

UNITED STATES OF AMERICA 136 FERC ¶ 62,261  
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas &amp; Electric Company

Docket No. EC11-102-000

ORDER AUTHORIZING DISPOSITION OF  
JURISDICTIONAL FACILITIES

(Issued September 26, 2011)

On August 5, 2011, San Diego Gas & Electric Company (SDG&E or Applicant) filed an application under section 203(a) (1) of the Federal Power Act (FPA)<sup>1</sup> requesting Commission authorization for the disposition of jurisdictional facilities to allow SDG&E to acquire from CalPeak Power – El Cajon LLC (CalPeak), the CalPeak El Cajon Energy Facility (Facility), and certain limited and discrete interconnection facilities located on SDG&E's property at the El Cajon substation. The jurisdictional facilities include interconnection facilities, related agreements, and associated books and records.

SDG&E, a California corporation, is a public utility with a franchise service territory engaged in the transmission, distribution, and sale of electricity. SDG&E is a subsidiary of Enova Corporation, which in turn is a wholly-owned subsidiary of Sempra Energy (Sempra). Through various subsidiaries and affiliates, Sempra provides a wide spectrum of electric, natural gas, and energy-related products and services to a diverse range of customers. SDG&E has conveyed operational control over its transmission facilities to the California Independent System Operator (CAISO), and is a Participating Transmission Owner in the CAISO.

According to the application, the land lease agreement between SDG&E and CalPeak, which the parties entered into prior to construction of the Facility, includes a provision giving SDG&E the option to purchase the Facility upon the expiration of CalPeak's contract with California Department of Water Resources (DWR). The terms pursuant to which SDG&E has elected to exercise its option are set forth in the Purchase Option Implementation Agreement (Purchase Agreement) between CalPeak and SDG&E, dated December 6, 2010. Under the Purchase Agreement, SDG&E will purchase and take ownership of the Facility effective as of January 1, 2012, upon the expiration of CalPeak's contract with DWR. In addition, the Purchase Agreement also provides for assignment of certain agreements between CalPeak on the one hand and SDG&E and the CAISO on the other.

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<sup>1</sup> 16 U.S.C. § 824b (2006).

SDG&E states that the proposed transaction is consistent with the public interest and will have no adverse effect on competition, rates, or regulation, nor will it result in any cross-subsidization or the pledge or encumbrance of utility assets to any associated company. With respect to competition, SDG&E states that the proposed transaction will entail the transfer of the Facility, including certain limited and discrete interconnection facilities, from CalPeak to SDG&E. The application explains that because of SDG&E's responsibilities under the administration of DWR's contract with CalPeak, SDG&E has treated the Facility as under its "control" in market-base rate filings. According to the application, by definition, SDG&E's acquiring ownership of a facility it already controls cannot and does not raise any horizontal competitive concerns.

With respect to vertical market power issues, SDG&E states that the proposed transaction will not cause it to gain the ability or incentive to affect prices or outputs in the downstream electricity markets or to discourage entry by new generators. The application asserts that while the proposed transaction includes the transfer of limited facilities used solely to interconnect the power plant to SDG&E's El Cajon substation, those interconnection facilities were designed and constructed to interconnect the Facility, not to serve as a network transmission facility. As such, SDG&E states that the transaction will not have any effect on the ability of transmission customers to take transmission service in the region. The application states that the fact that SDG&E owns transmission facilities to which the Facility is interconnected does not raise any competitive concerns because SDG&E's transmission facilities are operated by the CAISO pursuant to a Commission-approved open access transmission tariff (OATT).

With regard to the effect on rates, SDG&E states that the energy and capacity costs that had been borne indirectly by SDG&E's customers will now be borne by them directly. The application notes that sales from the Facility will continue to be made pursuant to market-based rate authorization, albeit SDG&E's and not CalPeak's. Likewise, the application states that the Commission's concern over the effects on transmission rates is not present here, because, among other things, the only transmission facilities being transferred are limited and discrete interconnection facilities located entirely within the fence line on SDG&E-owned property.

With respect to the effect on regulation, SDG&E states that it is a public utility subject to the Commission's jurisdiction under the FPA, and will continue to be one after acquiring ownership of the Facility. SDG&E asserts that the Commission will continue to have the ability to regulate the Facility's jurisdictional transactions. SDG&E also states that the proposed transaction will not adversely affect the authority or ability of state regulators to regulate the sale of power to retail customers. SDG&E states that it has sought the California Public Utilities Commission (CPUC) authorization to acquire the Facility, and it will continue to be subject to CPUC regulations after acquiring the Facility.

SDG&E asserts that based on facts and circumstances known to it or that are reasonably foreseeable, the proposed transaction will not result in, at the time of the closing or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of assets of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional facilities for the benefit of an associate company. SDG&E states that the proposed transaction will not result in, now or in the future: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under sections 205 and 206 of the FPA.

Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, NERC or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>2</sup> The foregoing authorization may result in a change in status. Accordingly, the Applicants are advised that they must comply with the requirements of Order No. 652. In addition,

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<sup>2</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

Applicants shall make any necessary filings under section 205 of the FPA to implement the transaction.

The filing was noticed on August 8, 2011, with comments, protests, or interventions due on or before August 26, 2011. CalPeak filed a timely motion to intervene and comments in support of SDG&E's application. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

After consideration, it is concluded that the proposed transaction is consistent with the public interest and is authorized, subject to the following conditions:

- (1) The proposed transaction is authorized upon the terms and conditions and for the purposes set forth in the application;
- (2) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission;
- (3) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;
- (4) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (5) If the transaction results in changes in the status or upstream ownership of SDG&E's affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made;
- (6) SDG&E shall make appropriate filings under section 205 of the FPA, as necessary, to implement the proposed transaction;
- (7) SDG&E shall account for the transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. SDG&E shall submit its final accounting entries within six months of the date that the transaction is consummated, and the accounting submissions shall provide all the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries; and

- (7) SDG&E shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Steve P. Rodgers  
Director  
Division of Electric Power Regulation - West

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