

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider the Annual )  
Revenue Requirement Determination of the ) Rulemaking No. 11-03-006  
California Department of Water Resources and ) (Filed March 10, 2011)  
Related Issues. )  
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OPENING COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U-902-E)  
ON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE SEANEEN WILSON

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San Diego, California  
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**OPENING COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U-902-E)  
ON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE SEANEEN WILSON**

Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, Respondent San Diego Gas & Electric Company (“SDG&E”) files these Opening Comments on the *Proposed Decision of Administrative Law Judge Seaneen Wilson* (“*Proposed Decision*”) issued in the above-entitled matter. SDG&E recommends that the *Proposed Decision* be revised in two respects: first, the Commission’s final order in this matter should reflect the accord reached between SDG&E and the Alliance for Retail Energy Markets (“AReM”) filed by *Joint Reply* on or about November 6, 2012; and second, the Commission’s final order should permit SDG&E to exercise the rights previously reserved under its *Comments of [SDG&E], and Reservation of Rights, re Revision to the Determination of Revenue Requirement by the California Department of Water Resources* (“*Comments Reserving Rights*”), filed on or about October 19, 2012. SDG&E’s proposed revisions would update the findings, conclusions and orders in the *Proposed Decision* to reflect recent factual developments which are of record in this matter.

**A. Allocation of Credits and Refunds Received by SDG&E from the California Department of Water Resources to Direct Access Customers**

As correctly noted in the *Proposed Decision*, SDG&E and the California Department of Water Resources (“Department”) reached an Agreement regarding the manner in which SDG&E should return to customers such credits and refunds, if any and as applicable, issued by the Department to SDG&E. On or about October 16, 2012, SDG&E filed a motion to have the Agreement entered into the record of this proceeding and adopted by the Commission. As duly noted in the *Proposed Decision*, on or about October 31, 2012, AReM filed a response to SDG&E’s motion indicating that the Agreement was unclear as to whether, and if so, how direct access customers would receive an allocable share of any such credits and

refunds received by SDG&E from the Department. The Proposed Decision defers adoption of the SDG&E-Department Agreement and sets the matter aside for a later decision.<sup>1</sup>

By permission of Administrative Law Judge Wilson, on or about November 6, 2012, SDG&E and AReM filed the *Joint Reply of [SDG&E] and [AReM]* indicating that the parties had met and conferred regarding the issues raised by AReM. The parties agreed the record would benefit from a clarification of the manner in which SDG&E would provide an allocable share of credits and payments it received from the Department to direct access customers. In essence, SDG&E and AReM agreed SDG&E should allocate a share of credits and payments, if any, it received from the Department to eligible direct access customers through SDG&E's Power Charge Indifference Adjustment, a component of SDG&E's Schedule DA-CRS billed to nonexempt direct access customers. While the *Proposed Decision* defers consideration of the SDG&E-Department Agreement in order to provide time for the Commission to consider the matters raised by AReM, SDG&E submits this deferral is unnecessary and that the Commission should proceed to approve the SDG&E-Department Agreement, as clarified by the SDG&E-AReM *Joint Reply*.

SDG&E and AReM have reached an accord as to the appropriate disposition of the matters raised by AReM and fully settled all controversies regarding whether direct access customers will receive their appropriate share of credits and payments issued by the Department to SDG&E. Pursuant to a ruling served by electronic mail, Administrative Law Judge Wilson set November 28, 2012, as the date for parties to file any responses to the SDG&E-AReM *Joint Reply* which describes this accord. In anticipation that no other parties would have an interest in the SDG&E-Department Agreement and/or the SDG&E-AReM clarification,<sup>2</sup> SDG&E submits the record should be considered closed on these issues and urges the Commission to proceed to approve the SDG&E-Department Agreement and the SDG&E-AReM accord. This would allow SDG&E to implement the return of credits and payments, if any and as applicable, to both bundled and direct access customers on a timely basis and without reservation for further regulatory approvals. In the event SDG&E is incorrect and other parties raise material and reasonable grounds requiring the Commission's further deliberation, SDG&E would withdraw the proposed findings of fact and conclusions of law submitted with these comments, but if SDG&E's belief proves correct, SDG&E

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<sup>1</sup> See *Proposed Decision*, at p.10.

<sup>2</sup> SDG&E notes that no party other than AReM filed a response to the SDG&E motion proposing the adoption of the SDG&E-Department Agreement. The absence of any other filings regarding the SDG&E-Department Agreement leads SDG&E to believe the issues raised by AReM are of narrow interest, involving only SDG&E and AReM.

respectfully requests the Commission modify the *Proposed Decision* to approve the SDG&E-Department Agreement subject to the clarification provided under the SDG&E-AReM accord.

#### **B. Issues Related to Kern River Gas Transmission Transportation Services Agreement**

On or about October 19, 2012, SDG&E filed its *Comments Reserving Rights* regarding the pending allocation of certain costs related to a transportation services agreement between the Department and Kern River Gas Transmission Company (“Kern River GT”). The agreement provided firm transportation supporting the Department’s amended and restated power purchase agreement with Sunrise Power Company LLC (“Sunrise Power”). Under the Commission’s most recent orders, that power purchase agreement was allocated to and has been managed by SDG&E – thus, certain, but not all, costs of that agreement and certain, but not all, costs of the associated gas-transportation agreement with Kern River GT were allocated to and paid by SDG&E and its customers.

At the time SDG&E filed its *Comments Reserving Rights*, the Department had yet to determine whether any costs associated with the Kern River GT agreement would be incurred and did not include any such costs in its 2013 revenue requirement. In the *Revision to the Determination of Revenue Requirement for the Period January 1, 2013, Through December 31, 2013* (“*Revised Determination*”) filed by the Department on or about October 15, 2012, the Department stated:

As an update to the 2013 Determination, the Department projects that it may incur costs as a result of a natural gas Transportation Service Agreement (“TSA”), signed in 2003 and expiring in 2018, that was associated with the expired contract with Sunrise Power Company, LLC. The Department is examining its contract alternatives to determine if the contract can be modified, assigned or terminated. The Department has included the costs associated with the TSA through the expiration of the contract in 2018 in this Revised 2013 Determination. If, through negotiation and disposition efforts, the Department does not incur these costs, the cash reserves held to pay these costs would be returned to ratepayers as “excess” amounts in a subsequent revenue requirement filing.<sup>3</sup>

The situation has since changed. On or about October 26, 2012, the Department filed a memorandum responding to SDG&E’s *Comments Reserving Rights*, indicating the Department had revised its 2013 revenue requirement to include the amount of \$14.594 million related to the Kern River GT

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<sup>3</sup> See *Revised Determination*, at p.18.

agreement and that this amount would be booked to the SDG&E utility-specific balancing account.<sup>4</sup> The *Proposed Decision* addresses SDG&E's reservation of rights as follows:

[If the Department] proposes a revision to the authorized 2013 [Department] revenue requirement subsequent to the issuance of this decision, we will provide parties the opportunity to comment on the reasonableness of such a revision, and consider all comments in ruling on such revisions.<sup>5</sup>

Given that the Department has already acted to include the costs of the Kern River GT transportation services agreement in its 2013 revenue requirement and, further, that the Department has presumed the entirety of those costs should be allocated to SDG&E and its customers, SDG&E submits the *Proposed Decision* should be modified so as to "call the question" and immediately set a schedule for the parties to file comments and, if necessary, further evidence and testimony regarding the fair allocation of any post-2012 costs from the Kern River GT agreement among the three utilities.

So that the Commission can fully address the equitable allocation of these costs among the utilities, SDG&E submits the Commission could approve the Department's allocation of the Kern River GT costs to SDG&E on an interim basis, but subject to such further orders as the Commission may issue in the future. SDG&E concedes that, if and when the Department incurs these costs, the Department must be reimbursed for them and, further, that the Commission must therefore provide for their timely reimbursement, but SDG&E contests whether the Department's presumptive allocation of the full extent of those costs to SDG&E is proper or equitable. Approving the Department-proposed allocation on an interim basis subject to further orders would meet the Department's financial requirements while reserving the opportunity for SDG&E to contest the propriety of the allocation proposed by the Department.

As the Department states in its October 26, 2012, memorandum, the costs of the Kern River GT agreement are being paid by the Department only because Sunrise Power Company "has failed to comply with its obligations to take back the [Kern River GT transportation services agreement] in accordance" with the restated and amended power purchase agreement executed between the Department and Sunrise Power Company.<sup>6</sup> While certain, but not all, costs from the Sunrise Power contract have previously been allocated to SDG&E pursuant to prior Commission orders and certain, but not all, associated costs of the

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<sup>4</sup> See *State of California Memorandum to the Honorable Michel P. Florio, Assigned Commissioner, and the Honorable Seaneen M. Wilson, Administrative Law Judge, Re Rulemaking No. 11-03-006 – Comments of San Diego Gas & Electric*, dated October 26, 2012. These amounts are reflected in the *Proposed Decision* at Appendix A, page 1, Line 23 "Net CFC [Costs Follow Contracts]" in the SDG&E Column.

<sup>5</sup> See *Proposed Decision*, at p.8.

<sup>6</sup> See *id.*, at p.2.

Kern River GT agreement have been allocated to SDG&E under the principle of “costs follow contract”, the Sunrise Power contract has expired,<sup>7</sup> undermining any *ab initio* basis for the assertion that there is a contract for post-2012 Kern River GT costs to “follow”. Further, SDG&E submits there is an issue in equity the Commission must consider here, specifically, how costs arising from a putative breach of contract should be allocated. To the best of SDG&E’s knowledge, this is a novel question not previously considered by the Commission with respect to the allocation of the Department’s revenue requirement. The Department has advised the Commission (and SDG&E) that it will be pursuing legal and market remedies which could reduce or eliminate the Kern River GT costs and that the benefits of these efforts, if any, will of course be returned to ratepayers. But in the event no such benefits are created or any benefits incompletely redress the Department’s grievances, SDG&E contests the presumption its ratepayers should be held accountable to the full extent of any residual costs stemming from Sunrise Power’s apparent breach of contract.<sup>8</sup>

The fairness concerns raised by SDG&E are heightened by the material financial effects the Department’s allocation of post-2012 Kern River GT costs will have on SDG&E’s rates and customers. As the Department indicates, the 2013 costs from the Kern River GT contract are north of \$14 million and, because the Kern River GT agreement extends through 2018, the total costs SDG&E’s ratepayers stand to absorb could be in excess of \$70 million.<sup>9</sup> This would be an unjust and unreasonable result under the facts presented by the Department, and the Commission should proceed to hear SDG&E’s position on the equitable allocation of the costs at issue pursuant to Water Code Section 80110 and Public Utilities Code Sections 451, 454(a), 701, and 728.<sup>10</sup> SDG&E reads the *Proposed Decision* to agree in spirit, holding that the parties should have a future opportunity to address the questions raised by SDG&E in its *Comments Reserving Rights*. Following the Department’s latest revision to the 2013 revenue requirement, SDG&E

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<sup>7</sup> See *id.*, at p.2.

<sup>8</sup> Of course, if the Commission were to determine at some later time that the costs of the Kern River GT agreement should be allocated to utilities other than SDG&E, SDG&E would obviously agree that any benefits the Department achieves as it pursues its market and legal remedies should be allocated to those other utilities as well.

<sup>9</sup> See *id.*, at p.1. SDG&E is also informed, and on that basis believes, that the allocation of post-2012 Kern River GT costs affects the total revenue requirement allocated to SDG&E. As examples, in the *Proposed Decision* at Appendix A, page 1, SDG&E believes the various costs and credits shown at Lines 16 through 19, 27, and 40 may be derived, in part, from the cost allocations reflected in Line 23. SDG&E intends to conduct discovery as to whether SDG&E’s information and beliefs are correct and would submit its findings in any future proceedings conducted by the Commission in this matter. Thus, the amounts at issue for and contested by SDG&E could be greater than the \$14 million discussed in these Opening Comments and, through the period 2018, greater than the \$70 million figure cited in the text.

<sup>10</sup> See also, Public Utilities Code Section 454.5(a).

submits this opportunity to be heard should be provided immediately. The *Proposed Decision* should be modified accordingly and as indicated in these comments.

Respectfully submitted,

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San Diego, California  
November 15, 2012



## SUBJECT INDEX

Page Reference	Subject	SDG&E's Modifications to Proposed Decision
p.8, Finding 11, Conclusion 2, Order 2	In the event of a revision to the Department revenue requirement, "we will provide parties the opportunity to comment on the reasonableness of such a revision, and consider all comments in ruling on such revisions."	<p>The Department has in fact revised its 2013 revenue requirement to include \$14.594 million of costs related to the Kern River GT Transportation Services Agreement. In addition, the Department has proposed to allocate this entire amount to SDG&amp;E.</p> <p>Parties should be permitted to comment, and if necessary to file testimony and submit evidence, on the reasonableness of the Department's proposed allocation of these costs. The schedule for the further proceedings necessary to resolve this issue should be established by a ruling of the presiding officer.</p> <p>Pending the further orders of the Commission and subject to any adjustments determined by the Commission to be just and reasonable, the allocation of the costs of the Kern River GT agreement may be allocated in full to SDG&amp;E on an interim basis so as to assure the Department will be made whole as to its 2013 revenue requirement.</p>
p.10, Finding 11, Conclusion 5, Order 5	Due to the concerns raised by AReM in response to the SDG&E Motion seeking approval of the SDG&E-Department Agreement, "we defer consideration of SDG&E's request for adoption of its Agreement with the Department to a separate decision."	<p>Following AReM's filing, SDG&amp;E and AReM met and conferred. This resulted in an accord between SDG&amp;E and AReM which completely resolves the issues raised by AReM. That accord was submitted by <i>Joint Reply</i> by SDG&amp;E and AReM on November 6, 2012.</p> <p>The SDG&amp;E-Department Agreement regarding the manner in which credits and payments received by SDG&amp;E from the Department should be clarified to comport with the accord reached by SDG&amp;E and AReM. Pursuant to that accord, SDG&amp;E will reflect an allocable share of such credits and payments, if any and as applicable, to direct access customers. That share will be reflected in the Power Charge Indifference Adjustment included in SDG&amp;E's Schedule DA-CRS as applicable to nonexempt customers.</p> <p>With the clarification provided by the SDG&amp;E-AReM accord, the SDG&amp;E-Department Agreement should be approved immediately so as to provide for the immediate and unreserved return of credits and payments, if any and as applicable, received by SDG&amp;E from the Department during 2013.</p>

## PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

### SDG&E's Proposed Revisions to Findings of Fact:

11. (Revised) DWR has proposed to allocate the entire 2013 costs of the Kern River GT TSA to SDG&E. Pursuant to the reservation of rights filed by SDG&E in its comments on DWR's revised 2013 revenue requirement, the parties should be permitted to file comments and, if necessary, evidence regarding the reasonableness of the allocation of these costs.

16. (New) On November 6, 2012, SDG&E and AReM filed a joint reply to AReM's response indicating the parties had met and conferred, and thereafter reached a full settlement of the issues raised by AReM.

17. (New) Under the accord reached by SDG&E and AReM, SDG&E will allocate a share of credits and payments, if any and as applicable, received by SDG&E from DWR to direct access customers through SDG&E's Power Charge Indifference Adjustment included in SDG&E's Schedule DA-CRS.

### SDG&E's Proposed Revisions to Conclusions of Law:

2. (Revised) The parties should be provided with an opportunity to comment and, if necessary, submit evidence, on the reasonableness of DWR's proposed allocation of post-2012 costs of the Kern River GT TSA to SDG&E.

5. (Revised) Subject to the clarification provided by SDG&E and AReM related to the allocation to nonexempt direct access customers of credits and payments received by SDG&E from the DWR, the Agreement between SDG&E and DWR is just and reasonable and should be approved.

6. (Revised) Subject to the clarification provided by SDG&E and AReM related to the allocation to nonexempt direct access customers of credits and payments received by SDG&E from the DWR, Exhibit SDG&E-1 should be received into the record of this proceeding.

### SDG&E's Proposed Revisions to Orders:

2. (Revised) The orders issued by this decision shall be subject to the Commission's further decisions and any revisions to Appendix A as may be ordered with respect to the just and reasonable allocation of the post-2012 costs of the Kern River GT TSA.

5. (Revised) San Diego Gas & Electric Company's request in its October 16, 2012, motion for adoption of its *Agreement Regarding Procedures Applicable to the Return of Net Negative DWR Power Charge Revenue Requirements* with the California Department of Water Resources is granted, subject to the clarification that SDG&E will reflect an allocable share of such credits and payments, if any and as applicable, to eligible direct access customers in SDG&E's Power Charge Indifference Adjustment included in SDG&E's Schedule DA-CRS.