

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

Order Instituting Investigation on the)
Commission's Own Motion to actively promote)
the development of transmission infrastructure to)
provide access to renewable energy resources for)
California.)

FILED
PUBLIC UTILITIES COMMISSION
MARCH 13, 2008
SAN FRANCISCO OFFICE
INVESTIGATION 08-03-010

Order Instituting Rulemaking on the)
Commission's Own Motion to actively promote)
the development of transmission infrastructure to)
provide access to renewable energy resources for)
California.)

FILED
PUBLIC UTILITIES COMMISSION
MARCH 13, 2008
SAN FRANCISCO OFFICE
RULEMAKING 08-03-009

**OPENING COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY
REGARDING AMENDMENTS TO PUBLIC UTILITIES CODE SECTION 399.2.5**

Paul A. Szymanski
Senior Attorney
San Diego Gas & Electric Co.
101 Ash Street, HQ 12
San Diego, CA 92101
Phone: 619/699-5078
Fax: 619/699-5027
pszymanski@semprautilities.com

December 6, 2010

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

Order Instituting Investigation on the)	
Commission's Own Motion to actively promote	)	FILED
the development of transmission infrastructure to	)	PUBLIC UTILITIES COMMISSION
provide access to renewable energy resources for	)	MARCH 13, 2008
California.	)	SAN FRANCISCO OFFICE
	)	INVESTIGATION 08-03-010

Order Instituting Rulemaking on the)	
Commission's Own Motion to actively promote	)	FILED
the development of transmission infrastructure to	)	PUBLIC UTILITIES COMMISSION
provide access to renewable energy resources for	)	MARCH 13, 2008
California.	)	SAN FRANCISCO OFFICE
	)	RULEMAKING 08-03-009

**OPENING COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY
REGARDING AMENDMENTS TO PUBLIC UTILITIES CODE SECTION 399.2.5**

INTRODUCTION

Pursuant to the November 9, 2010 Administrative Law Judge's Ruling Requesting Comments on Assembly Bill 1954 ("Ruling"), San Diego Gas & Electric Company ("SDG&E") submits these comments on the statutory amendments to Public Utilities Code § 399.2.5 that were approved through Assembly Bill ("AB") 1954 effective January 1, 2011. SDG&E continues to support the Commission's further efforts "to... actively promote" ongoing, specific measures to advance the development of the State's transmission infrastructure that supports the development of access to renewable generation resources. The new statutory amendments clarify and streamline the cost-backstopping mechanism which, if implemented as explained below, would provide greater certainty that the Commission indeed will backstop prudently

incurred costs that are later found not to be recoverable through rates set by the Federal Energy Regulatory Commission (“FERC”).

The amendments direct the Commission to make a determination of “eligibility for cost recovery” for certain categories of transmission-related costs based simply on an electric utility’s advice letter submission. In submitting the advice letter’s request for an eligibility determination, the advice letter must indicate that the utility “expects that the facility will be necessary to facilitate achievement of the renewables portfolio standard” in California. Because the opportunities intended by the legislature to utilize the cost-backstopping mechanism largely remain fallow, and because the Commission has kept open the instant proceeding to “...actively promote” the clear statutory objective, SDG&E recommends that the Commission implement the statutory amendments promptly and emphasize that it will accept advice letters that meet the plain, straight-forward, requirements.¹

In the discussion below, SDG&E responds to the Ruling’s questions (1) and (2) together, and questions (3) and (4) together.

DISCUSSION

- 1. What format should the Commission prescribe for a utility’s certification in its advice letter “that it expects that the facility will be necessary to facilitate achievement of the renewables portfolio standard...?” Please provide proposed language and/or a sample format.**
- 2. What showing should the Commission require a utility to make to support the utility’s “expect[ation] that the facility will be necessary to facilitate achievement of the renewables portfolio standard...?”**

SDG&E notes that the primary purpose of Section 399.2.5 continues to be “to facilitate achievement” of the State’s Renewables Portfolio Standard (RPS) goals. The Commission’s

¹ SDG&E incorporates by reference its February 17, 2010 and March 4, 2010 comments filed in the instant proceeding that make several recommendations, including the broad use of advice letters, to help facilitate and streamline the implementation of Section 399.2.5.

implementation of the statute, including its new amendments, therefore should enable a utility to state simply in its advice letter that “it expects that the facility will be necessary to facilitate achievement of the renewables portfolio standard.” The utility should also provide a sufficiently complete explanation of the basis for that expectation.

As to the format and content of the advice letter, there inevitably will be variation among facilities proposed as well as the circumstances that create the utility’s expectation that “the facility will be necessary to facilitate” the renewables portfolio standard. Thus, the Commission should not prescribe a “one-size-fits-all” format or prescribe specific text that would not allow for the flexibility needed to reflect the variety of circumstances under which a cost-backstopping eligibility determination may be sought. It should suffice that the advice letter seeking a Commission eligibility determination provides the basis for the “expectation” required by the statute, no more and no less. The facts, reasons, and circumstances pertinent to that “expectation” would comprise the showing that the utility would make to obtain the Commission’s eligibility determination.

- 3. What types of “costs incurred prior to permitting or certification” should be eligible for approval of cost recovery pursuant to § 399.2.5(c)(2)? What types of pre-permitting or pre-certification costs should not be eligible? Please be specific about the types of costs and the justification for concluding that each type should or should not be eligible for cost recovery pursuant to § 399.2.5(c)(2)?**
- 4. Notwithstanding the prudence review required by § 399.2.5(c)(2), should the Commission place limits on the amount of “costs incurred prior to permitting or certification” that could be approved when presented by advice letter as authorized by § 399.2.5(c)(2)? If the Commission should impose limits on approval of pre-permitting or pre-certification costs, please propose a method for determining what the limits should be.**

SDG&E notes that the statutory amendments do not dictate any limitations on either the types or amounts of costs identified in the statute. The fact that the statute has no such limitations makes sense because facilities that would further the statutory objective can vary greatly as would the pre-permitting and pre-construction costs for such facilities. SDG&E recommends that the Commission impose no such limitations in order to adhere closely to the statutory text and also so as not to preclude the backstopping of costs for eligible facilities.

Because Section 399.2.5, including the new amendments, do not contain any mention of the types of costs that either can be included as eligible or must be excluded, SDG&E finds that a reading of the plain language of the statute suggests that all costs for eligible facilities not otherwise recoverable through FERC-jurisdictional transmission rates, related to construction as well as pre-permitting and pre-construction activities, are “on the table” and should be considered. The list would include, but not be limited to, costs incurred in the planning analysis that identifies the subject facilities, public-outreach and media-related costs, CEQA-related costs, any other environmental and engineering study and pre-development costs, preliminary and final design costs, construction costs, and abandoned facility costs. These costs would include all applicable overheads as well as consultant expenses. The Commission’s eligibility determination would allow the tracking of identified types of costs in a memorandum account pending final recovery. The utility’s recovery of tracked costs would be subject to the prudence review specified in the statutory text.

CERTIFICATE OF SERVICE

I hereby certify that a copy of **OPENING COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY REGARDING AMENDMENTS TO PUBLIC UTILITIES CODE SECTION 399.2.5** has been electronically mailed to each party of record of the service list in I.08-03-010, R.08-03-009. Any party on the service list who has not provided an electronic mail address was served by placing copies in properly addressed and sealed envelopes and by depositing such envelopes in the United States Mail with first-class postage prepaid.

Copies were also sent via Federal Express to the assigned Administrative Law Judges and Commissioner.

Executed this 6th day of December, 2010 at San Diego, California.

 /s/ Jenny Norin

Jenny Norin