

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

Order Instituting Rulemaking to Consider the Annual)	
Revenue Requirement Determination of the)	Rulemaking 11-03-006
California Department of Water Resources and)	(Filed March 10, 2011)
Related Issues.)	
_____)	

Reply Brief of Respondent San Diego Gas & Electric Company (U-902-E)

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Reply Brief of Respondent San Diego Gas & Electric Company (U-902-E)

Respondent San Diego Gas & Electric Company (U-902-E) (“SDG&E”) files this Reply Brief in the above-entitled matter. By the *Scoping Memo and Ruling Regarding the Request of the California Department of Water Resources to Allocate Its 2012 Revenue Requirement Determination and Related Issues* (“*Scoping Memo*”) issued on September 7, 2011, the parties to this matter were permitted to file replies to the Opening Briefs filed on September 22, 2011. SDG&E was served with Opening Briefs by Southern California Edison (“Edison”) and Pacific Gas & Electric (“PG&E”) regarding the interutility allocation of the proceeds and benefits from those two distinct sources referred to as the “Sempra Settlement Funds” and the “Continental Forge Discount”.

A. Procedural Recommendation

SDG&E’s primary position in this proceeding is that a workshop, led by the Commission’s Energy Division, would provide an opportunity for the parties to discuss their disparate and thus far irreconcilable views as to the appropriate allocation of the proceeds and benefits from the Sempra Settlement Funds and Continental Forge Discount among the ratepayers of SDG&E, Edison and PG&E. As is apparent from a review of the Opening Briefs filed by Edison and PG&E, there is a wide gulf between not only the recommended allocation of the Sempra Settlement Funds and the Continental Forge Discount, but also between the bases upon which the two utilities stake their competing claims. Fundamentally, both sides claim “fairness” requires that their view prevail – because SDG&E found “fairness” to reside on both sides of the disputes, we recommended that the Commission require the parties to compare their views in the hope that some compromise could be reached. Nothing in the Opening Briefs filed by Edison and PG&E

dissuades us from our prior recommendation – to the contrary, a comparison of the positions taken by the other two utilities in their Opening Briefs fully substantiates the appeal of each’s position, the difficulties the Commission would have in reconciling the equities being argued or ultimately choosing one over the other, and the allure of permitting the parties to engage in an informal exchange that could result in some compromise respecting the merits of the arguments presented on both sides.

B. Reply to Position of Edison re the Sempra Settlement Funds

With respect to the allocation of the proceeds from the Sempra Settlement Funds,¹ Edison, as the utility responsible for the administration and operation of the Sempra Generation-Department power contract, has proposed that the allocation of these funds be based upon a methodology differentiating between four time periods marked by the prevailing Commission methodology for allocating the costs of the contracts executed by the California Department of Water Resources (“Department”). The Edison proposal allocates the \$130 million of settlement funds to each period based upon the level of megawatt-hours delivered in each period, and each utility is then allocated the proceeds of the Sempra Settlement Funds based upon the proportion of the Sempra-Department contract costs it bore during each period.²

SDG&E concedes Edison is generally correct in distinguishing between the underlying sources of the prior settlements received by the Department on the one hand and the Sempra Settlement Funds on the other hand; *i.e.*, the prior settlements received by the Department and allocated among the utilities by the Commission generally settled claims related to the pricing of short-term energy sales while the Sempra Settlement Funds arise from claims relevant to a long-term contract. Because the Commission has adopted various cost-allocation methodologies across the term of the Sempra contract, SDG&E concedes that there is a simple logic and appeal to the Edison proposal that calls for the Sempra Settlement Funds to be allocated based on the date of deliveries and the cost-allocation methodology applicable to those dates. Notwithstanding the foregoing concessions, SDG&E is not persuaded the distinctions raised by Edison are either relevant or compelling. First, a lump-sum cash settlement of multiple claims brought by multiple claimants cannot so simply be asserted to be ratable across the entire period of the contract underlying the

¹ The Sempra Settlement Funds result from an uncontested settlement filed on October 18, 2010, with the Federal Energy Regulatory Commission between, on the one hand, Sempra Generation and, on the other hand, the Department and this Commission. (See, *Public Utilities Commission of the State of California v Sellers of Long-Term Contracts to the California Department of Water Resources, etc.*, FERC Docket Nos. EL02-60-009, EL02-62-008; *Order Approving Uncontested Settlement*, 133 FERC ¶61,245, December 21, 2010.) The settlement provided, *inter alia*, that Sempra Generation would pay \$130 million, plus certain interest on that amount, to the Department and that the parties would mutually release the others from the claims specified in the complaint.

² See *Opening Brief of [Edison]*, September 22, 2011, at pp.9 to 10.

claims and settlement, nor ratable as to each megawatt-hour delivered during the entire contract tenor. In this respect, the Sempra Settlement Funds are distinguishable from the Continental Forge Discount, the benefits of which are explicitly tied to each unit of energy delivered. Further, as PG&E points out in its Opening Brief, the differentiation in the cost burdens relevant to the claims brought and settled mitigates against the per-unit refund represented by the Edison approach.³ There are competing logics in the views presented by the parties to this proceeding, and SDG&E would want to vet them with the other utilities to develop a better understanding of not only the relative weight each should be accorded in the instant case, but the effect the prevailing view would have in future settlements of any other outstanding long-term claims.

C. The Continental Forge Discount

SDG&E views the Continental Forge Discount as its own unique event in many respects. That discount was not, as is the case for the other settlements relevant to the 2000-2001 energy crisis, the result of claims related to the dysfunctions in the energy markets *per se*. Further, as noted in its Opening Brief, SDG&E agrees with PG&E that the benefits of the discount have been received by Edison in a manner not only disproportionate to the cost burdens Edison has borne with respect to the Sempra-Department contract but in a manner dissimilar to the allocation of all other settlements. On the other hand, reconsideration of how the benefits of the Continental Forge Discount should be distributed would represent an unprecedented reopening of a prior ratemaking; SDG&E generally believes ratemakings related to the Department's energy procurement activities should be treated as *res judicata* and not subject to relitigation. SDG&E has found nothing in the Opening Briefs of the other two utilities to clearly sway its views and continues to believe that where, as here, the competing equities argued have merit but cannot be reconciled, the parties should be instructed to make good faith efforts to reach mutual accommodations. That has not been done in this matter and SDG&E believes this omission should be cured as a first resort.

D. Summary and Recommendations

For the foregoing reasons, SDG&E respectfully requests that the Commission defer action on the allocation of the proceeds from the Sempra Settlement Funds and the Continental Forge Discount until such time as a workshop has been convened and the parties report to the Commission on its outcome. Whether or not a workshop is held, or if a workshop is held but does not result in a settlement of these

³ See [PG&E] *Opening Brief*, September 22, 2011, at pp.18 to 19.

issues, a decision on the other issues in this docket can proceed to a timely disposition in advance of the distribution of the proceeds from these two sources of funds, eliminating the possibility that the Commission would be unable to approve the Department's Notice of Determination of Revenue Requirements by the end of the year as contemplated and necessary. Thereafter, the Commission can determine the appropriate process that should be used to address the two issues that were the subject of the parties' briefs.

Respectfully submitted,

/s/ Alvin S. Pak

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