce the operation of its more expensive oil and gas units or acquire capacity to meet seasonal needs. As noted earlier, DRA found most such arrangements to be reasonable for the record period. At issue are certain power transactions related to two agreements that SDG&E and WWP signed on June 3, 1992 (June 3 agreements). Before we describe and discuss the parties' positions

with respect to the transactions, we review the key provisions of the agreements.

The June 3 agreements are entitled, respectively, "1992-1993 Firm Capacity and Energy Sale Agreement Between San Diego Gas & Electric Company and The Washington Water Power Company" (1992-93 agreement), and "1993 Firm Energy and Capacity Sale Agreement Between San Diego Gas & Electric Company and The Washington Water Power Company" (1993 agreement).

The term of the 1992-93 agreement was June 8, 1992 through March 31, 1993. This agreement had two major components. First, it obligated SDG&E to deliver 216,660 megawatt hours (MWh) of firm energy to WWP from June 8, 1992 through October 11, 1992 (1992 summer season). Of this amount, 120,960 MWh of base energy was to be delivered at a rate of 40 MW for each hour of the period. The remaining 95,700 MWh of peak energy was to be delivered at a rate not to exceed 110 MW in addition to the hourly delivered rate of base energy. Second, SDG&E was obligated to provide 600 MW months of firm winter capacity and associated energy to WWP during the fall and winter as follows:

Period	Capacity
November 1992	100 MW
December 1992	100 MW
January 1993	150 MW
February 1993	100 MW
March 1993	150 MW

The 1992-93 agreement required WWP to pay SDG&E $1.45 million for base and peak energy delivered during the 1992 summer season. It also required WWP to pay SDG&E $1.8 million for

2 The exact amount specified in the agreement is $1,749,900. A $3,249,900 payment specified in the 1993 agreement is similarly rounded to $3.25 million for discussions purposes.

the firm winter capacity and, for associated energy, a 110% of SDG&E's incremental energy cost plus SDG&E's cost for wheeling and losses to the point of delivery. SDG&E was obligated to bill WWP both the $1.45 million for the 1992 summer season energy and the $1.8 million for firm winter capacity on or before December 1, 1992. WWP was obligated to pay the total amount on January 4, 1993. The term of the 1993 agreement was June 1, 1993 through October 18, 1993 (1993 summer season). This agreement obligated WWP to deliver 216,660 MWh of firm energy to SDG&E during the 1993 summer season. Of this amount, 120,960 MWh of base energy was to be delivered at a rate of 36 MW for each hour of the period. The remaining 95,700 MWh of peak energy was to be delivered at a rate not to exceed 104 MW in addition to the hourly delivered rate of base energy. The 1993 agreement required SDG&B to pay WWP $3.25 million in monthly installments during the 1993 summer season.

Both agreements incorporated terms and conditions of the Western Systems Power Pool (WSPP) Agreement. The amounts of base and peak energy to be delivered during the respective summer seasons were equal (120,960 MWh base, 95,700 MWh peak, and 216,660 MWh total). However, the agreements were different in certain respects. The 1992-93 agreement allowed SDG&B to curtail energy deliveries by providing (in Section 7.4) that "SDG&B may curtail deliveries of [1992 summer season firm energy] upon notice given to WWP Power Scheduler by 0930 hours Pacific Time of the workday prior to the day or days that scheduled deliveries are to be curtailed." The 1993 agreement did not contain an equivalent provision allowing WWP to curtail deliveries to SDG&B. Where the 1992-93 agreement required WWP to pay SDG&E $1.45 million for 1992 summer season energy, the 1993 agreement required SDG&E to pay WWP $3.25 million, or an additional $1.8 million, for the same amount of energy delivered during the 1993 summer season. The firm winter capacity transaction was unique to the 1992-93 agreement.

4.1.2 SDG&E's Position

SDG&E's position is that the June 3 agreements involved two separately negotiated transactions with WWP. The first transaction, according to SDG&E, was a summer exchange in which WWP provided SDG&E with 140 MW of firm peaking capacity and energy during the 1993 summer season in return for SDG&E delivering nonfirm energy to WWP in the 1992 summer season. SDG&E claims that the summer exchange included a capacity charge of $1.8 million, or $2.86/kilowatt (kW) per month, payable to WWP during the summer of 1993. The second transaction, according to SDG&E, was a firm winter capacity transaction in which SDG&E sold 600 MW-months of capacity to WWP at $3/kW-month, for a total of $1.8 million. SDG&E contends that it properly booked the $1.8 million firm winter capacity payment (as well as the 10% markup on energy sales) as off-system sales, i.e., nonjurisdictional revenues which are set in general rate cases (GRCs).

4.1.3 DRA's Position

DRA's primary recommendation is that SDG&E be directed to credit the ECAC balancing account by $1.8 million as of the date WWP paid SDG&E $3.25 million for services rendered.[3] DRA rejects SDG&E's contention that the $1.8 million firm winter capacity transaction was independent from a summer exchange. Instead, DRA contends, the two WWP agreements involved a single transaction, an equal exchange, and the $1.8 million payment was a component part of the total $3.25 million in exchange revenue. DRA points out that nonjurisdictional sale revenue is forecast in GRCs, and variations from the forecast accrue to shareholders' Exchange revenue, on the other hand, is an ECAC item.

3 We note that while the 1992-93 agreement obligated WWP to pay $1.45 million for 1992 summer season energy deliveries and $1.8 million for winter capacity on January 4, 1993, SDG&E states that WWP actually paid these amounts in December 1992.

that compensates ratepayers for costs that are incurred by SDG&E and charged to ratepayers. DRA argues that the entire $3.25 million payment from WWP represented reimbursement of ECAC costs and that SDG&E's booking of the $1.8 million payment from WWP to nonjurisdictional sales constituted exploitation of a regulatory loophole which improperly benefitted shareholders. DRA also rejects SDG&E's claim that $1.8 million of its $3.25 million payment to WWP under the 1993 agreement was for a capacity charge. If the Commission does not accept its primary recommendation and instead accepts SDG&E's contentions that the $1.8 million payment from WWP was properly booked as a sale and the $1.8 million payment to WWP was for a capacity charge, DRA argues that the WWP transactions were unreasonable since better resource alternatives that SDG&E did not consider were available. In this event, DRA recommends that the ECAC balancing account be credited by $757,000.

4.2 Framework for Reasonableness Reviews.

In a reasonableness review, "[t]he burden rests heavily upon a utility to prove with clear and convincing evidence that it is entitled to the requested rate relief and not upon the Commission, its staff, or any interested party to prove the contrary." (Re Southern California Edison Company, D.90-09-088 (1990) 37 CPUC 2d 488, 499.) SDG&E does not question its assignment of the burden of proof that its operations and expenses were reasonable. SDG&E does take the position that DRA has the burden of supporting its own theories with sufficient evidence. Accordingly, there is no dispute regarding the applicant utility's burden of proof in reasonableness reviews. We affirm our holding in Edison, which means that SDG&E must show through clear and convincing evidence that its decisions and actions related to the WWP transactions were reasonable, and that it is entitled to retain the full $1.8 million at issue for the benefit of its shareholders.

We also affirm SDG&E's assertion that where DRA proffers its own theory of what occurred, it must support that theory with sufficient evidence. We should point out, however, this does not mean that any failure by DRA to do so would automatically lead to a finding that SDG&E's actions and decisions were reasonable. As the Commission explained in Re Southern California Edison Company (D.87-06-021 (1987) 24 CPUC 2d 476, 486) there are several ways for DRA to oppose a utility application. It can, as here, make its own evidentiary presentation, in which case it must enter testimony or other evidence in the record which will enable the Commission to make findings of fact inconsistent with the utility's showing.8 But it can also argue, by identifying a critical and missing element in the utility's showing, that the utility has failed to meet its burden of proof. Finally, even if the utility has made a minimum evidentiary showing, DRA can argue that the utility has not presented clear and convincing evidence if the showing is not persuasive or compelling.

With respect to the standard of review in reasonableness proceedings, SDG&E notes that D.87-06-021 also provides that

> "[t]he term 'reasonable and prudent' means that at a particular time any of the practices, methods, and acts engaged in by a utility follows the exercise of reasonable judgment in light of facts known or which should have been known at the time the decision was made. The act or decision is expected by the utility to accomplish the desired result at the lowest reasonable cost consistent with good utility practices. Good utility practices are based upon cost effectiveness, reliability, safety, and expedition.
>
> "A 'reasonable and prudent' act is not limited to the optimum practice, method, or act to the exclusion of all others, but rather encompasses a spectrum of possible practices, methods, or acts consistent with the utility system need, the interest of the ratepayers and the requirements of government agencies of competent jurisdiction." (Id.)

SDG&E goes on to point out that

> "A decision may be found to be reasonable and prudent if the utility shows that its decision-making process was sound, that its managers considered a range of possible options in light of information that was or should have been available to them, and that its managers decided on a course of action that fell within the bounds of reasonableness, even if it turns out not to have led to the best possible outcome." (Re San Diego Gas & Electric Company D.89-02-074 (1989) 31 CPUC 2d 236, 320, Conclusion of Law 3.)

DRA concurs that these are the appropriate standards of review. We affirm them for purposes of this case as well.

4.3 Discussion

4.3.1 Statement of the Issue

The primary question before us is whether SDG&E properly accounted for the WWP transactions. SDG&E received a $3.25 million payment from WWP at the end of 1992. It booked $1.45 million for summer season energy deliveries into the ECAC balancing account, and the remaining $1.8 million as an off-system sale. We are asked to decide whether the $1.8 million payment from WWP represented proceeds from an independent sale of firm winter capacity, as SDG&E contends, or was a component of an equal exchange, as DRA contends. If we determine the payment was properly booked as an off-system sale, we should then evaluate the WWP transactions by comparing them to the resource alternatives that were available to SDG&E. If we find the payment was not for a sale, SDG&E should be directed to credit the ECAC balancing account by $1.8 million plus associated interest for the benefit of ratepayers.

4.3.2 Linkage of the Agreements

We note that SDG&E and DRA agree that the June 3 agreements should be read together. They even agree that the two agreements involved an exchange. They do not agree on the nature of the exchange. As already noted, SDG&E claims there was a

summer-for-summer exchange and a separate and distinct firm winter capacity transaction which was joined with with the June 3 agreements solely as an administrative convenience to DRA claims that there was a single exchange which included the winter transaction as well as the summer transactions.

SDG&E argues that "[n]othing on the face of [the June 3 agreements] states that they constitute a single energy and capacity exchange, or a single transaction of any kind." (SDG&E Opening Brief, p. 5; emphasis in original.) Thus, SDG&E maintains, DRA's theory of a single energy and capacity exchange fails. However, there is no reference to SDG&E's claimed summer-for-summer exchange either. If the agreements' lack of reference to an exchange means there was no exchange, then SDG&E's theory would also fail. We reject the premise that an exchange existed only if the agreements explicitly referenced an exchange.

Based on the foregoing, we will evaluate the June 3 agreements and ensuing transactions as a whole, considering all relevant facts regarding their creation and execution. Because of SDG&E's interest in how we interpret the transactions, we will carefully weigh its assertions and arguments in light of the framework for reasonableness review discussed above.

4.3.3 Differential Quality of the Summer Deliveries

SDG&E relies on the claim that the asserted summer exchange did not provide for equal monetary payments because it did not place equal delivery obligations on the respective utilities. According to SDG&E, WWP had a firm obligation to deliver power to SDG&E in the summer of 1993, but its own obligation to deliver power to WWP in the summer of 1992 was nonfirm. SDG&E could curtail deliveries on one day's notice. According to SDG&E, the difference in obligations was reflected in a $1.8 million capacity charge which it paid to WWP under the 1993 agreement.

We recognize that under Section 7.4 of the 1992-93 agreement, SDG&E had a different obligation to WWP during the 1992 summer season than WWP had the following summer. Notwithstanding each agreement's requirement for deliveries of "216,660 MWH of firm energy" during the respective summer seasons, SDG&E had a right to curtail deliveries on one day's notice, no WWP did not. However, the fact that SDG&E had a less firm obligation than the return obligation imposed upon WWP does not constitute clear and convincing evidence that the value of SDG&E's right under Section 7.4, and WWP's lack of the same right, was equivalent to the $118 million difference in the terms of the asserted summer exchange. Moreover, as DRA has shown, the firm energy supplied by WWP was delivered by nonfirm transmission over the Pacific Intertie (PIT). SDG&E's testimony that nonfirm transmission on PIT is operationally equivalent to firm transmission does not overcome evidence elicited by DRA that in the event of a partial forced outage, nonfirm transmission would be interrupted before firm.

SDG&E's theory of the winter transaction as a separate, off-system sale requires that we find that the 1993 agreement included a capacity payment of $118 million. SDG&E asserts that its $3.25 million payment obligation for 1993 summer season deliveries from WWP included payment of a capacity charge of $2.86/kW-month ($1.8 million total), yet nothing in the 1993 agreement referred to a capacity charge or payment of that amount or any other amount. Instead, the 1993 agreement simply required SDG&E to pay a total of $3.25 million in five installments. Given SDG&E's obligation to prove clearly and convincingly that there was a capacity charge of $1.8 million, the absence of any reference to such a capacity charge in the 1993 agreement is significant.

4.3.4 Administrative Convenience

SDG&E has shown that it entered into two separate agreements, each of less than one year in duration, so that the two summer transactions could be carried out under the WSPP Agreement.

A single agreement of more than one year's duration would have required acceptance by the Federal Energy Regulatory Commission (FERC), which in turn would have delayed the commencement of energy deliveries. If anything, this undermines SDG&E's claim that the firm winter capacity transaction was joined with the summer-for-summer exchange and included in the 1992-93 agreement, at WWP's request, solely as an administrative convenience. It was possible for SDG&E and WWP to negotiate what SDG&E asserts was a single agreement, yet, solely because of an administrative hurdle, undertake the extra effort to create two separate written agreements to implement that single agreement. Under the circumstances, we are left to wonder why, despite the extra effort involved, it was not also possible, indeed reasonable, for the parties to create a third agreement to implement what SDG&E asserts was a separate and distinct agreement. SDG&E has not presented convincing evidence explaining, or demonstrating the value of, the administrative convenience that in its view justified joining two separate and independent transactions in a single agreement. When a single transaction, the claimed summer-for-summer exchange, was divided into two agreements. We find the inclusion of the firm winter capacity transaction in the June 3 agreements is more consistent with DRA's theory of a single exchange which included that transaction.

4.4.5 SDG&E's Reporting Duty

In Re Southern California Edison Company, D.90-01-048 (1990) 35 CPUC 2d 169, the Commission found that an electric utility has a duty to inform the Commission in its GRC filings of negotiations for power sale contracts having a major impact on revenues. (Id. at 189-90, Finding of Fact 12.) A rule of thumb for determining whether a contract has a major impact is to ask whether the utility would request an adjustment for an expense of that amount for the attrition year. (Id. at 182.) DRA has shown

that an expense of $1.8 million would trigger a SDG&E request for an attrition adjustment. At the time SDG&E and WWP were negotiating the June 3 agreements, SDG&E's test year 1993 GRC (Application (A.) 91-11-024) was in progress. SDG&E did not inform the Commission of the WWP negotiations or agreements in the GRC proceeding. DRA notes that under California Civil Code § 3529, "(t)hat which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due." DRA takes the position that Commission should apply this principle and infer that SDG&E did not violate its reporting duty, but instead properly excluded the transaction from the GRC because it viewed the winter transaction as part of an exchange rather than as an off-system sale.

SDG&E takes the position that timing prevented inclusion of the WWP revenues in its 1993 GRC. SDG&E explains that the negotiations with WWP occurred during the April to June 1992 time period. The GRC application was filed in November 1991, well before discussions with WWP commenced. GRC settlement discussions took place in April 1992, and an all-party settlement was signed on May 8, 1992. The rate case plan for processing GRCs includes a limited provision for updates, and update hearings in SDG&E's GRC were held in September 1992. (Re Time Schedules for the Rate Case Plan and Fuel Offset Proceedings D.89-01-040 (1989) 30 CPUC 2d 576, 604 and 609.) While updates are allowed in GRCs, SDG&E argues that the WWP winter capacity transaction was outside the allowable scope of such updates.

We find little merit to SDG&E's timing argument. In D.90-01-048, the Commission found that Edison's reporting duty existed where GRC hearings concluded in September 1987 and contract negotiations which should have been reported to the Commission continued into November of that year, just one month before the Commission issued its GRC decision. (35 CPUC 2d 169, 189.) Findings

of Fact 9 and 10.) Here, SDG&E was in negotiations with WWP during the same general time period it was in negotiations leading to an all-party settlement in the GRC. Moreover, the June 13 agreements with WWP preceded the Commission's GRC decision by six months. SDG&E also argues in effect that it was prevented from informing the Commission of the WWP negotiations because the rate case plan only allows updates for limited purposes which do not include short-term sales. Given the Commission's finding of an affirmative reporting duty on the utility's part in D.90-01-048, we find that SDG&E's reliance on the rate case plan rings hollow. The Commission's finding of an affirmative reporting duty on Edison's part was made a full year after the Commission adopted the current rate case plan. Moreover, even though Edison's 1988 GRC was prosecuted before the current rate case plan was adopted, the previous rate case plan (Resolution ALJ-149, as amended) contained essentially the same limitation on updates that appears in the current plan. The rate case plan's limitation on updates does not allow a utility to escape its reporting duty under D.90-01-048. Thus, if SDG&E had regarded the winter sale as a separate and distinct off-system sale at the time its GRC was pending, it would have had a duty to report that sale to the Commission. Because it did not do so, there is a reasonable presumption that at the time the WWP agreements were negotiated and signed, SDG&E did not regard the winter transaction as an off-system sale.

4.4.6 Conclusion

The 1992-93 agreement includes a provision for a $18 million payment by WWP in consideration for SDG&E's provision of firm winter capacity, and SDG&E's theory of a summer-for-summer exchange and a separate and distinct firm winter capacity sale is not implausible on its face. Nevertheless, SDG&E has not clearly and convincingly shown that the winter transaction was separate and distinct from the asserted summer exchange. Several elements of SDG&E's theory, including assertions of substantially different

service quality in the two summer deliveries and a summer capacity charge of $1.8 million have not been proven according to the established framework for reasonableness reviews.

DRA's theory of a single exchange is more credible. Given the reciprocity of terms in the agreements, their concurrent execution, supporting WWP documents which reflect the contingency of one upon the other, and the economic equivalence of the parties, as well as SDG&E's failure to clearly and convincingly prove key elements of its theory, we are lead to the conclusion that the June 3 agreements constituted a single exchange which included the winter transaction. As described simply by DRA, WWP committed to take services worth $3.25 million from SDG&E, and to provide services worth $3.25 million to SDG&E. The equal dollar value between the two parties, who have conflicting interests, and who negotiated at arm's length, is strong evidence that an equal exchange occurred." (Exhibit 14, pp. 4-5.) DRA's theory provides the clearest explanation of the agreements and ensuing transactions and is supported by the evidence. We conclude that the $1.8 million payment from WWP should not accrue to shareholders. We will direct SDG&E to credit the ECAC balancing account by $1.8 million plus associated interest.

5. Comments on Proposed Decision

Comments on the administrative law judge's proposed decision were filed by SDG&E and DRA. DRA filed a reply to SDG&E's comments. We have considered the comments and made changes to the proposed decision that we find to be appropriate. SDG&E's comments were, for the most part, directed to the proposed disposition of the WWP transactions. We have made minor changes to the discussion in Section 4, but we do not change the outcome of the proposed decision.

SDG&E, for the first time in this proceeding, proposes in its comments that balancing account interest be allowed on the uncontested SONGS Unit 1 Nuclear Unit Incentive Procedure award of

$570,060. SDG&E estimated that the total award including interest through November 1995 would be $652,137. As the sole grounds for its request, SDG&E notes that in D.93-04-037, issued in an earlier reasonableness review, the Commission required that balancing account interest be added to an $800,000 disallowance related to the Nuclear Unit Incentive Procedure. That disallowance, however, was the result of an agreement between SDG&E and DRA presented in a joint recommendation which resolved all SONGS issues for purposes of that proceeding. (D.93-04-037, p. 151.) The agreement explicitly provided for "related interest" on the disallowance. (Id. p. 14.) SDG&E has not provided any other precedents for allowing balancing account interest, and it has not shown that this component of the agreement it reached with DRA in the earlier proceeding should be accorded precedential value here. SDG&E's request is therefore denied.

Findings of Fact

1. SDG&E filed its reasonableness report with A.93-09-049 requesting, among other things, a reasonableness review of recorded gas and electric energy costs and operations for the record period which began August 1, 1992 and ended July 31, 1993, and, as to certain issues, other applicable periods.

2. DRA reviewed SDG&E's reasonableness report, conducted extensive discovery, and independently evaluated and issued a report on the reasonableness of SDG&E's gas and electric energy costs and operations for the applicable record periods.

3. DRA generally found SDG&E's expenses and operations to be reasonable for the record period, and with the exception of the WWP transactions and related disallowance recommendation, the contested issues were resolved during the proceeding.

4. DRA recommends that SDG&E's nuclear facility operations for the period April 1, 1992 through March 31, 1993 be found reasonable.

5. Nuclear operations for the remaining four months of the record period will be reviewed in an Edison ECAC proceeding and reflected in SDG&E's next ECAC proceeding.

6. DRA recommends that SDG&E's nuclear fuel costs for the record period be found reasonable.

7. DRA recommends that a $570,060 reward requested by SDG&E under the Nuclear Unit Incentive Procedure be allowed for SONGS Unit 1, Incentive Period 11.

8. DRA recommends that SDG&E's decisions during the record period regarding economy energy purchases be found reasonable, including decisions rejecting economy energy when justified by minimum load conditions.

9. DRA recommends that SDG&E's short term firm contractual arrangements between SDG&E and WAPA, BPA, and PSPL be found reasonable for the record period.

10. DRA recommends that SDG&E's administration of long term firm contracts with PGE, APS, PNM, Century, and CFE be found reasonable for the record period.

11. DRA recommends that SDG&E's participation in PGE coal and railroad settlements be found reasonable.

12. DRA recommends that SDG&E's purchases from QFs during the record period be found reasonable.

13. DRA recommends that SDG&E's record period fuel oil inventory levels and associated carrying costs be found reasonable.

14. DRA recommends that SDG&E's natural gas operations and expenses during the record period be found reasonable.

15. DRA recommends that SDG&E's recovery of $8,512,462 (including interest as of September 1992) pursuant to a United States District Court Summary Judgment (C-89-3551-MHP) be found reasonable.

16. In addition to the data currently recorded, SDG&E agrees to record the amount of economy energy rejected in the Transaction Schedulers' running logs, and to make those logs available for DRA's review.

17. If reasonableness reviews are reinstated for SDG&E's electric operations, SDG&E agrees to provide additional documentation for DRA to confirm the reasonableness of SDG&E's economy energy purchases.

18. DRA withdrew its recommendation that SDG&E's accounting for the capacity costs associated with off-system sales be found unreasonable and that SDG&E be ordered to credit the ECAC balancing account by $6,133,050 plus interest.

19. The agreed-upon revision to Section 9.(j).(2).(C) of SDG&E's Preliminary Statement was approved in D.95-04-076.

20. DRA agrees that inclusion of a 1993 federal tax change of $5,838,000 in SDG&E's revenue requirement should be found reasonable, but DRA reserves the right to audit SDG&E's implementation of the tax changes in the next reasonableness review.

21. SDG&E agrees to, or does not contest, recommendations by DRA that SDG&E provide economic analyses to DRA prior to renewing its contract with CFE; provide in its next reasonableness review an economic analysis of the remaining life of a contract with PNM, presenting options in administering the contract; and SDG&E be directed to test each fossil steam unit over the next two years to eliminate negative heat rate deviations.

22. The Commission encourages parties to avoid future reporting requirements and similar practices that may be appropriate for reasonable reviews but may not otherwise be necessary or appropriate in a regime of PBR regulation.

23. Nonjurisdictional sale revenue is forecast in GRCs, and variations from the forecast accrue to shareholders.

Exchange revenue, is an ECAC item that compensates ratepayers for costs that are incurred by SDG&E and charged to ratepayers.

24. Of a $3.25 million payment received from WWP at the end of 1992, SDG&E booked $1.45 million for summer season energy deliveries into the ECAC balancing account, and the remaining $1.8 million as an off-system sale.

25. If we find the $1.8 million winter capacity payment was not for a sale, SDG&E should be directed to credit the ECAC balancing account by $1.8 million plus associated interest for the benefit of ratepayers.

26. The June 3 agreements contain no reference to any year other than 1992.

27. The WWP agreements were negotiated and executed, SDG&E did not report any exchange.

28. SDG&E has not shown that the difference in delivery obligations resulting from Section 7.4 of the 1992-93 agreement had a value equivalent to the $1.8 million difference in the terms of the asserted summer exchange.

29. The firm energy supplied by WWP was delivered over nonfirm transmission.

30. The 1993 agreement contains no reference to a capacity charge or payment.

31. SDG&E and WWP entered into two separate agreements for administrative convenience, so that the two summer transactions could be carried out under the WSPP Agreement without delay in the commencement of energy deliveries.

32. SDG&E has not shown why administrative convenience justified joining two assertedly separate and independent transactions in a single agreement.

33. Inclusion of the firm winter capacity transaction in the June 3 agreements is more consistent with DRA's theory of a single exchange which included that transaction

34. An electric utility has a duty to inform the Commission in its GRC filings of negotiations for power sale contracts having a major impact on revenues.

35. A $148 million sale would have a major impact on SDG&E's revenues.

36. SDG&E did not inform the Commission of the WWP negotiations or agreements in its test year 1993 GRC proceeding.

37. If SDG&E had regarded the winter sale as a separate and distinct off-system sale at the time its GRC was pending, it would have had a duty to report that sale to the Commission.

38. Because SDG&E did not report any pending WWP sale in its test year 1993 GRC, there is a reasonable presumption that at the time the WWP agreements were negotiated and executed, SDG&E did not regard the winter transaction as an off-system sale.

39. SDG&E has not clearly and convincingly shown that the winter transaction was separate and distinct from the asserted summer exchange.

40. The June 3 agreements constituted a single exchange which included the firm winter capacity transaction as well as the summer season firm energy deliveries.

Conclusions of Law

1. SDG&E's recorded gas and electric energy costs and operations for the record periods under review in this proceeding were reasonable except for SDG&E's accounting of the WWP transactions.

2. The $570,060 reward requested by SDG&E under the Nuclear Unit Incentive Procedure for SONGS Unit 1 Incentive Period III should be allowed.

3. SDG&E should include recorded data on the amount of economy energy rejected in its Transaction Schedulers' running logs and make those logs available for DRA's review which includes

4. SDG&E should test each fossil steam unit over a two-year period as agreed to by SDG&E to eliminate negative heat rate deviations.

5. The proposal to revise Rule 9.(j)(2)c. of SDG&E's Preliminary Statement is moot.

6. SDG&E must show through clear and convincing evidence that its decisions and actions related to the WWP transactions were reasonable, and that it is entitled to retain the full $1.8 million at issue for the benefit of its shareholders.

7. The $1.8 million payment from WWP should not accrue to shareholders.

8. This decision concludes the reasonableness phase, and the proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. San Diego Gas & Electric Company's (SDG&E) request for a finding of reasonableness is granted to the extent provided in the discussion, findings, and conclusions herein. SDG&E shall credit its Energy Cost Adjustment Clause Balancing Account by $1.8 million associated with the Washington Water Power Company (WWP) transaction plus associated balancing account interest calculated from the date(s) that SDG&E received payment from WWP through the date the credit is recorded.

2. SDG&E is awarded $570,060 under the Nuclear Unit Incentive Procedure for SONGS Unit 1, Incentive Period 11.

3. SDG&E is directed to include recorded data on the amount of economy energy rejected in its Transaction Schedulers' running logs, and to make those logs available for DRA's review upon request.

SDG&E is directed to test each fossil steam unit over a two-year period, as agreed, to eliminate negative heatrate deviations.

5. This proceeding is closed.

This order is effective today.

Dated December 6, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners