

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

San Diego Gas & Electric Company

Docket No. ER05-853-001

ORDER DENYING REHEARING

(Issued April 20, 2006)

1. In an order issued on June 20, 2005, the Commission rejected San Diego Gas & Electric Company's (SDG&E) request to recover proposed incremental procurement costs retroactively to July 16, 2004, finding that SDG&E could only recover those costs incurred prospectively from June 21, 2005.<sup>1</sup> In this order, we deny the request for rehearing of that determination.

**Background**

2. On July 8, 2004, the California Public Utilities Commission (CPUC) issued Decision 04-07-028, which required CPUC-jurisdictional facilities to follow certain principles when making resource scheduling and procurement decisions, including scheduling and procuring sufficient and appropriate resources (both system-wide and locally within their service area) to permit the California Independent System Operator Corporation to maintain reliable grid operations. On April 21, 2005, SDG&E filed proposed revisions to its Transmission Owner Tariff (TO Tariff)<sup>2</sup> to reflect the incremental costs incurred by SDG&E, since July 16, 2004, to meet the requirements specified by the CPUC.

3. In the June 20 Order, the Commission accepted the proposed TO Tariff revisions regarding recovery of incremental procurement costs, suspended them for a nominal period, made them effective June 21, 2005, subject to refund, and set them for hearing

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<sup>1</sup> *San Diego Gas & Elec. Co.*, 111 FERC ¶ 61,426 at P 12 (2005) (June 20 Order).

<sup>2</sup> FERC Electric Tariff, Second Revised Volume No. 11.

and settlement judge procedures. However, the Commission rejected proposed tariff language that would have allowed the retroactive recovery back to July 16, 2004 of these proposed costs.<sup>3</sup> SDG&E filed a request for rehearing.

### **Discussion**

4. In the June 20 Order, the Commission stated that, while SDG&E had requested a June 20, 2005 effective date, it indicated in its filing and proposed TO Tariff revisions that it would flow through incremental procurement costs incurred as of July 16, 2004. SDG&E had provided no justification for recovering these costs retroactively to July 16, 2004, however, and the Commission found none. Accordingly, the Commission rejected SDG&E's proposal and found that SDG&E could only recover costs incurred prospectively from June 21, 2005.<sup>4</sup>

5. On rehearing, SDG&E argues that the Commission erred in this determination. First, SDG&E explains that it did not propose to increase immediately its existing reliability service rates to include the incremental procurement costs but only proposed to include those costs in its reliability service balancing account, which would affect reliability service rates for 2006. SDG&E explains further that customers that took transmission service from SDG&E from July 16, 2004 through the end of 2005 would not face any additional charges because those reliability service rates are set by Commission order and are not subject to change. But, according to SDG&E, beginning on January 1, 2006, SDG&E's existing reliability service rates would reflect the reliability-related incremental procurement costs incurred prior to January 1, 2006 and additional forecast costs expected to be incurred going forward.<sup>5</sup>

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<sup>3</sup> June 20 Order, 111 FERC ¶ 61,426 at P 12.

<sup>4</sup> *Id.* at P 12 & n.9. The Commission directed SDG&E to submit a compliance filing reflecting the removal from its TO Tariff of all language permitting this retroactive recovery of costs. On July 21, 2005, SDG&E submitted its compliance filing. On August 26, 2005, pursuant to delegated authority, the Acting Director of the Division of Tariffs and Market Development – West accepted the filing. *San Diego Gas & Elec. Co.*, Docket No. ER05-853-002 (Aug. 26, 2005) (unpublished letter order).

<sup>5</sup> *Citing* McClenahan Direct Testimony at 11:20-27.

6. SDG&E asserts that it could not have sought rate recovery of its incremental procurement costs related to its modified procurement plan earlier because it did not receive the CPUC's approval until February 10, 2005.<sup>6</sup> It contends that it submitted its TO Tariff revisions in due course thereafter.<sup>7</sup> SDG&E asserts that, because the rate changes would not take effect until January 1, 2006, it did not request waiver of the 60-day prior notice requirement and had no reason to believe that an immediate filing was necessary to ensure full recovery of its incremental procurement costs. SDG&E argues that, by establishing June 21, 2005 as the cutoff date for recovery of these costs, the Commission has drawn an arbitrary line between an undifferentiated group of pre-2006 transactions.

7. Finally, SDG&E contends that allowing the recovery of incremental procurement costs from July 16, 2004 forward would not violate the prohibition against retroactive ratemaking. First, SDG&E states that the reliability service charges under its TO Tariff assessed beginning in 2006 will have no linkage to past transmission and, thus, will be allocated on the basis of transmission services rendered in the future. SDG&E explains that its proposed recovery differs significantly from the impermissible retroactive rate design rejected in *Pacific Gas & Elec. v. FERC*.<sup>8</sup> SDG&E states that its proposed recovery simply reflects an additional cost of transmission service provided over SDG&E's facilities, which is appropriately recoverable through a balancing account linked to future services. Second, SDG&E argues that prior notice has been given to affected customers. SDG&E explains that, under its reliability service rate schedule procedures, it reflects its actually incurred incremental procurement costs in its normal annual reliability service rate update filing in December 2005 for transmission service rendered in 2006.<sup>9</sup> Therefore, according to SDG&E, since the approved rate will not apply to service rendered prior to January 1, 2006, customers will have more than adequate notice.

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<sup>6</sup> Citing McClenahan Testimony, Attachment 5.

<sup>7</sup> SDG&E contends that Southern California Edison Company (SoCal Edison) was able to file analogous revisions to its TO Tariff earlier (*i.e.*, in September 2004) because its compliance with the CPUC directive took effect in August 2004. *See Southern California Edison Co.*, 109 FERC ¶ 61,263 (2004).

<sup>8</sup> 373 F.3d 1315 (D.C. Cir. 2004).

<sup>9</sup> Citing McClenahan Direct Testimony at 11:22-24.

8. SDG&E's arguments misconstrue the issue at hand. SDG&E's assertion that it would not flow through the pre-June 21, 2005 costs until 2006 is not relevant. The issue is whether SDG&E can collect prior costs in rates that would be effective after the June 21, 2005 effective date. It is well-established that the rule against retroactive ratemaking "prohibits the Commission from adjusting current rates to make up for a utility's over or under-collection in prior periods."<sup>10</sup>

9. Here, moreover, the parties have not agreed to make the rate effective retroactively and did not have notice that a rate was tentative and would be later adjusted with retroactive effect.<sup>11</sup> Significantly, ratepayers did not have notice of the proposed collection of incremental procurement costs until SDG&E made its section 205 filing.<sup>12</sup> Consequently, contrary to SDG&E's assertion, it is appropriate to differentiate between those transactions that occurred before and after the June 21, 2005 effective date of the TO Tariff revision at issue.<sup>13</sup> Prior to June 21, 2005, there was no provision in the TO Tariff to recover these costs; therefore, SDG&E cannot include incremental procurement costs incurred prior to June 21, 2005 in its rates.<sup>14</sup>

10. For these reasons, we deny SDG&E's request for rehearing.

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<sup>10</sup> *Towns of Concord*, 955 F.2d 67, 71 n.2 (D.C. Cir. 1992).

<sup>11</sup> *Consolidated Edison Co. v. FERC*, 347 F.3d 964, 969 (D.C. Cir. 2003).

<sup>12</sup> We note that SDG&E did not make any earlier filing before the filing at issue here (*e.g.*, some sort of "placeholder" filing putting ratepayers on notice), and, even then, it took SDG&E over two months after the CPUC issued the applicable directive to make the filing at issue here.

<sup>13</sup> Since SDG&E submitted its section 205 filing on April 21, 2005, due to the 60-day prior notice requirement, the earliest date that the filing could become effective, absent waiver, was June 21, 2005. We note that, as here, the analogous TO Tariff revisions proposed by SoCal Edison did not become effective until after the 60-day prior notice period expired. *See Southern California Edison Co.*, 112 FERC ¶ 61,216 at P 20 & n.7 (2005).

<sup>14</sup> *See id.* at P 20.

The Commission orders:

The request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.