

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

Application of San Diego Gas & Electric  
Company (U 902 E) for Expedited  
Approval of the Miramar Energy  
Facility II Project

08-06-017  
(Filed June 16, 2008)

**PROTEST OF  
UTILITY CONSUMERS ACTION NETWORK (UCAN)**

**I.  
INTRODUCTION**

Utility Consumers' Action Network (UCAN) hereby protests SDG&E's application and, specifically, its request for expedited approval of construction of a Miramar Peaking Plant.

UCAN's protest is based upon the following points:

- SDG&E has failed to show cost-effectiveness of the project. It also hasn't explained why SDG&E customers should be charged for a project that is needed only because Calpine has failed to honor its contractual obligations.
- SDG&E has failed to show that the project is, in fact, needed by 2009.
- SDG&E doesn't address the fact that even if Miramar 2 is needed in 2009, that it won't likely be used again in 2016, at the earliest.
- SDG&E does not explain why it waited over 45 days before filing this application.

These issues will be discussed in greater depth below. Based upon these factors, UCAN urges the Commission to reject SDG&E's application unless SDG&E can offer detailed responses to the questions posed by UCAN below.

**II. ISSUES DISCUSSED**

UCAN shares SDG&E's concerns about the reliability of electric generation during the summer of 2009. The purpose of the contract that SDG&E entered into with Calpine to build the Otay Mesa project was, in part, to ensure the availability of power during the summer of 2009. The failure of Calpine to honor its contractual commitment now appears to imperil San Diego customers and, at a minimum, impose a fairly expensive generation resource that will likely be rarely used after 2009.

For the reasons stated below, UCAN protests the application submitted by SDG&E, although not the expedited processing of the application. In considering the application, UCAN urges the Commission to consider the following additional matters:

**Resource Needs:** If the CPUC is to conduct an evidentiary process in support of this application, UCAN is prepared to show that Miramar 2 is not needed in **any** year before 2010 if the deployment of AMI is accelerated. If SDG&E is unable/unwilling to so accelerate AMI, then Miramar 2 may be needed in 2009. However, once Calpine's Otay Mesa station comes on-line in the fall of 2009 (and in any case, before the summer of 2010), SDG&E would no longer need Miramar 2 until 2016. UCAN is prepared to demonstrate that SDG&E has ample surpluses in 2010-2012 (due to 370+ Mw of AMI and demand response such that even if South Bay were to be retired in its entirety prior to the summer of 2010, SDG&E would still have sufficient power to address its needs without Miramar 2.

Second, adding Carlsbad, as proposed by NRG, provides 222 Mw more of net capacity resulting in surplus capacity in 2013-2015, inclusive. With the proposed NRG plant, the first year in which new CTs have to be added is 2016. As will be discussed below, an evidentiary process may not be necessary to establish these facts.

If the Commission reviews the assumptions adopted by the Assigned Commissioner/ALJ in their June 20, 2008 ruling (see Appendix to that ruling) it will find that Miramar 2 is not needed in **any** year before 2010. And, even if needed in 2009, once Otay Mesa comes on line in the fall of 2009 (and in any case, before the summer of 2010), then SDG&E wouldn't need Miramar 2 until 2016 with the assumptions contained in the June 20<sup>th</sup> ruling.

**Costs.** SDG&E admits in its application that Calpine's Otay Mesa generation station construction is behind schedule, with the new on-line date in the fall of 2009. If not for this delay, UCAN submits that Miramar 2 would not be required by 2009 and, possibly, not at all. SDG&E appears to want to impose 100% of the \$56+ million price tag for Miramar 2 upon SDG&E's customers, even though it would not have been necessary to build the plant until 2016 absent Calpine's failure to honor its contract. Moreover, SDG&E's estimate doesn't address the natural gas costs to operate the peaker – costs that might have been lower had Otay Mesa been operational. The Commission will need to review the confidential Calpine/SDG&E contract to determine how the contract addresses liquidated damages and whether SDG&E anticipated the need for power in Summer 2009 in that contract.

The Commission also needs to ensure that the cost of the proposed plant is reasonable.

This can be done by comparing its cost to reasonable CT costs represented by SDG&E in the Sunrise Powerlink case. In Sunrise, (Phase 2) SDG&E asserted that 140 Mw of CTs in 2010 (Ex. SD-142, p. 3) would have a levelized cost, transmission included of \$26.1 million per year (Ex. SD-143, p. 20, sum of \$24.3 million/year for 2010 CTs and \$1.8 million/year for transmission), or  $\$26,100/140 = \$186/\text{kw-year}$ . Discounting by 8.4% per year to 2008 terms (as per SDG&E's Miramar 2 testimony, p. 28) yields  $\$186/1.084/1.084 = \$158/\text{kw-year}$ . The Commission must compare that cost to the confidential Miramar 2 cost in \$/lw in Table 4 on p. 28 of its Miramar 2 testimony.

**Expedited processing the application:** SDG&E claims that it needs a decision in no more than 80 days. In order to process this application in a timely fashion, the CPUC will need to know:

1. If SDG&E was informed on May 1, 2008 that Otay Mesa was slipping off schedule why did it wait until June 16<sup>th</sup> to file its application? It isn't clear why SDG&E's testimony doesn't include a letter from Otay Mesa dated May 1<sup>st</sup> confirming its breach of terms. It also isn't clear from its application why SDG&E didn't file the Miramar 2 CPCN earlier than June 16<sup>th</sup>, given that it admits that it would need to be approved by September 2008 to be on-line by July of 2009.
2. What arrangement has SDG&E made to have Calpine defray some of the costs of Miramar 2 due to its failure to deliver its Otay Mesa plant on a timely basis?
3. What steps did SDG&E take to offer premiums to other CT developers to accelerate deployment of their projects?
4. Why did SDG&E never publicly announce that it had signed contracts in 2007 with Wellhead and GE for the turbine and the EPC portions of Miramar 2 given that this information might have made it possible for other plant developers to expedite processing of their proposals?
5. How do the costs of maintaining South Bay in operation past 2010 compare to the costs of building and maintaining the Miramar 2 plant?
6. Is the proposed \$56 million cost of the project is reasonable compared to costs established in the Sunrise proceeding.

**Need for evidentiary hearings.** Given the timeline dictated by SDG&E, it does not seem possible to hold evidentiary hearings to test the veracity of the assertions offered in SDG&E's

application. However, it may not be necessary. The Commission has available to it an extensive evidentiary record from the Sunrise Powerlink application (A. 06-08-010) that includes most of the facts asserted by SDG&E in its application and testimony. UCAN submits that the evidentiary record in the Sunrise case addresses many of the important factual questions, such as the need for and cost of Miramar 2. If SDG&E provides prompt and satisfactory responses to the other questions posed by UCAN above, then the application may be sufficiently supported so as to avoid the need for evidentiary hearings. The burden will fall upon Energy Division and the assigned ALJ to apply the Sunrise evidentiary record to this application.

Respectfully Submitted,

Dated: July 7, 2008

/s/

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**CERTIFICATE OF SERVICE**

I hereby certify that I, Laura Impastato, have this day served a copy of the foregoing **PROTEST OF UTILITY CONSUMERS' ACTION NETWORK** on the electronic service list below that includes the applicant and the assigned Commissioner(s) and Administrative Law Judge(s). Dated at San Diego, California, this 7th day of July, 2008.

Signed,

/s/

Laura Impastato

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