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Decision 99-05-051 May 27, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SAN DIEGO GAS & ELECTRIC COMPANY: (1) informing the Commission of the Probable Timing of the End of its Electric Rate Freeze, (2) for Authorization to Change Electric Rates Through Implementation of Interim Ratemaking Mechanisms Concurrent with Termination of the Electric Rate Freeze, and (3) for Authorization to Change Electric Rates by Adding New, and Revising or Terminating Existing, Rate and Revenue Mechanisms and Rate Designs.	Application 99-02-029 (Filed February 19, 1999)
And Related Matters.	A. 99-01-16 Application 99-01-019 Application 99-01-034 Application 99-02-029

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OPINION

Summary

This decision approves, with certain conditions, a settlement filed in this proceeding on April 15, 1999 which establishes accounting, ratemaking, and customer information requirements for San Diego Gas and Electric Company (SDG&E) in ending the "transition period" enacted by Assembly Bill (AB) 1890. The end of SDG&E's transition period signifies that SDG&E has recovered all uneconomic generation costs subject to AB 1890's provisions and, also pursuant to AB 1890, removes the requirement that SDG&E's rates be frozen at levels in effect on June 10, 1996.

Background

In these consolidated proceedings, the Commission is considering how to end the transition period for Pacific Gas and Electric Company, Southern California Edison Company, and SDG&E. The associated applications also propose ratemaking arrangements for post-transition period regulation. The transition period is identified and required by Section 367 of AB 1890 for an electric utility seeking to recover the cost of generation assets that the utility would not otherwise be able to recover in a competitive generation market. During that transition period, the statute provides that the utility's rates will be frozen at levels in effect on June 10, 1996.

Pursuant to Commission decisions implementing these provisions, SDG&E has complied with the requirements of Section 367 which govern the transition period and the recovery of uneconomic generation assets. SDG&E estimates that the costs of relevant generation assets will have been recovered on or about July 1, 1999. Its application requests approval of interim revenue and ratemaking mechanisms and rate design which would be effective upon termination of the transition period and rate freeze.

The Commission held a prehearing conference on the matter at which the assigned Administrative Law Judge (ALJ) and Assigned Commissioner urged the parties to settle outstanding issues. Subsequently, SDG&E filed a motion to adopt a settlement on April 15, 1999. The settlement is also signed by Office of Ratepayer Advocates, Enron, Utility Consumer Action Network, the California Power Exchange Corporation, Southern California Edison Company, Federal Executive Agencies, California City-County Street Light Association, Alliance for Retail Markets, California Farm Bureau Federation, California Retailers Association, Pacific Gas and Electric Company, Coalition of California Utility Employees and the Automated Power Exchange Corporation. The Commission

held a day of hearing on April 20, 1999 to clarify the terms of the settlement at which the assigned ALJ presided and the Assigned Commissioner attended.

The Settlement

The settlement provides for the termination of SDG&E's transition period as follows:

PX Price and ISO/PX Balancing Account. The Power Exchange (PX) (electric commodity) price for customers taking electric service from SDG&E (referred to as "bundled" customers) will be calculated using the existing formula and subject to change pursuant to Commission order. The PX price will appear on direct access customers' bills for informational purposes. SDG&E will create a new balancing account that will provide it dollar-for-dollar recovery of Independent System Operation (ISO) uplift charges, and energy and ancillary services procurement costs, among other things.

Reliability Must Run (RMR) Costs. Recognizing that RMR costs are subject to the Federal Energy Regulatory Commission's (FERC) sole jurisdiction, SDG&E states its intent to apply to FERC for recovery of RMR costs. If the FERC does not authorize such recovery prior to the end of the transition period, the settlement permits SDG&E to create a balancing account which will permit it to recover RMR costs from retail customers according to existing methods for allocating transmission costs.

On-Going Transition Costs. The settlement would permit SDG&E to recover authorized "post-rate freeze transition costs" (such as those resulting from purchased power contracts and the nuclear costs) by recording them in the existing Transition Cost Balancing Account (TCBA) and recovering them through the existing Competition Transition Charge (CTC). The costs would be allocated using a system average percentage change method.

Rate Reduction Bonds. The settlement does not resolve the issue of whether the interest on SDG&E's rate reduction bond overcollections should change, as SDG&E proposes in a petition to modify D.97-09-057. The settlement proposes the matter be addressed in Phase II of these consolidated applications if the Commission has not addressed the petition to modify by that time. The settlement also informs the Commission that the state legislature may address the issue of unrealized bond-financed savings which SDG&E's witness estimated to be about $480 million. During the interim, SDG&E will not offset the Trust Transfer Amount (TTA) with charges which reflect the principal and interest paid to bondholders. The settlement does not allow SDG&E to establish a tracking account which records the refund amounts during the interim period.

Customer Communications. The settlement provides that SDG&E will, at its own expense, inform its customers about changes in the market occurring after the end of the transition period. SDG&E's witness agreed that SDG&E would work with Commission staff in developing the information.

Interim Rate Cap. The settlement would permit SDG&E to cap its residential, small commercial and lighting customer rates at levels not to exceed 112.5% of frozen electric rate levels "on a monthly average basis" for the months of July, August, and September 1999. Any revenue shortfall as a result of the cap would be recovered from customers in subsequent months, with a rate component that is "nonbypassable." The settlement does not identify the rate with more specificity. The settlement provides that SDG&E will not propose a "similar" rate cap for the year 2000 in this proceeding.

PX Billing Lag. The settlement provides that SDG&E will amortize the existing PX billing lag amount by increasing the PX price for bundled service customers in the period prior to the end of the transition period. The "PX billing lag amount" is the difference between the energy rate SDG&E charged its

customers on the basis of a forecast and the actual amounts it spent on energy pursuant to billings from the PX and ISO. SDG&E's witness estimates this amount to be about $40 million. If this amount is not fully amortized by the end of the transition period, the "undercollection" would be entered into the TCBA and recovered in subsequent periods "on a nonbypassable basis" from all customers. The settlement does not specify precisely how the amount would be recovered in rates. At the hearing, SDG&E stated its intent to file an advice letter to increase the PX price for its bundled customers in an attempt to recover the PX billing lag amount before the end of the transition period.

Utility Commodity Service. The settlement provides that no later than Phase II of this proceeding the Commission will consider the issue of SDG&E's proposed "commodity PBR" ratemaking mechanism. SDG&E agrees to engage the parties in discussions on this matter in the interim. The settlement also identifies a legal and policy dispute regarding whether SDG&E must bid into and purchase from the PX after the conclusion of the rate freeze. The settlement does not resolve the issue except that SDG&E agrees to continue to purchase all of its default retail customers' energy from the ISO/PX during the interim period. The settlement allows for SDG&E to propose changes to Schedule PX due to changes in SDG&E's PX market purchases, through the advice letter process.

Rate Design. The settlement sets forth a rate design methodology for the interim period that, for the most part, is consistent with current rate design.

Time of Use Rates. SDG&E agrees to withdraw its proposal to eliminate some time-of-use rate schedules. It may revisit the issue in another forum or in Phase 2 of these consolidated applications.

Discussion

SDG&E's application proposed ways of terminating its rate freeze and transition period effective July 1, 1999. Because of the complex nature of the

requirements of AB 1890, SDG&E's proposals are complex. Because the end of the transition period signals the beginning of more vigorous competition in SDG&E's energy markets, some of SDG&E's original proposals were, not surprisingly, controversial with competitors and consumer groups alike. SDG&E filed its application with little time for formal Commission review. For that reason, the Commission urged the parties to reach a settlement that would guide SDG&E's ratemaking and accounting on an interim basis. The hope was that the parties and the Commission would subsequently be able to consider the issues more deliberately in Phase 1 and Phase 2 of these consolidated applications.

With little time and information, a group of parties representing customers, competitors, unions and quasi-governmental bodies have resolved their differences on an interim basis, presenting the Commission with a settlement that would facilitate the end of the transition period as simply as possible under the circumstances. The settlement also fulfills the requirement that its essential elements may be retroactively modified in the event that the Commission finds any element unlawful or contrary to the public interest.[1] We commend the parties for their quick action and thoughtful proposal.

The settlement in general appears to be in the public interest. Three elements of the settlement, however, create some concern. The first is the provision that would change the transmission rate to include RMR costs during the period before the FERC acts on SDG&E's request for a rate change. FERC, not this Commission, has jurisdiction over transmission rates. We adopt the settlement on an interim basis and with the understanding that the treatment of

[1] As the SDG&E witness clarified, the utility may not retroactively change the information it provides to customers or change the capped rates.

RMR costs may be retroactively modified, consistent with subsequent orders of this Commission or FERC.

Our second area of concern is with respect to the settlement's treatment of rate reduction bond proceeds. In its original application, SDG&E proposed to utilize remaining bond proceeds to offset the Trust Transfer Amount (TTA) rate element of customers bills. Despite the early end to the rate freeze, the TTA will remain on ratepayers bills until the rate reduction bonds are repaid in 2007. The settlement does not contain an offset to the TTA. We find that offsetting the TTA is necessary to protect residential and small commercial customers against the possibility of rate increases. In addition the bonds were issued to provide benefits to residential and small commercial ratepayers and offsetting the TTA one for one with the proceeds is a fair and reasonable use of the proceeds for this interim order. In order to find the settlement acceptable, we find that it must contain an offset to the TTA. We ask the parties to modify the settlement to allow the rate reduction bond proceeds to offset the TTA one for one. We will not specify how any remaining proceeds should be disposed of or how long the offset should last. These issues are properly resolved in the post-transition ratemaking proceeding.

We are also concerned with the provision that appears to permit SDG&E to "carry over" costs incurred during the rate freeze period into the subsequent period. This occurs because the settlement specifies July 1, 1999 as the effective date for modified rates. As we stated in D.97-10-057 and other orders, AB 1890 does not permit a utility to carry over costs incurred during the rate freeze into the post-rate freeze period. Doing so would effectively permit the utility to charge rates at levels higher than those in effect on June 10, 1996 in violation of the rate freeze requirement of Section 368. Whether or not transition costs would constitute "costs incurred during the rate freeze" or would otherwise not qualify

for recovery after the rate freeze period in the circumstances anticipated by the settlement is a matter for final resolution at a later date and one which we might be able to avoid altogether. Therefore, we ask parties to modify the settlement to clearly specify that the rate freeze will end when the TCBA has a month-end zero or positive balance including any entries due to the undercollection or overcollection of the PX Billing Lag.

We herein adopt the settlement as modified with the condition that its provisions may be subject to retroactive changes in consideration of the law and public policy, and pursuant to our deliberations in Phase 1 of these consolidated applications.

This alternate has been circulated for review pursuant to the requirements of Pub. Util. Code Section 311(e). Several parties filed comments on the ALJ's proposed decision and the alternate order issued by Commissioner Duque.

SDG&E opposes any Commission staff oversight of its customer information program. SDG&E argues the requirements in that regard will slow down the process and should be less formal, as the settlement anticipates.

ORA generally supports the alternate decision. With respect to the offsets to the TTA, ORA observes that the offset will minimize potential rate impacts that were not apparent when it signed the settlement. ORA shares SDG&E's opposition to the information program requirements. This order modifies slightly the process for reviewing SDG&E's customer information materials. We encourage SDG&E to continue to work with the settling parties to ensure that the objectives of the communications plan are met.

UCAN supports the alternate order.

Edison objects to the discussion in the ALJ's proposed decision and alternate with regard to Section 368(a) as it pertains to the rate freeze and whether costs may be carried over from the rate freeze period to the post-

transition period. Consistent with our previous discussions about the interim nature of the settlement's provisions, we do not resolve the legal matter here. Parties will have adequate opportunity to address the issue subsequent phases of this proceeding. The language in this order serve to put SDG&E on notice that it assumes some risk that the Commission might ultimately interpret the law to prohibit SDG&E from recovering PX lag costs the way the settlement provides.

Findings of Fact

1. SDG&E proposes that the Commission end the transition period effective July 1, 1999.

2. SDG&E and several parties to this proceeding filed a settlement that would facilitate the end of the transition period on an interim basis. No party opposes the settlement.

3. AB 1890 does not permit costs to be carried over into the post-rate freeze period.

4. Ending the rate freeze when the TCBA has a month-end zero or positive balance including any entries due to the undercollection or overcollection of the PX Billing Lag), rather than a fixed date, would not require costs to be carried over into the post-rate freeze period.

5. The TTA will remain on ratepayer bills until the rate reduction bonds are repaid.

6. Significant rate reduction bond proceeds remain available and we do not specify how these proceeds shall be disposed of.

7. In Resolution ALJ 176-3011 dated March 4, 1999, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary.

Conclusion of Law

1. The Commission should adopt the settlement if the parties agree to modify it to offset the TTA and to end the rate freeze when the TCBA has a month-end zero or positive balance including any entries due to the undercollection or overcollection of the PX Billing Lag.

2. All elements of the settlement may be modified retroactively following the consideration of related issues in Phase 1 of these consolidated applications and consistent with the law and public policy.

3. Offsetting the TTA with excess bond proceeds is a fair and reasonable use of the proceeds for this interim order.

O R D E R

IT IS ORDERED that:

1. The settling parties shall meet and confer to determine whether the conditions set forth herein are acceptable modifications to their settlement. SDG&E and the settling parties shall file joint comments within 5 days of the effective date of this decision to indicate their acceptance of the conditions discussed herein.

2. Upon receipt of acceptance of the conditions discussed herein, the Joint Motion for Adoption of Settlement Agreement filed on April 15, 1999 by San Diego Gas and Electric Company, Office of Ratepayer Advocates, Utility Consumer Action Network, California Street Lighting Association, Southern California Edison Company, California Power Exchange, Coalition of California Utility Employees, Pacific Gas and Electric Company, Federal Executive Agencies, California Farm Bureau Federation, California Retail Association, Automated Power Exchange, and the Alliance for Retail Markets is granted.

3. SDG&E shall notify the Commission that it has recovered its generation-

related transition costs, as specified in Section 367(a) of the PUC Code, and the rate freeze is over by filing an advice letter on the day the TCBA has a month-end zero or positive balance including any entries due to the undercollection or overcollection of the PX Billing Lag.

4. If settling parties agree to the modifications to the settlement, SDG&E shall file an advice letter within 15 days of the effective date of this decision with interim rates and tariff schedules consistent with the findings of this order. This advice letter shall consolidate revenue and cost allocation impacts from decisions in Application (A.) 98-05-019, et al., A.98-07-006, et al, A.98-05-004, et al., and A.98-12-025. The advice letter shall become effective on the date the rate freeze ends, subject to Energy Division determining that theadvice letter is in compliance with this decision and decisions in the above referenced applications. SDG&E shall include, in the advice letter filing, work papers clearly delineating rate changes due to this order and the above referenced orders.

5. Within ten days of the effective date of this decision, SDG&E shall submit, in written form its customer communications plan with all proposed educational materials and customer service scripts, to the Consumer Services Division, the Energy Division, and the Public Advisor's Office. The Public Advisor's Office shall review the plan and specify necessary changes, if any, within 5 days of

receipt. Materials developed subsequently shall also be submitted for review and approval by the Public Advisor.

This order is effective today.

Dated May 27, 1999, at San Francisco, California.

RICHARD A. BILAS
President
JOSIAH L. NEEPER
Commissioner

Commissioner Henry M. Duque, being necessarily absent, did not participate.

We will file a written concurrence.

/s/ RICHARD A. BILAS
President

/s/ JOSIAH L. NEEPER
Commissioner

President Richard A. Bilas and Commissioner Josiah L. Neeper, Concurring:

This decision represents a milestone in electric restructuring: The first company to reach the end of the rate freeze and the transition period. We are very pleased that San Diego Gas and Electric has been able to manage its company in such a way so as to bring the benefits of electric restructuring to its ratepayers a full 2 ½ years earlier than required by the Legislature. This speaks very well for the future of the company, and the future of the industry.

There is one aspect to this decision which is troubling us. As we understand it, there is a significant average rate decrease for SDG&E customers to go into effect on July 1, with further reductions to come in the future when tail-end transition costs and restructuring implementation costs are fully collected. Our recollection from 1995 was that the Commission and the Legislature anticipated that ratepayers would receive a 20% rate decrease by 2001 even if no restructuring took place at all. The idea was that restructuring, and the introduction of competition, would provide benefits even greater than this 20%. We also understood that the benefits were to be across-the-board, from the smallest residential customer to the largest industrial customer. Everyone was supposed to be a winner.

We remain committed to this principle. And we intend to see that the benefits of ending the rate freeze are allocated fairly across all classes.

Today we have before us an all-party settlement that allows the rate freeze to end on July 1. To allow this monumental achievement to occur, parties agreed that the substantial terms of the settlement – the nitty-gritty details – would be subject to further review, including retroactive changes back to the date the decision goes into effect.

A major issue is the allocation of the post-rate freeze benefits. We fully expect this issue to be reviewed at the earliest possible date. This may be in the post-transition ratemaking proceeding, or in another appropriate forum. We will be reviewing any proposed decision that addresses allocations to ensure that benefits are spread reasonably evenly. In particular, we intend to ensure that residential ratepayers receive their fair share of the promised benefits, along with the bigger players. To this end, we will also look very closely at the RAP decision before the Commission at next week's continuation meeting.

We intend to vote for Commissioner Duque's alternate and file a Concurring Opinion.

RICHARD A. BILAS
President

JOSIAH L. NEEPER
Commissioner

San Francisco, California
May 27, 1999