

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

In the Matter of the Application of San Diego Gas &
Electric Company (U-902-E) for a Certificate of Public
Convenience and Necessity for the Sunrise Powerlink
Transmission Project

A.05-12-014

**RESPONSE OF PPM ENERGY, INC. TO ASSIGNED COMMISSIONER'S
RULING SEEKING BRIEFS ON LEGAL ISSUES**

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I. INTRODUCTION

Pursuant to the Assigned Commissioner's Ruling ("Ruling") dated February 10, 2006, PPM Energy, Inc. ("PPM") hereby submits this brief regarding various legal issues identified in the Ruling relating to San Diego Gas and Electric Company's ("SDG&E") request to defer consideration of issues other than the need for the transmission line. In addition to four questions posed specifically to SDG&E, the Ruling asks all parties to address the following issues:

1. What is the legal standard for waiving the Commission's rules and General Orders requested by SDG&E?
2. Has SDG&E met that legal standard?
3. Has SDG&E complied with the requirements of § 1003 of the Pub. Util. Code?
4. Please discuss legal and policy issues regarding delay in providing the legal notice required by the Commission's rules. Given the Commission's preference to ensure full public notice, what factors argue in favor of deferring compliance with the requirement?

PPM specifically addresses each of these questions below. At the outset, however, PPM believes it is important to set the policy context for both SDG&E's motion and PPM's position in support.

II. GRANTING SDG&E'S PROCEDURAL MOTION WILL FURTHER THE STATE'S RENEWABLE ENERGY GOALS, ENHANCE RELIABILITY IN THE REGION AND PROMOTE PUBLIC PARTICIPATION IN THE PLANNING OF NEEDED TRANSMISSION CAPACITY.

As a developer of new, renewable energy facilities seeking access to the San Diego area market, PPM supports SDG&E's application and its proposal regarding the schedule for this proceeding. As described in Section III of this brief, granting SDG&E's procedural motion is well within the Commission's discretion and comports with all applicable statutory and regulatory requirements. Apart from the legal issues, however, PPM urges the Commission to put the motion in its proper policy context by emphasizing the following key factors.

First, the motion is entirely procedural and concerned only with the sequencing of events in this proceeding. SDG&E does not seek to avoid any substantive information or decisional requirement applicable to this proceeding.

Second, the motion seeks to allow more time for community involvement in route selection—a worthy goal—while at the same time remaining consistent with the overall schedule for this proceeding. In fact, PPM would argue that the timeliness requirements of the Commission's own Rule 6(e), in these circumstances, simply require some creativity like SDG&E is proposing herein.

Third, based on discussions with the company, PPM understands that SDG&E's motion seeks an interim decision on need that will provide the company with a timely decision regarding that key issue without limiting full consideration of alternatives and environmental impacts.¹

Fourth, PPM is persuaded that this proposed transmission line will help address two of the most pressing problems facing energy policy makers in California: 1) enhancing electric reliability; and 2) promoting new clean, renewable energy facilities.

¹ PPM defers, of course, to the SDG&E brief regarding the answers to the specific questions in the Ruling addressed to SDG&E.

Finally, given the fate of many recent proposals for new, high voltage transmission facilities in California, there has been considerable controversy regarding the state's planning and permitting process for such facilities. In fact, the Commission has recently opened an Investigation (I.05-09-005) to specifically address how the Commission might reform its transmission CPCN approval processes in order to be more "pro-active" in support of broader state generation resource procurement goals. This proceeding, under the guidance of this Assigned Commissioner, offers the Commission the opportunity to exercise real leadership and creativity in reforming how the state considers major electric infrastructure proposals generally and major new transmission lines in particular. Consistent with the Governor's program for addressing California's infrastructure problems, the Commission should encourage new ideas meant to expedite resolution of key issues such as need, route selection and the like.

Simply stated, this is not the time for the Commission to send a bureaucratic "business as usual" message. PPM believes that SDG&E's proposal makes sense and will help resolve both need and route selection in a fair, public and timely fashion consistent with all applicable laws and requirements. As such, it merits the Commission's support.

III. PPM'S RESPONSE TO THE QUESTIONS IN THE RULING

A. What Is The Legal Standard For Waiving The Commission's Rules And General Orders Requested By SDG&E?

In its motion, SDG&E seeks to defer submission of certain information and related requirements required by various provisions of the Commission's General Order 131(D). (See SDG&E Motion at pp. 5 *et. seq.*) The company does not seek a waiver or deferral of any provision of any statute or regulation. Nor does it seek any generally applicable amendment to this Order that would require a rulemaking. Rather, the company seeks limited deferrals in the staging of certain requirements for this proceeding only. Accordingly, the standard for

Commission review of the motion is that applicable to the Commission's authority to grant exceptions to its General Orders and to set schedules for its proceedings.

General Order 131(D) itself is silent with regard to such case-specific deferrals/waivers, but the Commission has plenary authority in the statutes underlying the Order to grant SDG&E's request. By its terms, General Order 131(D) is based upon the authority of sections 451, 701, 702, 761, 762, 768, 770 and 1001 of the Public Utilities Code. (*See* General Order 131(D) at p.

1.) Section 701 provides as follows:

§ 701. Commission's authority to supervise and regulate public utilities

The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

Plainly, this extraordinarily broad authority is more than sufficient to allow the Commission to grant SDG&E's motion. Moreover, pursuant to this authority, the Commission has made clear that in specific proceedings the Assigned Commissioner and ALJ have the authority and responsibility to set schedules and make procedural rulings controlling the sequence of events. Rules 6(a) and 6(e) of the Commission's Rules of Practice and Procedure explicitly require that the applicant must and other parties may propose schedules at the outset of application proceedings. These rules require that the Assigned Commissioner and ALJ shall thereafter rule upon such proposals. In considering such schedules, Rule 6(e) sets forth this standard:

Any party's proposed schedule for purposes of this rule shall be consistent with the proposed or finally determined category, as appropriate, including a deadline for resolving the proceeding within 12 months or less (adjudicatory proceeding) or 18 months or less (ratesetting or quasi-legislative proceeding). The proposed schedule shall also take into account the number and complexity of issues to be considered, the number of parties expected to participate, the need for and expected duration of hearings, and any other factors that the party wants the assigned Commissioner to weigh in ruling on the scoping memo.

The Commission has further authority in this regard pursuant to Public Utilities Code section 1701, which permits procedural discretion and informality in Commission proceedings, and in Rule 87 of the Commission's Rules of Practice and Procedure. Rule 87 addresses explicitly deviations from the Commission's Rules:

These rules shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented. In special cases and for good cause shown, the Commission may permit deviations from the rules. Rules may be amended at any time by the Commission. (Emphasis added.)

Taken together, these authorities plainly allow the Commission to grant SDG&E's motion. Moreover, these authorities give the Commission broad discretion to grant the motion for any "good cause shown" and to "all things" that are "necessary and convenient to the exercise of [its] power and jurisdiction."

B. Has SDG&E Met the Standard?

PPM believes SDG&E has demonstrated sufficient good cause to grant its motion because it will produce the benefits described in the motion and in Section II of this brief. Without repeating all those points, the overall impact of SDG&E's proposal will be to allow greater community participation in route selection without delaying this proceeding.

The proposal will also promote administrative efficiency by providing an expedited interim decision on the need issues. While PPM believes the "facility"² is indeed "needed," this procedure as proposed by SDG&E will allow all parties to avoid the time and expense of hearings to resolve route-specific and environmental issues should the Commission rule that the functionality provided by this facility is not needed. Conversely, if the Commission issues the requested interim ruling that the facility is needed, then all parties will have a full opportunity to

² For these purposes, PPM would define "facility" as a new high voltage bulk transfer link from new, clean, renewable resources in the Southeast corner of the state to the rapidly growing Northeast portion of SDG&E service territory along the I-15 corridor.

address the remaining issues. This and the other reasons discussed above comprise more than sufficient good cause for granting the motion.

C. Has SDG&E Complied with the Requirements of § 1003 of the Pub. Util. Code?

Section 1003 describes generally the required contents of a CPCN application. The section does not demand that the information submitted be final nor does it require that it be route-specific. To the contrary, the statute uses phrases such as “*preliminary* engineering and design information” and “an *appropriate* cost estimate” to describe the level of detail for such information. It is in General Order 131(D) where the Commission has made these requirements more specific. PPM notes that SDG&E has submitted preliminary information in the application on each topic set forth in section 1003. Based on our review of the application and the motion, PPM believes the information in the application meets the general descriptions of information in section 1003.³ PPM therefore believes SDG&E has met the requirements of this law already.

Moreover, since SDG&E proposes to submit all the required information specified in General Order 131(D) once a final preferred route and potentially feasible alternates are selected, its proposal would substantially comply with Section 1003 even if the initial information submitted failed to meet every requirement of this law at the outset of the proceeding. Section 1003 does not specify the schedule for submission of the information other than the very general reference to “in the application.” Pursuant to the authorities previously discussed, the Commission has discretion to set a schedule for this proceeding and to schedule the submission of information required by Section 1003.

³ PPM notes that SDG&E has not asked for any waiver of the statutory requirement, only the more specific procedural requirements of the General Order.

D. Please Discuss Legal and Policy Issues Regarding Delay in Providing the Legal Notice Required by the Commission's Rules. Given the Commission's Preference to Ensure Full Public Notice, what Factors Argue in Favor of Deferring Compliance with the Requirement?

This aspect of SDG&E's motion is predicated on the self-evident problem that it is not possible to provide specific notice to those persons living near the route of the transmission line until a specific route is selected. To require SDG&E to provide route-specific notice (such as through the direct mail requirement of General Order 131(D) (XI(b)) now will, ironically, foreclose SDG&E's efforts to promote greater community involvement in the route selection decision. On the other hand, deferring the route-specific notice requirement will allow this process to proceed while still ensuring that the notice is provided prior to the Commission's review of all route-specific issues, including its consideration of alternatives and environmental impacts pursuant to the California Environmental Quality Act. Thus, deferring compliance with this requirement arguably promotes greater public participation in the route selection decision and is consistent with the Commission's preference for greater public involvement.

This is particularly the case given the impressive public notice and various public comment opportunities that SDG&E is engaged in regarding the route selection. As described at pp. 3-4 of the Motion, SDG&E has:

- embarked on a series of community working groups in San Diego and Ramona;
- held eight public open houses in the communities of Scripps Ranch, Valley Center, Ramona and Borrego Springs;
- stated its intent to hold five additional open houses in early 2006;
- mailed notices to over 80,000 property owners within the project study area;
- placed advertisements in all local newspapers;
- posted notices in highly traveled public areas such as post offices, libraries and community centers;
- informed the local broadcast media;
- set up a project hotline phone number and email address to receive public comment on the project;
- established a website where the public may obtain information regarding the proposal and submit comments on it; and
- made courtesy service of the application and its motion on the service list for R.04-04-003.

These are not the actions of a utility seeking to avoid public notice or limit public participation. In many ways, these voluntary efforts surpass the notice requirements that SDG&E seeks to defer. SDG&E is to be commended for its efforts to involve the public in its route selection and to publicize the project generally. The robust response to the application and this motion also demonstrate that SDG&E's efforts have alerted the public to this proceeding.

Thus, by granting SDG&E's motion, the Commission will not be compromising its preference to ensure full public notice. SDG&E has already provided substantial notice of this project and this proceeding and has stated its intention to continue these laudable efforts throughout this Spring. These efforts, in combination with the provision of the specific notice required by General Order 131 (D) (XI-A) upon submission of the PEA, will ensure reasonable and timely public notice of SDG&E's project and this Commission's review of it.

IV. CONCLUSION

For the reasons stated above, PPM respectfully requests that the Commission grant SDG&E's motion.

February 24, 2006

Respectfully submitted,

By _____

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PROOF OF SERVICE

I declare that:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and am not a party to the within action. My business address is ELLISON, SCHNEIDER & HARRIS L.L.P., 2015 H Street; Sacramento, California 95814-3109; telephone (916) 447-2166.

On February 24, 2006, I served the attached *Response Of PPM Energy, Inc. To Assigned Commissioner's Ruling Seeking Briefs On Legal Issues* by electronic mail or, if no e-mail address was provided, by United States Mail at Sacramento, California, addressed to each person shown on the attached service list.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 24, 2006, at Sacramento, California.

Ron O'Connor

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