

Decision 99-03-015 March 4, 1999

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of San Diego Gas & Electric Company (U 902-E) for Authority to Sell Electrical Generation Facilities and Power Contracts.

Application 97-12-039  
(Filed December 19, 1997)

**OPINION**

San Diego Gas & Electric Company (SDG&E) seeks authorization to sell and donate its South Bay Power Plant (South Bay) to the San Diego Unified Port District (Port District) through an Amendment to this application.

The transaction documents for this proposed sale and donation are Attachment A to SDG&E's filing, and the volume of these attachments is significant. Accordingly, pursuant to Rule 2.3(c) of the Commission's Rules of Practice and Procedure, SDG&E served the filing without attachments on parties other than the Office of Ratepayer Advocates, and SDG&E served a notice of availability with respect to the attachments. There are no protests.

**I. Procedural Background**

SDG&E filed its application on December 19, 1997. Notice appeared in the Daily Calendar on January 5, 1998. The Commission issued its first interim opinion in Decision (D.) 98-10-055 on October 22, 1998, in which it permitted SDG&E to commence an auction of South Bay, its Encina Power Plant (Encina), and its 17 combustion turbines (Combustion Turbines), subject to certain conditions; approved of the proposed operations and maintenance (O&M) agreement for subsequent operation of the plants by SDG&E for the purchasers; approved the accounting and ratemaking treatment described in SDG&E's

application, subject to certain conditions; and determined that SDG&E's sale of its fossil plant assets does not create market power concerns.

In D.98-10-055, we noted that SDG&E was temporarily suspending the auction of South Bay in order to facilitate a possible purchase of the plant by the Port District, and that if SDG&E entered into a definitive sales agreement with the Port District, we expected SDG&E to amend its application accordingly. On December 11, 1998, SDG&E and the Port District entered into definitive agreements with respect to South Bay.

In addition, on December 3, 1998, we adopted D.98-12-012 which approved a mitigated negative declaration for the project represented by the application, and approved a related mitigation, monitoring, and reporting program. This mitigated negative declaration anticipated that SDG&E would be selling South Bay to the Port District.

The Amendment (i) describes the South Bay transaction; (ii) discusses the legislation applicable to the transaction; (iii) provides the definitive agreements; (iv) provides certain estimates, including book values, transaction costs, and plant-related environmental remediation costs, for accounting and ratemaking adjustments necessary to reflect the sale and donation; and (v) asks the Commission to make specific findings and to grant final approval of the sale and donation.

## **II. The South Bay Transaction**

The definitive agreements provide that SDG&E will transfer South Bay to the Port District. The Port District is a local public entity organized and existing as a port district pursuant to Appendix I of the Harbors and Navigation Code. As a result of negotiations between SDG&E and the Port District, the real property being transferred to the Port District includes two parcels which were not included in SDG&E's original auction plan.

One parcel (the LNG Parcel) is a 33-acre lot located immediately adjacent to the southeast portion of the main plant site. The LNG Parcel was at one time used by SDG&E for liquefied natural gas processing and storage activities, but such activities have been discontinued by SDG&E for many years.

The other parcel (the Transmission Parcel) is a 16-acre lot located immediately to the north of the main plant site, between J and F streets in the City of Chula Vista. The Transmission Parcel is a long, narrow lot used by SDG&E as a right-of-way for electric and natural gas transmission and distribution facilities, and for the oil pipeline which serves the plant. SDG&E has reserved easements which will allow it to continue all necessary utility uses of the LNG Parcel and the Transmission Parcel. These two parcels are described in detail in Attachment A to the Amendment.

Pursuant to the definitive agreements, the Port District will pay SDG&E \$110 million for the South Bay plant facilities, and SDG&E will provide the Port District with a charitable donation of the main plant site land, the LNG Parcel, the Transmission Parcel, and the value of the South Bay plant facilities which exceeds \$110 million. The value of SDG&E's donation to the Port District must be determined by an independent appraisal. To ensure accuracy, this appraisal needs to be conducted close to closing, and therefore SDG&E cannot presently provide an accurate estimate of the value of the donation.

Because it is not an experienced power plant operator, the Port District is leasing the plant to Duke Energy South Bay, LLC (Duke), a wholly owned subsidiary of Duke Energy Corporation. Duke Energy Corporation is one of the country's largest energy service companies, with over \$26 billion in assets. Duke Energy companies provide electric service to approximately 2 million customers, operate pipelines that deliver 12 percent of the natural gas consumed in the United States, and are leading marketers of electricity, natural gas, and natural

gas liquids. Duke will operate the South Bay generating facilities, and will sell energy, capacity, and ancillary services from those facilities.

### **III. Relevant Legislation**

In 1998, SB 1589 amended Public Utilities (Pub. Util.) Code § 363 by adding subsection c:

- (c) For those bayside fossil fueled electric generation and associated transmission facilities that an electrical corporation has proposed to divest in a public auction and for which the Legislature has appropriated state funds in the Budget Act of 1998 to assist local governmental entities in acquiring the facilities or to mitigate environmental and community issues, and where the local governmental entity proposes that the closure of the power plant would serve the public interest by mitigating air, water and other environmental, health and safety, and community impacts associated with the facilities, and where the local governmental entity and electrical corporation have engaged in significant negotiations with the purpose of shutting down the power plant, and where there is an agreement between the electrical corporation and the local governmental entity for closure of the facilities or for the local governmental entity to acquire the facilities, the commission shall approve of these facilities or the transfer of these electric generation and associated transmission facilities to the local governmental entity and shall consider the utility transactions with the community to be just and reasonable for its ratepayers. For purposes of calculating the Competition Transition Charge, the commission shall not use any inferred market value for the facilities predicated on the continued use of the plant, the construction of successor facilities or alternative use of the site and shall net the costs of the depreciated book value of the power plant and the unrecovered costs of decommissioning, environmental remediation and site restoration against the net proceeds received from the local governmental entity for the acquisition or closure of the facilities. Thereafter, any net proceeds received from the ultimate disposition, by the electrical corporation, of the site shall be credited to recovery of Competition Transition Charges.

This statute is directly applicable to SDG&E's proposed sale and donation of South Bay to the Port District.

South Bay is a bayside fossil fueled electric generation facility that an electrical corporation, SDG&E, has proposed to divest at public auction. As set forth in the Request for Judicial Notice that SDG&E filed concurrently with the Amendment, in Section 7 of the Budget Act of 1998 (Assembly Bill 1656) the Legislature appropriated \$15 million of state funds to assist the Port District, a local governmental entity, in acquiring South Bay. The \$15.0 million was included in the CPUC budget for 1998-1999 fiscal year under General Fund for Support of the San Diego Unified Port District Purchase of SDG&E's South Bay Power Plant. The Port District proposes that the closure of South Bay would serve the public interest by mitigating air, water, and other environmental, health and safety, and community impacts associated with the facility.

The negotiations between SDG&E and the Port District with respect to South Bay were conducted by SDG&E officers and the chairman of the Port District, as well as by negotiating teams which included senior staff members and outside legal counsel for both sides. The negotiations took place over more than 20 sessions, with a number of the sessions lasting well into the night, and the negotiations resulted in modifications by each party of its initial positions, modifications with millions of dollars of value to the other party. Therefore, these negotiations were "significant negotiations" under Pub. Util. Code § 363(c) because (i) they were conducted at a senior level; (ii) over several sessions; and (iii) resulted in modifications by each party of its initial positions to a substantial extent. (D.98-10-029, mimeo., at 5 and 11.)

Finally, it is the Port District's avowed intention to shut down South Bay.<sup>1</sup> Accordingly, now that there is an agreement between SDG&E and the Port District for the Port District to acquire South Bay, all of the criteria specified in Pub. Util. § 363(c) have been satisfied.

#### **IV. Reasonableness of the Proposed Transaction**

Because SDG&E's proposed sale and donation of South Bay to the Port District satisfies the criteria specified in Pub. Util. Code § 363(c), we should approve the transaction, and should consider the transaction to be just and reasonable. As we noted when we considered PG&E's proposed treatment of its Hunters Point Plant, transactions which satisfy Pub. Util. § 363(c) are just and reasonable as a matter of law. (D.98-10-029, mimeo., at 7.) Accordingly, SDG&E requests that we authorize SDG&E's sale and donation of South Bay, including the LNG Parcel and the Transmission Parcel, to the Port District, and determine that such transfer is just and reasonable.

The sale and donation of South Bay to the Port District is in the public interest, and the measures described in the mitigated negative declaration adopted in D.98-12-012 are sufficient to avoid or mitigate the reasonably foreseeable adverse environmental impacts of the project represented by SDG&E's divestiture application. Therefore, we will approve the sale and donation of South Bay to the Port District, subject to the measures adopted in D.98-12-012 to avoid or mitigate the reasonably foreseeable adverse environmental effects of the project.

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<sup>1</sup> In Section 4.12 of the Asset Sale Agreement the Port District warrants that it intends to decommission South Bay as soon as reasonably practicable, taking into account must-run and local reliability issues.

## **V. Market Valuation**

Pub. Util. Code § 377 provides that the Commission "shall continue to regulate the nonnuclear generation assets owned by any public utility prior to January 1, 1997, that are subject to [C]ommission regulation until those assets have been subject to market valuation in accordance with procedures established by the [C]ommission." SDG&E believes its proposed transfer of South Bay is consistent with this requirement. Although SDG&E is not auctioning South Bay, it is selling and donating South Bay pursuant to a transaction that has been deemed just and reasonable as a matter of law. SDG&E requests that we determine that the market value of South Bay is \$110 million plus the amount of SDG&E's South Bay land and plant donation to the Port District, as determined by the independent appraisal that SDG&E will commission. The donation will equal the appraised value of the donated land, plus the appraised value of the plant in excess of \$110 million.

## **VI. The Transaction Documents**

Attachment A to the filing contains copies of the transaction documents associated with the proposed sale and donation. These documents include the Asset Sale Agreement, O&M Agreement, and Facilities Services Agreement previously presented to the Commission, as well as several subsidiary agreements. These documents are consistent with our directives in D.98-10-055. In particular, the transfer of South Bay is subject to an O&M Agreement substantially in the form presented in SDG&E's application, and the transfer is subject to an assignment of SDG&E's Must-Run Agreements for the plant with the Independent System Operator (ISO).

The details of some of the documents and their schedules may change between now and the closing of the sale and donation, as is customary in complex asset transactions of this type. SDG&E therefore asks us to approve the

sale and donation of South Bay under the form of the agreements submitted with the filing, with the understanding that the precise content of the documents and their schedules may be somewhat different in some respects at closing, and that SDG&E may be executing additional documents and agreements necessary to effectuate the substance of the transaction.

As noted above, the Asset Sale Agreement, O&M Agreement, and Facilities Services Agreement previously presented to us have been revised in response to SDG&E's South Bay negotiations, but these revisions did not substantially change the documents from the form that we previously reviewed. Set forth below is a brief description of the primary changes to these three documents, as well as a short description of the additional ancillary agreements included in Attachment A. The discussions below are summary in nature. The transaction documents themselves control the parties' rights and should be consulted for a more precise and complete treatment of the issues.

#### **A. Asset Sale Agreement**

The revisions to the South Bay Asset Sale Agreement include changes to the provisions relating to assignment of SDG&E's South Bay Must-Run Agreement and clarifications to the provisions relating to environmental responsibilities upon decommissioning. The provision relating to the assignment of SDG&E's Must-Run Agreement with the ISO (former Section 2.5(c)) has been modified to spell out the parties' rights and responsibility in the event of changes to SDG&E's Must-Run Agreement between signing and closing, and it has been moved to the Three Party Agreement described below. In Section 4.11, the Port District warrants that Duke is a qualified, experienced, and licensed operator of power plants and has the ability to operate South Bay in accordance with any and all Commission, ISO, and FERC requirements. In addition, the definition of

"Plant Decommissioning Costs" in Section 1.1(s) has been modified to clarify certain issues involving the allocation of environmental responsibilities.

**B. O&M Agreement**

SDG&E has complied with § 363(a). In the O&M Agreements, the definition of "Owner Subsidiary" has been removed, as in the Facilities Services Agreement, because the Port District will not be assigning these agreements to a subsidiary, and therefore the provision was unnecessary. In addition, changes in Sections 6.1, 8.1, and 11.1 give the new owner a somewhat greater ability to direct the overall management of certain activities at the facilities during the contract term.

**C. Facilities Services Agreement**

In the Facilities Services Agreement, the definition of "Owner Subsidiary" has been removed, just as it was for the O&M Agreements. Section 2.3 contains modifications to the parties' relocation obligations. Pursuant to this revised section, the new owner is no longer obligated to relocate all of the Subject Equipment and Services (as such term is defined in the Facilities Services Agreement) upon the decommissioning or other earlier termination of the Facilities Services Agreement by the new owner. Rather, the new owner will only be required to relocate Subject Equipment and Services that (i) are used by SDG&E at the time of such decommissioning or earlier termination, and (ii) are required in accordance with good industry practice. Finally, Section 5.5 has been added to coordinate the scheduling and payment obligations for capital improvements. Either party may propose a capital improvement and both parties will cooperate to establish the schedule and cost allocation for such improvements.

**D. Other Ancillary Agreements**

SDG&E and the Port District are entering into a Quitclaim Deed, Easement Reservation and Covenant Agreement (ECA) which creates reciprocal easements over the new owner's land and SDG&E's land in order to facilitate the use, operation, and access to each party's facilities. The ECA and the Real Property Contribution Agreement being executed by SDG&E and the Port District establish certain additional rights and responsibilities with respect to the land being transferred by SDG&E, as well as the means by which the land will be transferred.

SDG&E, the Port District, and Duke are entering into a Three Party Agreement and a Related Agreements Assignment and Assumption Agreement which establish certain legal relationships between the parties. Pursuant to these agreements, the parties have agreed that the Port District may assign to Duke certain rights and obligations under the O&M Agreement, the Facilities Services Agreement, and the ECA. In addition, SDG&E has agreed to directly assign its South Bay Must-Run Agreement with the ISO to Duke. Duke's resulting obligations to SDG&E will be guaranteed by Duke Capital Corporation pursuant to the Guaranty included in Attachment A.

In addition, SDG&E, the Port District, and/or Duke will execute other agreements which may be required to effectuate the transactions. Such agreements may include (i) a Participating Generator Agreement, (ii) a Meter Service Agreement for ISO Metered Entities, (iii) agreements required in connection with the provision of reserve or auxiliary power by SDG&E to the new owner, (iv) agreements necessary to effectuate the delivery of electrical energy to SDG&E at the facilities, (v) agreements required by SDG&E to access certain of the revenue or ISO meters included in the Assets, and (vi) various assignment and assumption agreements needed to transfer the assets.

## VII. Accounting and Ratemaking Adjustments

In D.98-10-055, we established the accounting and ratemaking treatment for SDG&E's fossil generation sales. In particular, sale proceeds for South Bay are to be adjusted for the costs of the auction, tax consequences of the sale, and forecasted environmental cleanup costs. The amount by which these net sale proceeds exceed SDG&E's sunk costs for the plant is then to be credited by SDG&E to its transition cost balancing account (TCBA) within 30 days after the sale is concluded. (D.98-10-055, mimeo., at 17 and 19.) SDG&E will make its TCBA adjustments consistent with our directives.

### A. Transaction Costs

Based upon costs incurred to date and its projections for additional work that will be required to complete the sale and donation, SDG&E estimates that its transaction costs to sell South Bay will approximate the figures set forth below. These costs are estimates, and will be adjusted to reflect actual costs before they are netted against auction proceeds.

<u>Description</u>	<u>Estimated Amount</u>
Investment Banker	\$1.53 million
Outside Legal	\$1.80 million
Independent Engineer	\$0.16 million
Outside Document Support	\$0.09 million
SDG&E Environmental Consultant	\$1.11 million
CPUC CEQA Costs <sup>2</sup>	\$1.20 million
Outside Survey Costs	\$0.15 million
Title Insurance and Escrow Costs	\$0.31 million

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<sup>2</sup> This estimate was provided by Andrew Barnsdale of the Commission's Energy Division, and it includes costs relating to South Bay, Encina, and the Combustion Turbines. As such, this figure has also been included in SDG&E's Compliance Filing relating to Encina and the Combustion Turbines. SDG&E will, of course, only net these costs once against the proceeds from its fossil asset sales.

Advertising	\$0.02 million
Appraisal	\$0.15 million
Other Miscellaneous Sale-Related Costs	<u>\$0.03 million</u>

Total Estimated Transaction Costs	<u>\$6.55 million</u>
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**B. Tax Effect**

The sale of South Bay will create certain Financial Accounting Standard (FAS) 109 deferred tax liability. This deferred tax liability resulting from plant sales was recognized and authorized for recovery in D.97-11-074, our Phase Two Competitive Transition Charge decision. (D.97-11-074, mimeo., at 161.) SDG&E estimates that the total FAS 109 deferred tax liability resulting from the sale of South Bay will be approximately \$26.5 million. As with transaction costs, this tax figure is an estimate, and it will be adjusted to reflect actual costs before it is netted against auction proceeds.

The charitable donation portion of the South Bay transaction will create a tax deduction for SDG&E. This deduction will reduce SDG&E's taxes by an amount equal to the authorized deduction multiplied by the applicable federal and state tax rates.<sup>3</sup> For example, if SDG&E's combined effective federal and state tax rate is 40 percent, a charitable contribution deduction of \$30 million would provide SDG&E with a tax reduction of \$12 million (\$30 million x .4).

SDG&E proposes to use this tax benefit to reduce CTC. SDG&E believes this approach is consistent with our direction in D.98-10-055 that proceeds from SDG&E's power plant sales should be used to reduce CTC. Moreover, such treatment is consistent with the Legislature's direction in Pub. Util. Code

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<sup>3</sup> Note, however, that the Internal Revenue Code limits SDG&E's charitable contribution deduction in any one year to 10 percent of SDG&E's taxable income for that year. (IRC § 170(b)(2).) Any excess deductions must be carried forward into future tax years. (IRC § 170(d)(2).)

Section 363(c) that net proceeds from SDG&E's disposition of South Bay are to be credited to recovery of CTC.

As noted above, the amount of SDG&E's donation to the Port District must be determined by an independent appraisal, which cannot be conducted until close to closing. Therefore, SDG&E cannot presently provide an estimate of the tax benefit associated with the South Bay donation. Once the South Bay appraisal has been conducted, SDG&E will be able to calculate the estimated tax benefit from its donation. SDG&E's actual tax benefit may, however, differ from this estimate if the Internal Revenue Service (IRS) or the State of California disagree with the appraisal and disallow some or all of the deduction.

Accordingly, SDG&E proposes that within 30 days after the sale and donation are concluded, SDG&E will credit its TCBA with an amount equal to the estimated federal and state tax reduction that SDG&E will achieve as a result of its charitable contribution to the Port District. If the IRS or the State of California should disallow some or all of SDG&E's proposed deduction, at the time of the disallowance SDG&E would be authorized to make an entry to its TCBA equal to the additional federal and state taxes that SDG&E would pay as a result of the disallowance, plus carrying costs.

It currently appears to SDG&E that the only tax effect of the sale and donation will be the creation of FAS 109 deferred tax liability and the charitable deduction discussed above. This is because the net gain realized by SDG&E on the sale will be offset by the expense created by flowing through the net gain to the TCBA. If in fact there is any net tax effect resulting from the sale other than FAS 109 deferred tax liability, SDG&E will make the appropriate adjustment, and will apprise the Commission in the relevant annual proceeding relating to the TCBA balance.

**C. Estimated Environmental Remediation Costs**

SDG&E's estimated environmental remediation costs for South Bay are \$7.88 million. This estimate is based upon detailed studies conducted by SDG&E's environmental consultant, Fluor Daniel GTI (Fluor). Attachment C to this filing are Fluor's remediation studies for South Bay. Both the estimates and the studies have previously been provided to the Office of Ratepayer Advocates.

The remediation estimate presented by SDG&E for South Bay is reasonable and well-founded. Pursuant to D.98-10-055, SDG&E should net estimated environmental remediation costs against sale proceeds. Accordingly, SDG&E requests authorization to net \$7.88 million in estimated environmental remediation costs against the sale proceeds for South Bay.

**D. Net Book Value**

The net book value of South Bay as of December 31, 1997, was \$64.103 million. The net book value of the LNG Parcel and the Transmission Parcel as of December 31, 1997, was \$112,000 and \$144,000, respectively. To determine the sunk costs associated with these assets as of the actual closing date, SDG&E will update these 1997 book value figures to reflect 1996 generation capital additions approved in D.98-05-059, the 1997 and 1998 generation capital additions currently before us in A.98-08-012, and accumulated depreciation from January of 1998 through closing. The updated book value figures will then be reflected in SDG&E's TCBA calculations.

**E. Proposed Adjustments**

The actual entries to SDG&E's TCBA to reflect the sale and donation of South Bay will consist of the \$110 million of total sale proceeds, plus the estimated federal and state tax benefit to SDG&E resulting from SDG&E's charitable donation of South Bay land and plant, less SDG&E's actual transaction costs, less SDG&E's estimated environmental remediation costs, less the actual

tax consequences of the sale and donation, and less the actual net book value of South Bay, the LNG Parcel, and the Transmission Parcel as of the closing date. This net figure will be credited to the TCBA within 30 days after the sale and donation are concluded. Using the estimates set forth above, the following table illustrates the calculation of the TCBA credit resulting from this sale and donation.

Sale Proceeds	\$110 million
plus: tax benefit from charitable donation	to be determined
less: Transaction Costs	\$6.55 million
Deferred Taxes	\$26.5 million
Estimated Environmental Remediation Costs	\$7.88 million
Net Book Value	<u>\$64.36 million</u>
Estimated Net Credit to TCBA (before tax benefit adjustment)	<u>\$4.71 million</u>

SDG&E requests authorization to make each of the accounting and ratemaking adjustments described above.

### **VIII. Request for Exempt Wholesale Generator Finding**

Under the Federal Energy Policy Act of 1992 (the Act), it is possible for persons to qualify as "exempt wholesale generators" (EWGs) under the Act, which avoids federal regulation as a public utility holding company under the Public Utility Holding Company Act of 1935 (PUHCA). A person must apply to the Federal Energy Regulatory Commission for EWG status and, in the case of facilities that were formerly in a utility's ratebase, such as South Bay, a finding is necessary that allowing such a facility to be an EWG "(1) will benefit consumers, (2) is in the public interest, and (3) does not violate state law." (15 U.S.C. § 79z-5a(c).) This determination must be made by this Commission, as the applicable state utility commission.

SDG&E requests that we include such a determination in our decision regarding the present filing. The transition of electrical generation from a regulated monopoly to a competitive marketplace is the policy of the State of California. (*See, e.g.*, Pub. Util. Code § 330(d).) That policy is expressly intended to benefit consumers. (*Id.*) Subjecting the Port District or Duke to regulation under PUHCA would not advance that policy and is not required to prevent any violation of California law regulating utilities. Moreover, the determination requested by SDG&E is consistent with determinations already provided by us regarding previous fossil generation sales by Pacific Gas and Electric Company and Southern California Edison Company. (*See* D.97-12-107, mimeo., at 9; D.97-12-106, mimeo., at 8.)

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **Findings of Fact**

1. As a result of negotiations between SDG&E and the Port District, the real property being transferred to the Port District includes two parcels which were not included in SDG&E's original auction plan, the LNG Parcel and the Transmission Parcel.

2. Pursuant to the definitive agreements, the Port District will pay SDG&E \$110 million for the South Bay plant facilities, and SDG&E will provide the Port District with a charitable donation of the main plant site land, the LNG Parcel, the Transmission Parcel, and the value of the South Bay plant facilities which exceeds \$110 million. The amount of this donation will be determined by an independent appraisal conducted close to closing.

3. Because it is not an experienced power plant operator, the Port District is leasing the plant to Duke Energy South Bay, LLC (Duke), a wholly owned subsidiary of Duke Energy Corporation.

4. The O&M contracts are reasonable for both the seller and the buyer.

5. South Bay qualifies as a bayside fossil fueled electric generating facility which an electrical corporation has proposed to divest in a public auction.

6. The Budget Act of 1998 appropriated state funds to assist the Port District, a local governmental entity, in acquiring South Bay or to mitigate environmental and community issues. The appropriated funds were included in the CPUC budget for the fiscal year 1998-1999. The CPUC will release the \$15.0 million to the Port District when it provides to the Executive Director of the CPUC all the necessary documents that demonstrate the sale and transfer of the South Bay Power Plant to the Port District.

7. The Port District proposes that the closure of South Bay would serve the public interest by mitigating air, water, and other environmental, health and safety, and community impacts associated with the facility.

8. The negotiations between SDG&E and the Port District were significant in that (1) they were conducted at a senior level; (2) over several sessions; and (3) resulted in modifications by each party of its initial positions to a substantial extent.

9. The measures described in the mitigated negative declaration adopted in D.98-12-012 are sufficient to avoid or mitigate the reasonably foreseeable adverse environmental impacts of the project.

10. The market value of South Bay is \$110 million plus the amount of SDG&E's South Bay land and plant donation to the Port District, as determined by the independent appraisal that SDG&E will have conducted.

11. SDG&E estimates that its transaction costs to sell South Bay will approximate \$6.55 million. This cost estimate should be adjusted to reflect actual costs before it is netted against auction proceeds.

12. The sale of South Bay will create Financial Accounting Standard (FAS) 109 deferred tax liability. SDG&E estimates this liability will be approximately \$26.5 million. This cost estimate should be adjusted to reflect actual costs before it is netted against auction proceeds.

13. The charitable donation portion of the South Bay transaction will create a tax deduction for SDG&E. This deduction will reduce SDG&E's taxes by an amount equal to the authorized deduction multiplied by the applicable federal and state tax rates.

14. Within 30 days after the South Bay sale and donation are concluded, SDG&E should credit its TCBA with an amount equal to the estimated federal and state tax reduction that SDG&E will achieve as a result of its charitable donation to the Port District. If the IRS or the State of California disallow some or all of SDG&E's proposed deduction, at the time of the disallowance SDG&E should make an entry to its TCBA equal to the additional federal and state taxes that SDG&E would pay as a result of the disallowance, plus carrying costs.

15. If there is any net tax effect resulting from the sale other than FAS 109 deferred tax liability, SDG&E should make the appropriate adjustment, and apprise the Commission in the relevant annual proceeding relating to the TCBA balance.

16. SDG&E's estimated environmental remediation costs for South Bay of \$7.88 million are reasonable and well-founded. SDG&E should net \$7.88 million of estimated environmental remediation costs against the sale proceeds for South Bay.

17. The net book value of South Bay as of December 31, 1997, was \$64.103 million. The net book value of the LNG Parcel and the Transmission Parcel as of December 31, 1997, was \$112,000 and \$144,000, respectively.

18. To determine the sunk costs associated with South Bay, the LNG Parcel, and the Transmission Parcel as of the actual closing date, SDG&E should update its December 31, 1997 book value figures to reflect 1996 generation capital additions approved in D.98-05-059, the 1997 and 1998 generation capital additions currently before the Commission in A.98-08-012, and accumulated depreciation from January of 1998 through closing.

19. The entries to SDG&E's TCBA to reflect the sale and donation of South Bay should consist of the \$110 million of total sale proceeds, plus the estimated federal and state tax benefit to SDG&E resulting from SDG&E's charitable donation of South Bay land and plant, less SDG&E's actual transaction costs, less SDG&E's estimated environmental remediation costs, less the actual tax consequences of the sale, and less the actual net book value of South Bay, the LNG Parcel, and the Transmission Parcel as of the closing date. This net figure should be credited to the TCBA within 30 days after the sale and donation are concluded.

20. The sale of South Bay will not jeopardize electric system reliability. (See, Finding of Fact 9, D.98-10-055.)

21. The sale of South Bay does not create market power concerns. (See, Finding of Fact 11, D.98-10-055.)

### **Conclusions of Law**

1. SDG&E's sale and donation of South Bay to the Port District is just and reasonable.

2. The sale and donation of South Bay to the Port District is in the public interest and should be approved, subject to the measures adopted in D.98-12-012

to avoid or mitigate the reasonably foreseeable adverse environmental effects of the project.

3. Allowing South Bay to be an exempt wholesale generator within the meaning of the Act will benefit consumers, is in the public interest, and does not violate California law.

4. The accounting and ratemaking adjustments described in SDG&E's January 21, 1999 filing should be approved.

5. SDG&E's Request for Official Notice, dated January 21, 1998, is granted.

## **O R D E R**

### **IT IS ORDERED that:**

1. Subject to the measures described in the mitigated negative declaration approved in D.98-12-012 to avoid or mitigate the reasonably foreseeable adverse environmental effects of the project, San Diego Gas & Electric (SDG&E) may transfer by sale and donation its South Bay Power Plant, including the LNG Parcel and the Transmission Parcel, to the San Diego Unified Port District, or its permitted affiliates, in accordance with the forms of the documents in SDG&E's January 21, 1999 filing, together with customary ancillary documentation necessary to effectuate the transactions.

2. The accounting and ratemaking adjustments described in SDG&E's January 21, 1999 filing are approved.

3. The Executive Director shall serve a copy of this decision on the San Diego Unified Port District.

4. Upon consummation of the transaction, SDG&E shall provide to the Commission's Executive Director all necessary documents that demonstrate the sale and transfer of the South Bay Power Plant to the Port District; the Executive Director shall thereafter release the previously appropriated \$15.0 million to the Port District.

This order is effective today.

Dated March 4, 1999, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners