

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

Application of San Diego Gas & Electric Company
(U 902-E) for Waiver of Certain Affiliate
Transaction Rules for Interactions with Unregulated
Subsidiary

A.17-03-xxx
(Filed March 30, 2017)

**APPLICATION OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) FOR
WAIVER OF CERTAIN AFFILIATE TRANSACTION RULES FOR
INTERACTIONS WITH UNREGULATED SUBSIDIARY**

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Pursuant to the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, San Diego Gas & Electric Company (“SDG&E”) respectfully submits this Application requesting waivers of certain affiliate transaction rules (“ATRs” or “Rules”) for interactions with an intended unregulated SDG&E subsidiary and seeking Commission approval of other related requests.

SDG&E intends to create a new unregulated subsidiary (“NewCo Sub”). The NewCo Sub will be a separate corporate entity from SDG&E¹ and will be subject to the Rules, except for the waivers requested in this Application. The purpose of the NewCo Sub will be to help commercialize innovations, especially Intellectual Property (“IP”) and related products that can be used by utilities and the energy industry in California and across the country (“the Proposal”).²

¹ *Affiliate Transaction Rules Applicable to Large California Energy Utilities* (“ATRs”), at Rule V.A, p. 10, available at: <http://docs.cpuc.ca.gov/PublishedDocs/PUBLISHED/GRAPHICS/63089.PDF>, approved by D.06-12-029 (amending D.97-12-088), at Ordering Paragraph 1.

² While the NewCo Sub will likely focus mostly on SDG&E-developed IP, it will not be restricted to commercializing only SDG&E-developed IP; it can pursue other commercial activities.

SDG&E does not need Commission approval to form the NewCo Sub. However, SDG&E has determined that it requires waivers of certain Affiliate Transaction Rules to make the NewCo Sub competitive in the marketplace. In addition, SDG&E has proposed two standard protocols (*i.e.*, a sharing mechanism and a Section 851³ framework) for future agreements between SDG&E and the NewCo Sub for IP rights. SDG&E seeks Commission approval of the requested relief stated below.

I. SUMMARY OF REQUEST

In this Application, SDG&E respectfully requests that the Commission:

- Authorize waivers for certain Affiliate Transaction Rules concerning interactions between SDG&E and the NewCo Sub;
- Approve a proposed sharing mechanism between SDG&E ratepayers and shareholders for revenues generated by the transfer of IP from SDG&E to the NewCo Sub; and
- Approve a framework for future IP transfers under Section 851 between SDG&E and the NewCo Sub to help expedite Commission review.

SDG&E is not requesting approval for a rate increase in this Application.

II. BACKGROUND

The Commission has established policies intended to help Californians obtain safe, reliable, environmentally responsible natural gas and electricity. In its attempts to execute these policies in its company operations, SDG&E has developed IP and related products related to electric and gas utility functions. While SDG&E desires to commercialize the IP and related

³ California Public Utilities Code Section 851.

products for the financial benefit of its ratepayers and itself, commercializing, marketing and distributing IP and related products are not core competencies or areas of operational focus for SDG&E. Therefore, SDG&E intends to create the NewCo Sub to help SDG&E pursue commercialization opportunities of certain IP owned by SDG&E.

A. Description of Unregulated Subsidiary

The purpose of the NewCo Sub will be to help commercialize innovations, especially IP and related products that can be used by utilities and the energy industry in California and across the country. Its main activities will include, but not be limited to, managing business development efforts, commercializing IP and patents, and marketing and distributing IP products. While the NewCo Sub will likely focus mostly on SDG&E-developed IP, it will not be restricted to commercializing only SDG&E-developed IP; it can pursue other commercial activities. The NewCo Sub will primarily target geographic markets outside of SDG&E's territory, but it can also commercialize IP both inside and outside of SDG&E's service territory.

The NewCo Sub will be a separate corporate entity from SDG&E.⁴ The NewCo Sub will be initially funded by SDG&E shareholders. It will be subject to the Affiliate Transaction Rules, except for the requested waivers requested in this Application. As such, the NewCo Sub:

- will not use "SDG&E" or a variation of "SDG&E" in its name or branding, will not use the SDG&E name or logo, and will use the disclaimer appropriate to covered affiliates of SDG&E;⁵
- will operate in a physically separate space from SDG&E;⁶

⁴ See Rule V.A, p. 10.

⁵ See Rule V.F, pp. 13-14.

⁶ See Rule V.C, p. 11.

- will be staffed by its own employees or contractors, except as allowed by the Rules;⁷
- will keep its own accounting books and records;⁸
- may obtain support services from the market or may obtain allowable shared services from SDG&E or from SDG&E's parent company, Sempra, as permitted by the ATRs;⁹
- Will use cost accounting and controls align with affiliate separation policies;
- Will be governed by a Board of Directors; and
- Any shared officers or directors with SDG&E will not be used as conduits.¹⁰

B. Retention of an Independent Evaluator During the Evaluation and Negotiation Process with the Unregulated Subsidiary

From time to time, SDG&E decides whether to pursue an agreement to sell or license its IP to a third party. Once the NewCo Sub is established, SDG&E may decide to pursue an agreement to sell or license its IP rights to the NewCo Sub. SDG&E intends to follow the same process as the one used for third party agreements, except that SDG&E will retain an Independent Evaluator throughout the process as a safeguard measure. The Independent

⁷ When the NewCo Sub is formed, any initial transfer of employees will be done in compliance with Rule V.G.2 (pp. 15-16). Rule V.G.2.e allows employees not involved in marketing to be used on a temporary basis (less than 30% of chargeable time) by affiliates not engaged in energy marketing under specific conditions. Any employee transfers or loaned labor will be done in compliance with the Rules and this Proposal.

⁸ See Rule V.B, p. 11.

⁹ See Rule V.E, p. 12-13.

¹⁰ See Rule V.G.1, pp. 14-15.

Evaluator will observe the process throughout the evaluation and negotiation steps to evaluate whether SDG&E's activities and decisions were fair, reasonable, and performed with no preferential treatment. SDG&E will include a report from the Independent Evaluator in any subsequent Section 851 filings.

The accompanying testimony of Mr. Stephen Johnston (Ex. SDGE-02) describes this process, and SDG&E's intent to use an Independent Evaluator, in greater detail.

III. SDG&E'S REQUESTS FOR RELIEF

A. Requested Waivers of ATRs

SDG&E seeks approval from the Commission to waive certain Affiliate Transaction Rules that would govern the relationship and interactions between SDG&E and the NewCo Sub.¹¹ The requested waivers fall into three general categories:

Category I: Sharing of Information: SDG&E requests waivers to the following ATRs to allow sharing of information related to SDG&E-developed IP:

- Rule III.B.2. (Non-Discrimination Standards/Affiliate Transactions/Provision of Supply, Capacity, Services or Information)
- Rule III.E.4 (Non-Discrimination Standards/Affiliate Transactions/Business Development and Customer Relations)
- Rule IV.B. (Disclosure and Information/Non-Customer Specific Non-Public Information)

¹¹ SDG&E has identified those waivers in this testimony that it believes are necessary based on the contemplated structure of the NewCo Sub described in Ex. SDGE-02. Depending on the final structure of the NewCo Sub, as approved by Commission, SDG&E may require fewer, or more, ATR waivers.

Category II: Transfer Price of IP: SDG&E requests waivers to the following ATRs

related to the transfer price of SDG&E-developed IP:

- Rule III.B. (Non-Discrimination Standards/Affiliate Transactions)
- Rule V.H.1 (Separation/Transfer of Goods and Services)

Category III: Shared Officers: SDG&E requests a waiver to the following ATR to allow

shared officers and shared members of the board of directors of the NewCo Sub:

- Rule V.G. 1. (Separation/Employees)

Without these waivers, it is unlikely that the NewCo Sub would be able to effectively compete against third parties in the open market.

B. Proposed Standardized Sharing Mechanism

SDG&E proposes to implement a standard sharing mechanism to govern how any financial compensation received by SDG&E from the NewCo Sub for IP rights is shared between ratepayers and shareholders. Specifically, SDG&E proposes that its ratepayers receive 75% of the financial compensation SDG&E receives from the NewCo Sub for the IP rights and shareholders receive 25% of the amount.¹²

C. Proposed Standardized Information for Future Section 851 Filings for Agreements for IP Rights between SDG&E and the Unregulated Subsidiary

All IP transactions between SDG&E and the NewCo Sub will be submitted to the Commission for approval pursuant to Section 851. To simplify and expedite Commission review of these future Section 851 filings, SDG&E proposes to standardize the information it provides

¹² Note that the portion of financial compensation provided to SDG&E shareholders may be subject to corporate tax.

in Section 851 filings between SDG&E and the NewCo Sub for IP rights. Specifically, in these future filings, SDG&E will:

- Include a report from an Independent Evaluator that documents the evaluation, negotiation and selection process;
- Demonstrate that SDG&E selected the offer that provides a potential optimal result for SDG&E and its ratepayers; and
- Commit to the standardized sharing mechanism of 75% (ratepayers) / 25% (shareholders) for financial compensation received by SDG&E from the NewCo Sub for the IP rights.

IV. SUPPORTING TESTIMONY

In support of this Application, SDG&E includes the testimony of the following witnesses, organized as shown:

- SDGE-01 (David Geier) provides policy support for the Proposal and provides:
 - o a general overview of and rationale for the Proposal;
 - o a description of how the Proposal is consistent with Commission policies and aligned with previous Commission decisions; and
 - o an overview of the Proposal's potential benefits for SDG&E ratepayers, SDG&E and its shareholders, the Commission, and society in general.
- SDGE-02 (Stephen Johnston) describes the NewCo Sub and the Proposal in greater detail, including:
 - o the proposed process to transfer IP from SDG&E to the NewCo Sub;
 - o the proposed standardized sharing mechanism; and
 - o framework for future Section 851 filings for agreements between SDG&E and the NewCo Sub.
- SDGE-03 (Diana Day) describes the Affiliate Transaction Rules for which SDG&E seeks a waiver and the basis of each requested waiver. Specifically, SDG&E requests waivers of:
 - o Rule III.B.2 (Non-Discrimination Standards/Affiliate Transactions/Provision of Supply, Capacity, Services or Information);
 - o Rule III.E.4 (Non-Discrimination Standards/ /Business Development and Customer Relations);

- o Rule IV.B. (Disclosure and Information/Non-Customer Specific Non-Public Information);
- o Rule III.B (Non-Discrimination Standards/Affiliate Transactions);
- o Rule V.H.1 (Fair Market Value and Separation/Transfer of Goods and Services); and
- o Rule V.G.1. (Separation/Employees).

V. SDG&E’S REQUESTS SHOULD BE APPROVED AS IN THE PUBLIC INTEREST

SDG&E’s requested relief should be approved as in the public interest.

SDG&E’s request for waivers should be granted. SDG&E is requesting certain waivers of the ATRs. SDG&E’s request for six waivers out of dozens of ATRs is very limited. Without these waivers, it is unlikely that the NewCo Sub would be able to effectively compete against third parties in the open market.

The ATRs, adopted by D.97-12-088 and amended by D.06-12-029,¹³ “govern [] the relationship between Commission-regulated gas and electric utilities and certain of their corporate affiliates.”¹⁴ The Rules “create nondiscrimination, disclosure and information, and separation standards aimed at fostering competition and protecting consumers' interests.”¹⁵

The Commission has approved requests to waive certain ATRs when the petitioner demonstrates that the waivers are not contrary to the public interest.¹⁶ In support of this Application, SDG&E has provided testimony that demonstrate that each of the ATR waivers requested is in the public interest.

¹³ *Affiliate Transaction Rules Applicable to Large California Energy Utilities*, available at: <http://docs.cpuc.ca.gov/PublishedDocs/PUBLISHED/GRAPHICS/63089.PDF>, approved by D.06-12-029 (amending D.97-12-088), at Ordering Paragraph 1.

¹⁴ D.05-09-006 at 2 (approving a settlement, with conditions, waiving certain ATRs for a PG&E affiliate).

¹⁵ *Id.*

¹⁶ *See, e.g.*, D.05-09-006; D.00-07-047 (finding that the requested exemptions from the ATRs are “in the public interest” and therefore “warranted.”).

The first two categories of waivers requested – concerning the sharing of non-public information by SDG&E and the NewCo Sub and the transfer price for IP sold or licensed by SDG&E to the NewCo Sub – are necessary for the NewCo Sub to effectively compete in the open market. If the NewCo Sub is unable to compete in the open market, it will not be able to commercialize SDG&E’s IP. This would be contrary to the public interest for several reasons including, but not limited to, the loss of potential financial compensation for SDG&E ratepayers and the unavailability in California and across the country of the SDG&E IP and related products.

The third category of ATR waivers requested – allowing shared officers or directors – is a necessary governance protection for SDG&E and its shareholders to protect their investment in the NewCo Sub. In accordance with the ATRs, shared officers and directors will not hold positions in either company that would allow them to become conduits.

SDG&E’s other requests for Commission approval should be approved as reasonable and in the public interest. The standardized sharing mechanism – 75% (ratepayers) / 25% (shareholders) proposed is identical to Commission-approved sharing mechanism for IP licensing or sales agreements.¹⁷ SDG&E’s request for Commission approval of a standard framework to include certain information (i.e., an Independent Evaluator’s Report and the 75/25 sharing mechanism) in any future 851 filings for IP agreements between SDG&E and the NewCo Sub – is also in the public interest because it promotes efficiencies, conserves the Commission’s time and resources, and promotes transparency with the inclusion of the Independent Evaluation’s report.

¹⁷ D.13-05-010 at 600; D.13-11-025 at 82-83 & OP 34.

VI. STATUTORY AND PROCEDURAL REQUIREMENTS

A. Rule 2.1 (a) – (c)

This Application is filed in compliance with the Commission’s Rules of Practice and Procedure. In accordance with Rule 2.1 (a) – (c) of the Commission’s Rules of Practice and Procedure, SDG&E provides the following information.

1. Rule 2.1 (a) - Legal Name

SDG&E is a corporation organized and existing under the laws of the State of California. SDG&E is engaged in the business of providing electric service in a portion of Orange County and electric and gas service in San Diego County. SDG&E’s principal place of business is 8330 Century Park Court, San Diego, California 92123. SDG&E’s attorney in this matter is Emma D. Salustro.

2. Rule 2.1 (b) - Correspondence

Correspondence or communications regarding this Application should be addressed to:

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3. Rule 2.1 (c)

a. Proposed Category of Proceeding

This proceeding does not clearly fit into any of the proceeding categories defined in Rules 1.3. Therefore, in accordance with Rule 7.1(e), SDG&E proposes that this proceeding be conducted under the rules applicable to the ratesetting category.

b. Proposed Schedule and Issues to be Considered

The issues to be considered are described in this Application and the accompanying testimony.

SDG&E does not believe that approval of this Application will require hearings. In the event that hearings are determined to be necessary, SDG&E proposes the following schedule:

PROPOSED SCHEDULE	
<u>ACTION</u>	<u>DATE</u>
SDG&E Application filed	March 30, 2017
Response/Protests	May 1, 2017
Reply to Response/Protests	May 11, 2017
Prehearing Conference	May 25, 2017
Scoping Memo Issued	June 30, 2017
Intervenor Testimony	August 31, 2017
Rebuttal Testimony	September 21, 2017
Evidentiary Hearings, if necessary	October 12, 2017
Concurrent Opening Briefs	November 13, 2017
Concurrent Reply Briefs	December 4, 2017
Proposed Decision	TBD (est. Feb. 2018)

4. Rule 2.1 (d) – Safety

SDG&E states that it is committed to safety. In D.16-01-017, the Commission amended Rule 2.1 to require all applications to include a detailed showing of relevant safety

considerations. In this proceeding, the Commission is primarily considering SDG&E's requests for waivers of ATRs related to sharing information, setting prices for transferring IP from SDG&E to the Unregulated Sub, and sharing officers or directors. Based on current information, SDG&E's proposals will not result in any adverse safety impacts on the facilities or operations of SDG&E.

B. Rule 2.2 – Articles of Incorporation

A certified copy of SDG&E's Restated Articles of Incorporation, as last amended, presently in effect and certified by the California Secretary of State, was previously filed with the Commission on September 10, 2014, in connection with SDG&E's A.14-09-008, and is incorporated herein by reference.

VII. SERVICE

This is a new application. The official service list has not yet been established in this proceeding. Accordingly, SDG&E will serve this Application on all parties to the service lists of SDG&E's most recently completed General Rate Case proceeding (A.14-11-003). Hard copies will be sent by overnight mail to the Assigned Commissioner in A.14-11-003, Commissioner Michael Picker; the Assigned Administrative Law Judges in A.14-11-003, John S. Wong and Rafael L. Lirag; and the Chief ALJ, Karen V. Clopton.

VIII. CONCLUSION

WHEREFORE, SAN DIEGO GAS & ELECTRIC COMPANY requests that the Commission grant SDG&E's Application as described herein.

Respectfully submitted this 30th day of March, 2017.

By: /s/ Emma D. Salustro

Emma D. Salustro

Attorney for:

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OFFICER VERIFICATION

OFFICER VERIFICATION

David L. Geier declares the following:

I am an officer of San Diego Gas & Electric Company and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in the foregoing **APPLICATION OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) FOR WAIVER OF CERTAIN AFFILIATE TRANSACTION RULES FOR INTERACTIONS WITH UNREGULATED SUBSIDIARY** are true to my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 30, 2017 at San Diego, California.

By: /s/ David L. Geier

David L. Geier
San Diego Gas & Electric Company
Senior Vice President – Electric Operations