

**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

Application No. 05-12-014  
(Filed December 14, 2005)

**RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) TO  
CONSERVATION GROUPS' PROPOSED "PLEADING AND HEARING  
SCHEDULE"**

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January 30, 2006

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Pursuant to Commission Rule 45(f), applicant San Diego Gas & Electric Company ("SDG&E") hereby replies to Conservation Groups'<sup>1</sup> motion proposing a briefing schedule and another prehearing conference on February 27 to consider SDG&E's motion to defer.<sup>2</sup> SDG&E objects to Conservation Groups' procedural schedule, and submits that yet another pre-hearing conference to consider SDG&E's motion is unnecessary.

In response to an e-mailed request by a representative of Conservation Groups,<sup>3</sup> the presiding judge ruled on January 10 that the time for filing formal pleadings by all parties in response to the application is extended to February 17. On January 20,

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<sup>1</sup> Commendably, the San Diego Chapter of the Sierra Club and the Center for Biological Diversity determined they have common interests in this proceeding, and have jointly filed the motion. In a later paper, they adopt the shorthand "Conservation Groups."

<sup>2</sup> Concurrently with its application, SDG&E filed a Motion to Set Procedures and to Defer Certain Filing Requirements ("SDG&E motion"), seeking permission to postpone, pending completion of route selection for the Sunrise Powerlink ("Sunrise" or "project"), certain Certificate of Public Convenience and Necessity ("CPCN") requirements for the above application, specifically dependent on route selection, including the Proponent's Environmental Assessment ("PEA").

<sup>3</sup> The requesting January 10 e-mail was from Mr. David Hogan of the Center for Biological Diversity.

Conservation Groups submitted a proposed procedural schedule that contemplates full submission of all papers addressing SDG&E's motion by February 17. SDG&E does not object to the February 17 deadline for interested members of the public, but SDG&E does object to Conservation Group's procedural request.

**I. Conservation Groups' proposed schedule is inefficient and unfair.**

SDG&E submits that Conservation Groups' atomized submission of responsive papers to SDG&E's application and motion borders on absurd. There is, to date, a 15-page response to SDG&E's motion characterized as a "motion" for determination of applicability of the California Environmental Quality Act ("CEQA") filed January 20, and a 28-page paper actually titled as a response to SDG&E's motion, filed Friday, January 27. Both papers are in fact responses objecting to SDG&E's motion, notwithstanding the title of the first. A review of both papers reveals no reason why the arguments made therein could not have been coherently submitted in one paper. Conservation Groups' request would compound this procedural spam by setting two separate response dates for SDG&E, followed by two separate replies by Conservation Groups.

At the outset, the Commission should make it clear that it will not entertain multiple layers of responsive pleading. All responses necessarily contain some element of a request for affirmative relief, and to allow a response to a motion to itself be treated as a motion will make it difficult for the Commission to timely decide the simplest issue. In essence, Conservation Groups' CEQA "motion" is simply a response to SDG&E's motion, grounded on the notion that a need determination requires the Commission to prepare an environmental impact report under CEQA. Nothing is added to the argument

by calling it a “motion” for a determination that CEQA applies. Such a determination would be inherent in any ruling based on Conservation Groups’ argument.

SDG&E also notes that the Commission’s rules specifically allow applicant to reply to protests (Rule 44.6), and, with permission, to reply to responses to motions (Rule 45(f)). This accords with the more general rule in American adjudication that the movant gets the last word (but is not allowed to add new affirmative arguments). But Conservation Groups’ proposed schedule would give them, not one, but two, last words, even though SDG&E is the movant. To remedy this inefficiency and unfairness, SDG&E’s suggests that the Commission require SDG&E simply reply by February 10 to all of Conservation Groups’ papers, however characterized, that address SDG&E’s application or its motion to defer. The matter would then be deemed submitted for decision without leave for further papers on the matter.

**II. There is no need for a prehearing conference on SDG&E’s motion to defer.**

To date, Conservation Groups have submitted 43 pages of argument against SDG&E’s motion to defer. SDG&E this day has filed a response to the first of Conservation Groups’ responsive filings. SDG&E is prepared and (based on the quantity of paper generated alone) expects Conservation Groups to be prepared, to argue SDG&E’s motion at the January 31 prehearing conference. In such circumstances, no further argument is needed. In any event, the Commission usually does not hear argument on written procedural motions, and Conservation Groups do not suggest a reason to do so here. To postpone submission until a February 27 prehearing conference would mean that *two and a half months* was required to submit one procedural motion for Commission decision, when the Commission’s Rules contemplate 15 days. Nothing is

advanced by scheduling oral argument except delay. To grant Conservation Groups' motion in such circumstances bodes ill for efficient disposition of SDG&E's application.

### **III. Conclusion**

SDG&E respectfully requests that the Commission order further procedures in response to SDG&E's motion to defer, including a February 10 date for SDG&E's response to Conservation Groups' papers, and on that date closing the record on further response to SDG&E's motion to defer, and rejecting the request to schedule another PHC to consider SDG&E's motion.

Respectfully submitted,



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January 30, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true and correct copy of the **RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) TO CONSERVATION GROUPS' PROPOSED "PLEADING AND HEARING SCHEDULE"** to each party of record on the service list in A.05-12-014 via electronic mail. Those parties without an email address were served by placing copies in properly addressed and sealed envelopes and depositing such envelopes in the United States Mail with first-class postage prepaid.

Executed this 30th day of January, 2006 at San Diego, California.



Doris K. Reed