129 FERC ¶ 61,233
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

San Diego Gas & Electric Company Docket No. EL10-2-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued December 17, 2009)

1. On October 9, 2009, as amended,[1] San Diego Gas & Electric Company (SDG&E) filed a Petition for Declaratory Order (Petition) requesting approval of proposed accounting and ratemaking treatment for the Border-East Line, a portion of the Sunrise Powerlink transmission project (Sunrise Project), which will be leased to Citizens Energy Corporation (Citizens). For the reasons discussed below, we will conditionally grant the Petition.

I. <u>Background</u>

2. On December 18, 2008, the California Public Utility Commission (CPUC) granted SDG&E a certificate of public convenience and necessity to construct the Sunrise Project, a 120-mile, 500 kV transmission line and associated upgrades that will extend from SDG&E's Imperial Valley substation to load-centers in western San Diego County. The Border-East Line, the portion of the Sunrise Project to be located between the Imperial Valley substation and the San Diego County line, will be subject to a 30-year lease between SDG&E and Citizens. SDG&E and Citizens entered into a Development and Coordination Agreement in which Citizens agreed to finance half of the Border-East Line's costs in exchange for a 30-year entitlement to 50 percent of the Border-East Line's transfer capability. Title to the Border-East Line will remain with SDG&E and the transfer capability will revert to SDG&E upon expiration of the lease term.[2] Citizens will pre-pay the 30-year lease amount to SDG&E, estimated as $ 83 million.[3]

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[1] On October 14, 2009, SDG&E filed an errata.

[2] Citizens Oct. 9, 2009 Petition for Declaratory Order, Docket No. EL10-3-000, at 27.

[3] *See* Petition, Att. A.

3. In its Petition, SDG&E seeks approval of its proposed accounting and ratemaking treatment for the portion of the Border-East Line that SDG&E will lease to Citizens. SDG&E states that its proposed accounting and ratemaking treatment ensures that it will not double recover the costs of the Border-East Line. SDG&E notes that, in Docket No. EL10-3-000, Citizens filed a Petition for Declaratory Order seeking certain incentives for the Border-East Line.

II. Petition

4. First, SDG&E seeks approval to record the amount of Citizens' prepaid lease payment as a contra-account credit in Transmission Plant Account[4] Nos. 350-359. SDG&E states that if, in Docket No. EL10-3-000, the Commission approves Citizens' inclusion of the prepaid lease payment in Citizens' transmission rate base for accounting and ratemaking purposes and such approval occurs before the Border-East Line becomes operational, then SDG&E will not record the contra-account credit in Account Nos. 350-359 until the Border-East Line becomes operational. If Commission approval occurs after the Border-Line becomes operational, SDG&E states that it will discontinue its Transmission Plant rate base recovery of the Citizens-related Border-East Line capital costs by recording a contra-account credit in its Transmission Plant Account Nos. 350-359. SDG&E contends that this manner of accounting for the prepaid lease payment will reduce its gross transmission plant balance by the prepaid lease payment when calculating its transmission rate revenue requirements. SDG&E adds that it will show the amount of the Transmission Plant reflecting the offset by the full amount of the prepaid lease payment in its FERC Form No. 1. Additionally, SDG&E seeks to record Citizens' prepaid lease payment as an increase to cash with an off-setting increase to a deferred liability (revenue) account. SDG&E then seeks to amortize the deferred liability (revenue) into income over the lease term.

5. Second, concurrently with the entry to record the contra-account credit to Transmission Plant Account Nos. 350-359, SDG&E requests approval to record the amount of the prepaid lease payment in Account No. 186, Miscellaneous Deferred Debits. SDG&E intends to amortize this balance in Account No. 186 evenly, on a *pro rata* basis over the lease term. SDG&E maintains that the combined treatment of the lease transaction in Account Nos. 350-359 and 186 will provide transparent assurance that CAISO customers paying the CAISO's High Voltage Access Charge will not be exposed to the risk of double recovery by SDG&E for the Citizens' entitlement during the lease term.

6. Third, SDG&E seeks approval to record and account for all operations and maintenance (O&M)**,** administrative and general (A&G), and overhead (such as general

[4] 18 C.F.R. Part 101 (2009).

and common plant) cost reimbursements that it receives from Citizens during the lease term as either a reduction to the applicable expenses or as a miscellaneous revenue credit. It contends that such treatment will either reduce the expense costs recorded in the applicable account for these categories of expense or increase miscellaneous revenues that it presently flows through under its transmission rate formula. SDG&E argues that this treatment of revenue will provide transparent assurance that CAISO customers paying the CAISO's High Voltage Access Charge will not be exposed to the risk of double recovery by SDG&E of O&M, A&G, or overhead costs during the lease term. SDG&E states that, in the future, it will submit to the Commission the allocation factors it will utilize for O&M, A&G, and general and common plant costs.

7. Finally, SDG&E states that, consistent with generally accepted accounting principles, it will depreciate the portion of the Border-East Line that is leased to Citizens over 30 years to match the corresponding revenues derived from the Development and Coordination Agreement. It states that this treatment of the Citizens leasehold entitlement will transparently ensure that CAISO transmission customers are not exposed, after termination of the lease term, to any risk that SDG&E would seek to recover the capital cost attributable to the initial capital investment in the Border-East Line that had already been fully recovered through Citizens' cost-of-service-based revenue requirements stream.

8. Separately, SDG&E states that it will include the portion of the Border-East Line retained by SDG&E that is not subject to the Citizens' entitlement in its Transmission Plant Account Nos. 350-359 upon commercial operation and depreciate it over its 58-year estimated useful life.

III. <u>Notice of Filing and Responsive Pleadings</u>

9. Notice of the Petition was published in the *Federal Register*, 74 Fed. Reg. 54032 (2009), with interventions, comments and protests due on or before November 9, 2009.

10. Public Utilities Commission of the State of California filed a notice of intervention. Modesto Irrigation District; Metropolitan Water District of Southern California; Transmission Agency of Northern California; Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities); Northern California Power Agency; Cities of Santa Clara, California and Redding, California and M-S-R Public Power Agency; Southern California Edison Company; and Imperial Irrigation District (Imperial) filed timely motions to intervene. Six Cities and Imperial also filed comments. Sacramento Municipal Utility District (SMUD) filed a motion to intervene out-of-time.[5] SDG&E filed an answer to Six Cities' comments.

[5] On November 18, 2009, SMUD filed an errata to its motion.

11. Imperial states that it does not oppose SDG&E's proposed accounting and rate treatment. Imperial seeks to clarify, however, that SDG&E's statement that the CPUC has found that no renewable resource development would occur in the Imperial Valley without the Sunrise Project is inaccurate.

12. Six Cities request that the Commission make clear that SDG&E's shareholders, not CAISO transmission customers, will bear the risk of increased tax expenses if the Internal Revenue Service (IRS) does not agree with SDG&E's proposed treatment of the prepaid lease payment. Six Cities contend that, if the IRS does not agree with SDG&E's proposed treatment of the prepaid lease payment, there could be a substantial increase in tax expense associated with the Sunrise Project that SDG&E might argue should be flowed through to transmission customers. Six Cities argue that SDG&E is the only entity that can mitigate this risk (e.g., by seeking a private letter ruling from the IRS or structuring its relationship with Citizens to allow for the reversal of the transaction if the IRS issues an adverse tax ruling). Six Cities state that, if SDG&E fails to mitigate the risk of adverse tax consequences and the tax expense associated with the Sunrise Project increases as a result, SDG&E's shareholders, as opposed to CAISO transmission customers, should bear the increase.

IV. <u>Discussion</u>

A. <u>Procedural Matters</u>

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure 18 C.F.R. § 385.214 (2009), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.214(d) (2009), the Commission will grant SMUD's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept SDG&E's answer and will, therefore, reject it.

B. <u>Proposed Accounting and Rate Treatment</u>

16. We support SDG&E's efforts to provide transparent assurance that CAISO customers paying the CAISO's High Voltage Access Charge will not be exposed to the risk of double recovery by SDG&E for the portion of the Border-East Line leased to Citizens. We also support SDG&E's effort to ensure that CAISO transmission customers are not exposed, after termination of the lease term, to any risk that SDG&E would seek

to recover the capital cost attributable to the initial capital investment in the Border-East Line that had already been fully recovered through Citizens' cost-of-service-based revenue requirements stream.

17. However, SDG&E's proposed accounting does not conform to the general requirements of the Uniform System of Accounts (USofA).[6] Under the Commission's USofA, property owned by a utility but leased to others as operating units or systems is to be recorded in Account No. 104, Electric Plant Leased to Others. Additionally, revenues and expenses from electric property leased to others, properly includable in Account No. 104, must be recorded in Account No. 412, Revenues From Electric Plant Leased to Others, and Account No. 413, Expenses From Electric Plant Leased to Others, respectively. SDG&E's lease transaction with Citizens provides Citizens a 30-year entitlement to 50 percent of the Border-East Line's transfer capability and is appropriately recorded in Account Nos. 104, 412, and 413. We find that this accounting methodology is consistent with the Commission's USofA, excludes all costs related to property leased to Citizens from SDG&E's formula rate and protects CAISO rate payers from the risk of double recovery, as SDG&E states it seeks to do in the instant filing.

18. Accordingly, we grant SDG&E's requests subject to the following conditions. First, SDG&E must record the original cost of the portion of the Border-East Line leased to Citizens in Account No. 104. Second, SDG&E must depreciate the cost of electric plant recorded in Account No. 104 using Account No. 413 and Account No. 108, Accumulated Provision for Depreciation of Electric Utility Plant. Third, SDG&E must record all O&M and A&G expenses related to the leased property in Account No. 413 and all revenues from Citizens must be recorded in Account No. 412. Finally, SDG&E must record Citizens' prepaid lease payment in Account No. 253, Other Deferred Credits, and amortize the amount to Account No. 412 over the life of the lease.

19. We reject as premature Six Cities' request that the Commission make clear that SDG&E's shareholders, not CAISO transmission customers, will bear the risk of increased tax expenses if the Internal Revenue Service (IRS) does not agree with SDG&E's proposed treatment of the prepaid lease payment. Because the IRS has not issued such a finding, the issue is not ripe for review. Accordingly, we reject Six Cities' request.

[6] 18 C.F.R. Part 101.

<u>The Commission orders</u>:

SDG&E's Petition is conditionally granted, subject to the conditions discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.