

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

COMMISSION ADVISORY AND  
COMPLIANCE DIVISION  
Energy Branch

**RESOLUTION E-3419\***  
November 8, 1995

**R E S O L U T I O N**

RESOLUTION E-3419. SAN DIEGO GAS & ELECTRIC COMPANY  
REQUESTS ADDITION OF SOUTH BAY POWER PLANT TO THE LIST  
OF COVERED HAZARDOUS SUBSTANCE CLEANUP SITES.

BY ADVICE LETTER 949-E/969-G, FILED ON MAY 23, 1995.

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**SUMMARY**

1. Pursuant to Decision [D.] 94-05-020, San Diego Gas & Electric Company [SDG&E] wants to add its South Bay Power Plant to the list of Covered Hazardous Substance Cleanup Sites contained in Section VII.C.1.c(3) of its Electric Preliminary Statement and Section VIII.E.1.c(3) of Gas Preliminary Statement.
2. The Division of Ratepayer Advocates [DRA] protests the advice letter on the grounds that the cost of cleanup of the South Bay site is a current expense, associated with current operations, which should be covered in the utility's General Rate Case.
3. This Resolution rejects the protest and grants the request because SDG&E has complied with the requirements of D.94-05-020 (regarding the ratemaking of hazardous waste) for adding the site to the list of covered sites and D.94-08-023 (regarding SDG&E's Performance Based Ratemaking mechanism).

**BACKGROUND**

1. Prior to 1988, the costs of cleanups were estimated and claimed in general rate cases. In 1988 the Commission established a special mechanism for utilities to recover these costs rather than rely on general rate case forecasts [D.88-09-020, D.88-09-063, D.89-01-039, D.88-07-059]. The mechanism allowed the utilities to record the cleanup costs into memorandum accounts for eventual reasonableness review by the Commission prior to their recovery in rates. This mechanism, and its use of advice letter filings, required reasonableness review proceedings.
2. In D.92-11-030, the Commission considered the first utility hazardous substance reasonableness review application [A.91-04-044]. Although the Commission found that the utility had failed to demonstrate by clear and convincing evidence the

prudence of its cleanup costs, it was sympathetic to the difficulty of establishing the prudence of hazardous waste management that took place some time before. Consequently, it solicited comments on the appropriateness of reasonableness reviews and alternative methods of recovering hazardous substance cleanup costs. A collaborative group consisting of eight parties representing consumer, environmental, and utility interests participated in a workshop set up for that purpose in the summer of 1993.

3. D.94-05-020 approved the hazardous waste settlement agreement proposed by the participants in the workshop. It listed the sites that the utilities identified for recovery of decontamination costs. The South Bay site was not included in this list of sites. D.94-05-020, however, anticipated additions to the list. On page 6, mimeo, it states:

...the utility may add sites to the procedure by filing an **advice letter** requesting such treatment...Alternatively, the utility may seek funding for cleanups at those sites through other proceedings, such as general rate case filing or separate application. [Emphasis added]

4. D.94-05-020 also eliminated the need for subsequent reasonableness review proceedings and expedited the recovery of hazardous waste program expenses. Under the new regime, 90% of the cleanup costs are assigned to utility ratepayers and 10% assigned to utility shareholders.

5. The new procedure applies to manufactured gas plant sites, presently identified Federal Superfund sites, and other sites identified by the utilities. Under the new mechanism, the utilities may add sites to the procedure by filing an advice letter and providing such information as the name and location of the site, the source, nature and date of the contamination, utility operations at the site, and any environmental agency actions taken regarding the site.

#### **NOTICE**

1. SDG&E served notice of AL 949-E/969-G by mailing copies to other utilities, government agencies, and all parties that requested such information. AL 949-E/969-G was noticed in the Commission Calendar.

#### **PROTESTS**

1. DRA protests the advice letter stating that it is not appropriate to designate the SDG&E South Bay site as part of the new hazardous waste mechanism. According to DRA, the South Bay cleanup costs are current expenses associated with current operations and should be covered through the General Rate Case.

2. It is the DRA view that the new mechanism applies to sites contaminated prior to 1988. The cleanup costs at South Bay will

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be for contamination attributed to **recent** corrosion and leaks. According to the advice letter, the areas of contamination include two oil spills on the East Loop fuel system, occurring on October 17, 1991, and September 13, 1994. SDG&E claims that the leaks are the result of piping corrosion and may also be the result of leaks at South Bay's South Tank Farm.

3. SDG&E's base rates are determined by the Performance Based Ratemaking [PBR] mechanism [D.94-08-023]. Under PBR, the utility has a risk sharing mechanism which is less favorable to the shareholders than the new hazardous waste mechanism. DRA contends that SDG&E is trying to transfer risk associated with current operations in PBR to the hazardous waste mechanism where SDG&E's risk is lower.

4. SDG&E responded to DRA's protest, contending that D.94-05-020 applies to all hazardous waste cleanup cost incurred on the sites that are listed under Covered Hazardous Substance Cleanup Sites, no matter **when** the contamination took place. It is the SDG&E view that the new mechanism applies to all contamination, old and new, on the approved sites.

5. SDG&E states that, besides the 1991 and 1994 spills, its advice letter also mentions three other leaks at South Bay's South Tank Farm discovered and repaired in 1988 and 1989, none of which is the result of current operations, and all the leaks and spills, except the 1994 spill, occurred well before the Commission adopted the new hazardous waste or PBR mechanisms.

6. SDG&E finally states that the purpose of this filing is to comply with D.94-05-020 by providing all the required information about the site in order to include it in the Covered Hazardous Substance Cleanup Costs list. SDG&E claims it has provided all the required information and requests that the protest be denied and the advice letter approved as a compliance filing.

#### DISCUSSION

1. According to the Settlement Agreement [page 11, mimeo], approved in D.94-05-020, a utility shall file an advice letter with the Commission listing the sites that it wishes to have included within the new mechanism and provide:

- [1] the name of the site;
- [2] the location of the site,
- [3] the source, nature, and approximate date of the contamination,
- [4] utility operations at the site, if any, and
- [5] environmental agency actions and oversight regarding the site, if any.

The Settlement Agreement further provides that the advice letter shall be treated as a compliance filing under General Order No. 96-A and will be processed by the Commission Advisory and Compliance Division [CACD] within 40 days after the filing, if

**unopposed.** If a filing is opposed, the CACD will either prepare a Resolution, or require the utility to file an **application** seeking inclusion of the specified costs in the new mechanism.

2. CACD has reviewed AL 949-E/969-G and finds it in compliance with the above five requirements.

3. D.94-05-020, by adopting the Collaborative Report, authorizes recent, as well as past, hazardous spills on a site to be eligible for inclusion on the list of covered sites. D.94-05-020 [page 6, mimeo] states that the new procedure applies to **all** costs and recoveries whether or not they relate to a site owned by a utility and whether or not a governmental agency has ordered a cleanup of the site. At pages 14 through 16 of the Collaborative Report the parties describe various types of utility hazardous substance sites. One type is as follows:

**Everyday Operation** -- Sites at which hazardous substance contamination results from current, normal, day-to-day operations and maintenance activities including accidental leaks, spills or equipment failures [e.g., transformer, capacitor, or pipeline ruptures].

The Report, on page 54 and 55, describes the new mechanism and notes that the utilities may seek to include **all** types of sites in the mechanism, including sites with "contamination resulting from everyday operations".

4. CACD has reviewed DRA's protest to AL 949-E/969-G. The purpose of conducting a hazardous waste collaborative workshop was to find a mechanism to rid the utilities of delays in cleanups, to promote efficient use of Commission and utility resources, and to terminate reasonableness reviews. It is the CACD view that such a process was not undertaken to discuss remedies for past problems only, as understood by the DRA. The results of the exchange of views by parties in those conferences, which resulted in D.94-05-020, were intended to be applied to such problems regardless of the time of their occurrence. It is the CACD view, in keeping with the tenor of D.94-05-020, that D.94-05-020 extends to all hazardous waste spills, regardless of when they occurred.

5. DRA also contends that cleanup costs of the South Bay site should be recovered through an application in accordance with SDG&E's PBR mechanism (D.94-08-023, A.92-10-017). The PBR D.94-08-023, on the one hand, provides [page 59, mimeo] for **applications** to address "material external events" [those with annual impact of \$500,000 or over on base rate revenues], recognizing that there are certain events outside the control of management which could affect the PBR mechanism but could not be incorporated into PBR at the time because of uncertain timing, unknown costs, and similar factors. On the other hand, in the same decision, the Commission adopted the Joint DRA/SDG&E Testimony which declared that it would abide by the results of the hazardous waste collaborative workshop, if adopted.

[page 60, mimeo; Exhibit 101, page 13, line 17, dated December 7, 1995]. The Collaborative Report, approved earlier by D.94-05-020, required an advice letter filing to include a site on the Covered Hazardous Substance Cleanup Sites list.

6. It is the CACD view that the intent of the Commission is governed by the language most specific to hazardous waste cleanup dicta on page 60 of PBR D.94-08-023. The Commission explicitly adopted the Joint DRA/SDG&E Testimony that uses the Collaborative D.94-05-020 for addressing the recovery of hazardous waste cleanup costs. The SDG&E PBR mechanism was adopted with the view that regulation should be less bureaucratic and less complicated. It would be inconsistent to say now that the SDG&E PBR requires SDG&E to file applications for recovery of hazardous waste cleanup costs when three months earlier the Commission adopted a mechanism that streamlined the process.

7. The CACD recommends that the South Bay site be included in the Covered Hazardous Substance Cleanup Sites list.

#### FINDINGS

1. San Diego Gas and Electric Company [SDG&E] filed advice letter 949-E/969-G seeking approval to add its South Bay Power Plant to the list of Covered Hazardous Substance Cleanup Sites, pursuant to D.94-05-020.

2. DRA filed a timely protest. DRA protests that the potential costs of removing contamination at the site should be a current expense associated with current operations which is recovered through the General Rate Case.

3. SDG&E has complied with the requirements of D.94-05-020 for adding the plant to the list of Covered Hazardous Substance Cleanup Sites.

4. D.94-05-020 encompasses all Covered Sites. It is the option of a utility to have Other Hazardous Substance Costs included within the ratemaking treatment adopted in D.94-05-020 or to seek rate recovery through a general rate case, application, or other authorized procedure.

5. PBR D.94-08-023 has adopted the provisions for hazardous waste in D.94-05-020.

6. The DRA protest should be denied.

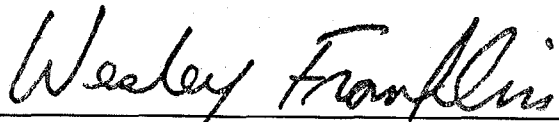
7. Inclusion of the South Bay Power Plant in the list of Covered Hazardous Substance Cleanup Sites is appropriate.

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**THEREFORE, IT IS ORDERED that:**

1. San Diego Gas and Electric Company Advice Letter 949-E/969-G is approved.
2. The protest of Division of Ratepayer Advocates is denied.
3. This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on November 8, 1995. The following Commissioners approved it:



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Wesley M. Franklin  
Executive Director

DANIEL Wm. FESSLER  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSHIA L. NEEPER  
Commissioners