

**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.	)	
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**Opening Brief of Respondent San Diego Gas & Electric Company (U-902-E)**

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September 22, 2011  
San Diego, California

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

Respondent San Diego Gas & Electric Company (U-902-E) (“SDG&E”) files this Opening 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 directed to file briefs regarding the interutility allocation of the proceeds and benefits from two distinct sources, namely, the “Sempra Settlement Funds” and the “Continental Forge Discount”.

**A. Introduction and Summary**

SDG&E’s position 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, Southern California Edison (“Edison”) and Pacific Gas & Electric (“PGandE”) is that the Commission should ultimately effect an allocation consistent with the prevailing equities and the Commission’s applicable prior precedents. At this point in time, however, SDG&E is unable to propose any specific allocation of the funds in controversy. The competing and disparate equities and views regarding the disposition of the funds in dispute, in our opinion, require greater and more detailed disclosures than has been provided to date. Thus, as stated at the prehearing conference held in this matter on September 1, 2011, SDG&E believes the three utilities, the Department of Water Resources (“the Department”), the Commission’s Energy Division, and other interested parties should be afforded an opportunity to discuss these matters further and, if possible, reconcile their differing views. At these workshops, SDG&E would expect Edison to explain the reasoning behind their proposed allocation of the Sempra Settlement Funds. Additionally, the unique facts and

circumstances relevant to the Continental Forge Discount warrant discussions amongst the parties as to the prevailing equities presented by PGandE's proposal to recapture and redistribute cost savings previously enjoyed by Edison's ratepayers.

## **B. Position of Respondent SDG&E**

In determining the Department's 2012 revenue requirement allocable to the three respondent-utilities, the Commission is being asked to reflect the proceeds and benefits from two distinct sources.

The first source of funds, "the Sempra Settlement Funds", arises 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. Edison, as the utility responsible for the administration and operation of the Sempra Generation-Department power contract, had informally circulated a proposal for the allocation of these funds among the three utilities. The proposal differentiates between four time periods relevant to the contract, allocates the \$130 million settlement funds based upon the level of contracted megawatt-hours relevant to each period, and applies different interutility allocations to the settlement funds relevant to each period.<sup>1</sup>

The second source of funds, "the Continental Forge Discount", arises from a settlement reached in a class action lawsuit brought before, *inter alia*, the California Superior Court in and for the County of San Diego, by various plaintiffs against, *inter alia*, Sempra Energy and certain of its subsidiaries. A settlement of the claims was reached on January 4, 2011, and provided, *inter alia*, that Sempra Generation would provide the Department with a unilateral price reduction under the Sempra Generation-Department power contract in the form of a discount of four dollars and fifteen cents per megawatt-hour (\$4.15/mwh) for the life of the contract, effective January 1, 2006.<sup>2</sup> Proceeds from this discount for the period prior to January 2009 have been distributed among the three respondent-utilities using the fixed-allocation percentages

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<sup>1</sup> See *Prehearing Conference Statement of Southern California Edison Company (U 338-E)*, August 25, 2011, at pp.3 to 6.

<sup>2</sup> The FERC approved these provisions of the Continental Forge settlement in its order cited above.

previously adopted by the Commission in the predecessor proceedings to the instant matter.<sup>3</sup> Proceeds from this discount for the period January 2009 through August 2010 have been received by Edison in their entirety. Proceeds from this discount for the period after August 2010 have yet to be distributed among the three utilities. PGandE argues the allocation of the Continental Forge Discount should have remained consistent with the fixed-cost allocation percentages applied to the earliest proceeds from the discount, raising the specter that Edison might be required to return 52.5 percent of the proceeds it previously received for the period January 2009 through August 2010.

With respect to the allocation of the Sempra Settlement Funds, SDG&E has advised Edison that its proposed four-period allocation is complicated and unprecedented, and would result in a lower allocation of the settlement proceeds than SDG&E might otherwise expect. SDG&E has requested, but not received, an explanation from Edison as to the reasoning supporting Edison's proposed allocation methodology. SDG&E is also aware the Department is currently negotiating with various other contractors and that the Edison proposal, if applied to any settlements the Department might reach with those power sellers in the future, could potentially and beneficially affect SDG&E's share of the proceeds of those future settlements. SDG&E believes that further workshops, the traditional method the Commission has employed in Department-related ratemakings to resolve contested matters, should be convened so that all parties can consider Edison's position in greater depth and develop an understanding of the full range of administrative and financial impacts of Edison's proposals.

With respect to the Continental Forge Discount, SDG&E is sympathetic to the PGandE view that the allocation of the January 2009 to August 2010 benefits entirely to Edison could be viewed as an administrative "oversight" and "miscalculation".<sup>4</sup> Nevertheless, SDG&E is also concerned that "reopening" past allocations of the Department's revenue requirements or assignments of costs would be invited by the adoption of PGandE's view. SDG&E once again believes that a discussion held in informal workshops should be convened so that all of the parties can fully understand the implications of PGandE's proposed reopening of past allocations, particularly where, as here, one utility's ratepayers would be exposed to a substantial one-time increase in their charges through no fault of theirs or their utility.

In requesting the opportunity for workshops on the topics of the Sempra Settlement Funds and the Continental Forge Discount, SDG&E notes that representatives from the three utilities, the Department and

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<sup>3</sup> See *Order Granting, In Part, Petition for Modification of Decision 04-12-014, on the Permanent Allocation of the Department of Water Resources' Annual Revenue Requirement*, Decision 05-06-060, in Application 00-11-038, *et al.*, June 30, 2005. This decision allocated the "fixed" costs of the Department's power contracts among the utilities using the ratio of 42.2:47.5:10.3 for PGandE, Edison and SDG&E, respectively.

<sup>4</sup> See *Prehearing Conference Statement of Pacific Gas & Electric Company*, August 25, 2011, at pp.4 to 5.

the Commission's Energy Division held an initial discussion of the foregoing matters on September 12, 2011. Those discussions were, although preliminary and inconclusive, informative and productive. Based on its sanguine perception of the exchange of views that occurred during that meeting, SDG&E believes further discussions in the workshop format previously used by the Commission in prior Department-related ratemakings hold considerable promise and should be ordered as a precursor to submission of the issues for decision. Obviously, the ultimate distribution of the settlement proceeds at issue will affect, *i.e.*, reduce, SDG&E's rates by offsetting SDG&E's share of the Department's 2012 revenue requirements. While it would be simple enough for SDG&E to assert that it has an entitlement to a specific share of the proceeds from both sources of funds, SDG&E submits that the allocation of these proceeds could have implications beyond the splitting of the proverbial pie. These implications cause SDG&E to resist, for the moment, its natural and strong predisposition to take the positions that would result in the highest short-term allocations of the two sources of funds at issue.

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. Even if the workshop does not result in a settlement of the issues involved here, 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.

Respectfully submitted,

/s/ Alvin S. Pak

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