

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

**ENERGY DIVISION**

**RESOLUTION G-3261  
OCTOBER 7, 1999**

**RESOLUTION**

Resolution G-3261. San Diego Gas & Electric Company (SDG&E) requests approval of a revision to Schedule GP-SUR to clarify how franchise fees should be determined once SDG&E has sold its South Bay and Encina power plants. SDG&E's request is approved.

By Advice Letter 1144-G, filed April 14, 1999.

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**SUMMARY**

This resolution approves SDG&E's Advice Letter (AL) 1144-G. SDG&E requests a revision of the applicability section of Schedule GP-SUR – Customer-Procured Gas Franchise Fee Surcharge, in order to clarify how franchise fees should be determined for certain customers once SDG&E has sold its South Bay and Encina power plants and its combustion turbines.

The revision would remove self-procurement cogeneration customers and the SDG&E UEG from eligibility for an exemption from paying the franchise fee surcharge on gas deliveries to such customers from SDG&E.

A late protest was filed by Dan Tobias and Associates on July 6, 1999. We deny the protest. The protest was filed in a very untimely fashion, and we disagree with the arguments made in the protest in any case.

**BACKGROUND**

Under SDG&E's gas rate Schedule GP-SUR, self-procurement cogeneration customers are exempt from the franchise fee surcharge for that quantity of gas transported to these customers by SDG&E used to generate electricity sold to SDG&E. SDG&E's UEG is also exempt from the franchise fee surcharge.

This exemption was originally established in compliance with Senate Bill 278 (Statutes of 1993, Chapter 233) and California Public Utilities Code Sections 6350 through 6354. Those code sections exempted the electric department of a combined utility from paying a franchise fee surcharge on the gas transported to it by the utility's gas department. Those code sections also exempted cogeneration customers from paying a franchise fee surcharge on the amount of gas delivered to such customers used to generate electricity sold to the utility.

With the transfer of the Encina and South Bay power plant and combustion turbine ownership from SDG&E to new owners, SDG&E's UEG will no longer own any gas-fired power plants.

In its AL 1144-G, SDG&E asserts that "Effective with the transfer of the Encina and South Bay power plant and combustion turbine ownership from SDG&E to the new owners, which currently is expected to occur during April/May 1999, the GP-SUR exemption will terminate for self-procurement cogeneration customers and 100% of their gas usage will be subject to the Franchise Fee Surcharge. Because the Schedule GP-SUR exemption is governed by state law (California Public Utilities Code Section 6350 et seq.), the exemption will terminate on the actual date of ownership transfer of the last SDG&E fossil facility."

SDG&E requests the elimination of the utility exemption and the cogeneration exemption referenced in Schedule GP-SUR, effective on the same date as the transfer of ownership of the Encina and South Bay plants.

#### NOTICE

Public notice of AL 1144-G was made by publication in the Commission calendar, and by SDG&E mailing copies of the filing to interested parties, including other utilities and the interested parties shown on the mailing list attached to the AL.

#### PROTESTS

On July 6, 1999, a protest against AL 1144-G was filed by Dan Tobias & Associates, Inc. (Tobias) representing Goal Line, LP the owners of a combined cycle 50 megawatt natural gas fired cogeneration facility located in Escondido, California. The project sells its electric generation output to SDG&E pursuant to a long-term power purchase agreement.

Tobias states that including the franchise fee surcharge in SDG&E's transportation charge will economically impact the Goal Line project, as well as other cogenerators, will reduce the gross profit margins of the project, and will reduce the potential market value of the project.

Tobias' position is that franchise fees apply to the sale or transfer of tangible personal property that passes above or below the City of Escondido's city streets, and that SDG&E is the owner of the gas as it passes through the streets. Once at the cogeneration plant, where title to the commodity is passed according to Tobias, the gas does not pass above or below city streets. Tobias adds that the distribution lines are the property of SDG&E, not the cogenerator.

Tobias concludes that the city franchise fees should be the burden of SDG&E and not the cogenerator, and it is immaterial that SDG&E has sold its gas-fired power plants and combustion turbines.

SDG&E replied to Tobias' protest on July 16, 1999, and requests that Tobias' protest be denied because it lacks merit. SDG&E states that Tobias' protest is based on a misunderstanding or incorrect characterization of franchise fees, the Public Utilities Code Sections related to this issue, and the legal basis for the underlying SDG&E exemption. SDG&E also infers that since other non-utility generators did not protest the AL, they must not share the same misunderstanding.

SDG&E states that the purpose of SB 278 was to address the harm caused to municipal governments through the inadvertent loss of franchise fee revenue which resulted when the Commission allowed gas customers to bypass the serving utility, because no basis was set for valuing the gas commodity purchased from non-utility suppliers. SB 278 imputes a value to the energy commodity, owned by a party and transported through the lines of the serving utility, and applies the surcharge to it.

SDG&E asserts that the legislature also took note of two other relevant issues:

"First the legislature recognized the parity provisions of Section 454.4 of the PU Code to insure that the costs borne by non-utility generation were no greater than the costs of the utility generator serving the area. Second, the legislature recognized settled case law in *Sacramento v. Pacific Gas and Electric Company (PG&E)*. In that case, the California Supreme Court held that the transfer of gas from the gas department of a combined utility to the electric department of a combined utility did not constitute a sale. Rather, the transaction was merely for regulatory accounting purposes only. Thus, there was no basis for computing a franchise fee."

Therefore, the UEG departments of SDG&E and PG&E received exemptions from the franchise fee surcharge, as did non-utility generation within their respective service territories.<sup>1</sup> With the divestiture of SDG&E's gas-fired generation, the basis for its exemption from the surcharge ceased. SDG&E asserts that, at the same time, the exemption for non-utility generation in SDG&E's service territory received under the parity concept of Section 454.4 of the PU Code should also cease.

SDG&E contends that the impact of the end of the exemption on the value of the Goal Line project is irrelevant. The owners should have been aware of the nature of the exemption.

SDG&E requests that Tobias' protest be denied, and that AL 1144-G be approved.

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<sup>1</sup> Southern California Edison did not receive an exemption since it was not a combined utility, nor did non-utility generation in SCE's territory.

## DISCUSSION

Under SDG&E's gas rate Schedule GP-SUR, self-procurement cogeneration customers are exempt from the franchise fee surcharge for that quantity of gas transported to these customers used to generate electricity sold to SDG&E. SDG&E's UEG is also exempt from the gas franchise fee surcharge. This exemption was originally established in compliance with Senate Bill 278 and California Public Utilities Code Sections 6350 through 6354.

SB 278 states that "...the purpose of this act is to provide protection for the financial integrity of local government and to ensure that all customers purchasing gas or electricity who transport gas or electricity on transmission systems that are subject to a franchise agreement share equitably in the burden of compensating local government for the private use of public lands."

While SB 278 required most transportation customers who receive transportation service from an energy transporter to pay a franchise fee surcharge, the legislation and the PU Code sections which it enacted exempted certain energy transporters from the franchise fee surcharge. PU Code Section 6351, part c, states that "transportation customer" shall not include "a utility transporting its own gas through its own gas transmission or distribution system, or both, for purposes of generating electricity or for use in its own operations." PU Code Section 6352, part b, states "...the surcharge assessed for gas used to generate electricity by a nonutility facility shall be the same as the surcharge assessed for gas used to generate electricity by the electric utility for that quantity of gas described in Section 454.4."

With the transfer of the Encina and South Bay power plant and combustion turbine ownership from SDG&E to new owners, SDG&E's UEG no longer owns any gas-fired power plants. Therefore, there is no basis for an SDG&E UEG exemption from the franchise fee surcharge on gas deliveries. Since there is no basis for the UEG exemption, there is also no longer any basis for the exemption received by cogeneration customers.

Tobias' protest was filed in a very untimely fashion, so we need not consider their arguments. Tobias could be disqualified as a party under PU Code Section 311(g), and we do not agree with the arguments made in their protest in any case. Tobias argues that SDG&E should bear the burden of franchise fee surcharges because a transfer of gas ownership allegedly does not occur above or below city streets, and the distribution lines are owned by SDG&E. If we accepted Tobias' notion of responsibility for franchise fees, there would be no basis for a franchise fee on any self-procurement transportation customer. It is clear from the language in SB 278 and the PU Code that the intent was to provide for a franchise fee surcharge on energy transported over utility facilities. The bill and the PU Code provided an exemption to the UEG department of a combined utility for gas deliveries to the UEG. They also provided an exemption to cogenerators from the franchise fee surcharge to comply with the requirements of cogenerator rate parity as stated in PU Code Section 454.4. The exemption did not apply to SCE or to cogenerators in Edison's service territory.

SDG&E requests an effective date of May 24, 1999. (The date of the transfer of ownership of the South Bay plant occurred in April 1999, while the date of the transfer of ownership of the Encina plant occurred on May 22, 1999.) Since the revision is pursuant to the requirements of the PU Code, we will approve AL 1144-G effective May 24, 1999.

### COMMENTS

The Draft Resolution of the Energy Division was mailed to SDG&E and Tobias in accordance with PU Code Section 311(g). No comments were received by the Energy Division.

### FINDINGS

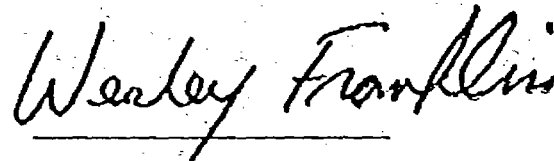
1. On April 14, 1999, SDG&E filed AL 1144-G in order to request a revision of the applicability section of Schedule GP-SUR – Customer-Procured Gas Franchise Fee Surcharge. The revision clarifies how franchise fees should be determined for certain customers now that SDG&E has sold its South Bay and Encina power plants and its combustion turbines.
2. SDG&E has sold its Encina and South Bay power plants, and no longer owns any gas-fired power plants. There is no longer any basis for an exemption from the franchise fee surcharge for SDG&E's UEG. There is also no longer a basis for the exemption for cogenerators.
3. Tobias filed a protest in a very untimely fashion. Their protest should be denied.
4. The revision to Schedule GP-SUR was made in compliance with the requirements of PU Code Sections 6350 through 6354.
5. AL 1144-G should be approved, effective on May 24, 1999.

October 7, 1999

**THEREFORE, IT IS ORDERED THAT:**

1. AL 1144-G is approved with an effective date of May 24, 1999.
2. This resolution is effective today.

I hereby certify that this resolution was adopted by the Public Utilities Commission at its regular meeting on October 7, 1999. The following Commissioners approved it:



WESLEY M. FRANKLIN  
Executive Director

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
JOEL Z. HYATT  
CARL W. WOOD  
Commissioners