

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND
COMPLIANCE DIVISION
Energy Branch

RESOLUTION E-3358
January 7, 1994

R E S O L U T I O N

RESOLUTION E-3358. SAN DIEGO GAS AND ELECTRIC COMPANY REQUEST TO RECORD COSTS ASSOCIATED WITH THE CLEANUP OF ITS FUEL STORAGE FACILITY ON THE GRAYBILL SITE INTO SDG&E'S HAZARDOUS WASTE MEMORANDUM ACCOUNT.

BY ADVICE LETTER 894-E FILED ON OCTOBER 12, 1993.

SUMMARY

1. San Diego Gas and Electric Company (SDG&E) requests authorization to book into its Hazardous Waste Management Memorandum Account, up to \$5 million in costs associated with the cleanup of soil and groundwater contamination of the Graybill Site. The costs represent the amount of the utility's potential exposure in settling a suit claiming SDG&E is one of the responsible parties for the contamination.
2. This Resolution approves the request and places the utility on notice that it will have the burden of proving in a reasonableness review process before the Commission that the amount of settlement it negotiates is reasonable.
3. No protests of this advice letter have been received by the Commission Advisory and Compliance Division (CACD).

BACKGROUND

1. This request covers only the Graybill property consisting of three separate parcels (A, B, and C). In the early 1900's Union Oil (Unocal) purchased the property and constructed on it a storage tank facility in 1907. Tanks and associated piping were constructed on Parcels A and B. Parcel C was used for the construction of an office building. From 1907 to 1972 Unocal used the facility to store kerosene, gasoline, diesel fuel, fuel oil, jet fuel, aviation fuel, lubrication and stove oil, methanol, grease, and other things. Unocal owned the property from 1907 to 1972.
2. In 1972 Olson Development Company owned by Carl Olson bought the property and immediately sold Parcels A and B to

William and Grayson Boehm. William and Grayson Boehm established Graybill Terminal Company to operate the storage facility. In August 1972, by contract No. D-22192, Graybill granted SDG&E an exclusive license to use the facility for receiving, storing and delivering fuel to its electric generating plants. SDG&E incorporated this facility (known as National Avenue Tank Farm) into its fuel system while Graybill Terminals retained the exclusive charge of the facility. SDG&E's pipeline was connected to the storage facility in July 1973, and the first delivery of fuel arrived in August 1973.

3. During its tenure on the property SDG&E stored on it primarily diesel fuel which was used to run the turbines at the Silver Gate Power Plant.

4. During the time Unocal owned the tank farm it used to store there a multitude of products, including diesel fuel and other petroleum distillates. Many of these products have been found as contaminants in the soil on the property.

5. On March 27, 1992 California Regional Water Quality Control Board found that the property is contaminated and issued Cleanup and Abatement Order No. 92-08 directing Unocal Corporation and Graybill Terminals to clean the property up.

6. Following the issuance of the order, Graybill Terminals filed a suit against Unocal. Unocal in turn filed a suit against Olson and SDG&E seeking that they contribute to the cleanup. Trial has been set to take place in January 1994.

7. Both Unocal and Olson allege that SDG&E caused or contributed to the contamination of the Graybill site during the time it was using it. The parties have entered into negotiations with SDG&E and agreed to evaluate the potential claims against each other.

8. Unocal's technical consultants Mark Sheilhorn and Alton Geoscience agree that the preferred remedial method for decontamination of the site is excavation of contaminated soil with on-site treatment by low temperature thermal desorption. Both light and heavy petroleum products at this site, such as gasoline, diesel and bunker, are removable by the thermal process. Dewatering and storage of ponding groundwater will be carried on during the excavation. A regulatory cleanup level has not been specified at this time. For a 1,000 parts per million (ppm) total petroleum hydrocarbon (TPH) cleanup level for the soil 18,000 to 22,000 cubic yards, for a cleanup level of 100 ppm TPH the estimated volume is 30,000 cubic yards. The cost of a cleanup to 100 ppm is estimated to be between \$3.5 to \$4.0 million, the cost of a cleanup to 1,000 ppm would be approximately \$250,000 to \$400,000 less. The off-site groundwater and soil treatment process is expected to take three to four months and is presently estimated to cost \$900,000. Taking the

higher of the two estimates, the costs of cleanup may be as high as \$4.9 million.

9. SDG&E is interested in settling the matter to limit its exposure. Its cost of settling the case may be as high as \$5 million. As a precondition of recovering any settlement monies in rates, it must be able to enter its costs into an authorized hazardous waste memorandum account at the time the expense is incurred.

NOTICE

1. Public notice of this filing has been made by publication in the Commission calendar, and by San Diego Gas and Electric mailing a copy of this filing to the interested parties on the service list attached to the Advice Letter No. 894-G.

PROTESTS

1. No protests have been received by the CACD.

DISCUSSION

1. SDG&E is required to file an advice letter for approval of establishing a memorandum account for expenditures associated with hazardous waste cleanups according to D. 88-09-063, Ordering Paragraph 3 and Conclusion of Law 7. The Decision setting the Commission policy distinguished between cases where the utility, on the one hand, has been issued an order by a governmental agency for hazwaste cleanup and, on the other hand, where an order has not been issued. This procedure, however, did not explicitly provide that utilities could seek memorandum account treatment for hazwaste sites which they do not presently own and for which no order for cleanup had been issued by a governmental agency.

2. The Commission, on being petitioned by the utilities to set up a procedure providing for hazardous waste memorandum accounts for non-owned sites, has set forth its requirements for authorization of such hazardous waste memorandum accounts in D. 93-09-066 dated September 17, 1993. The following requirement is relevant here (D.93-09-066, Ordering Paragraph 2.)

"4b. Requests by advice letter for hazardous waste cleanup memorandum accounts for sites that are not owned by the utilities at the present time shall be accompanied by supporting documentation showing clearly (1) the percentage and the amount of the utility's responsibility for the cleanup, (2) the records and outcome of the negotiation process with other potentially responsible parties in which the utility's portion of the costs and operations has been estimated or established, (3) the percentage and

the amount of the costs of operations of other responsible parties involved, and (4) such other information relevant to the review process as the Director of the CACD may prescribe."

3. The situation under consideration in this filing is where the utility does not own the property and has received no governmental order to clean up the site. There are allegations that the utility is wholly or partly responsible for the contamination. For a utility, there may be less of an incentive to negotiate aggressively in any settlement discussions since a utility has a mechanism for recovering costs through the memorandum account, whereas other parties may have to bear such costs from its shareholders. Accordingly, it is of interest to ensure that the utility has made a valid effort that its exposure to any liability is reasonable and that it does not accede to bearing portions of other parties' liability because it is perceived as a "deep pocket" entity that can pass on its costs to its customers.

4. CACD recommends that SDG&E be authorized to establish the requested hazardous waste memorandum account because it may be put at a disadvantage in its negotiations if there were a premature disclosure of information that it desires to keep confidential during the negotiations. It is also important to establish the memorandum account in a timely fashion so that the utility would not be exposed to a potential loss because of delays of the regulatory process.

5. The utility should be put on notice that when its expenditures associated with the settlement of the Graybill site cleanup suits are reviewed for reasonableness it will be required to furnish a persuasive showing of (1) the extent of its responsibility for the contamination of the site, (2) the detailed record of the negotiation process with the other potentially responsible parties (Graybill, Olson, and Unocal), and (3) the amount of the costs of operations of other responsible parties involved.

6. D. 88-09-063 (Finding of Fact 17) allows SDG&E to record expenses in a hazardous waste memorandum account only after receiving authorization to book such expenses consistent with the policy applicable to Pacific Gas and Electric Company, Southern California Gas Company and Southern California Edison Company (D. 86-12-095, D87-05-027 and D.87-12-066). Therefore, any expenses incurred prior to the effective date of this Resolution may not be booked in the memorandum account.

7. SDG&E's Preliminary Statement (Preliminary Statement, Part 16, Section (e) specifies how SDG&E will maintain its Hazardous Waste Memorandum Accounts.

8. D. 88-09-063 also requires that the expenses recorded in the hazardous waste memorandum accounts not be placed in rates

until after a reasonableness review by the Commission has authorized their recovery.

9. CACD recommends approval of this advice letter with the caveats set forth in the discussion above.

FINDINGS

1. San Diego Gas and Electric Company is endeavoring to negotiate a settlement of a suit based on allegations of responsibility for the contamination of the Graybill site in San Diego.

2. SDG&E believes that the settlement of the suit against it may be as high as \$5 million.

3. The total estimated costs of the proposed cleanup listed in the Advice Letter may be \$4.9 million barring unforeseen circumstances.

4. SDG&E has complied with Decisions 88-09-063 and 93-09-066.

5. Costs incurred prior to the effective date of this Resolution may not be included in SDG&E's hazardous waste memorandum account.

6. The hazardous waste memorandum account balance accrue interest at the rate and in the manner prescribed in SoCalGas' Preliminary Statement, Part 16, Section (e).

7. SDG&E may recover in rates, after a reasonableness review, only that part of the costs of the cleanup for which it may be reasonably held responsible.

5. CACD recommends approval of advice letter 893-E.

THEREFORE, IT IS ORDERED that:

1. San Diego Gas and Electric Company is authorized to record up to \$5,000,000 in expenses, associated with hazardous substance cleanup at the Graybill property, described in the Advice Letter 894-E, in San Diego, California in an interest bearing hazardous waste memorandum account, under the terms and conditions of the Hazardous Waste Management Account in Part 16, Section (e), of its Preliminary Statement.

2. The expenses recorded in the hazardous waste memorandum account shall be subject to a reasonableness review and shall not be placed in rates until so ordered by the Commission.

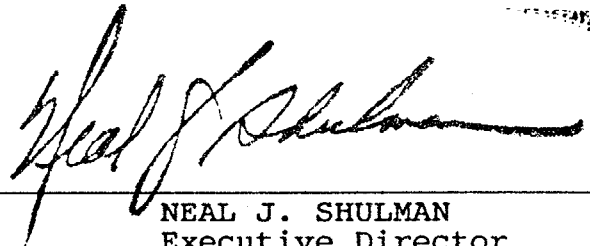
January 7, 1994

3. In its reasonableness review, San Diego Gas and Electric Company shall be required to furnish a persuasive showing of:

- a. The extent of its responsibility for the contamination of the site,
- b. the detailed record of the negotiation process with the other potentially responsible parties (Graybill, Olson, and Unocal),
- c. the amount of the costs of operations of other responsible parties involved.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on January 7, 1994. The following Commissioners approved it:



NEAL J. SHULMAN
Executive Director

DANIEL Wm. FESSLER
President
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
P. GREGORY CONLON
JESSIE J. KNIGHT, Jr.
Commissioners