

Commission is also required for the transfer of SDG&E's SONGS ownership interest, and by the Federal Energy Regulatory Commission (FERC) for transfer of the long-term power supply contracts.

In a motion filed with the CPUC on April 1, 1998, the Office of Ratepayer Advocates (ORA) and SDG&E requested that the CPUC adopt a revised schedule for SDG&E's proposed divestiture. The revised schedule bifurcates the CPUC's consideration of SDG&E's divestiture of its tangible assets (fossil-fueled generating assets and refueling facility) and intangible assets (SONGS ownership interest and long-term power supply contracts) described in Application No. 97-12-039. SDG&E's application initially sought a single auction and regulatory approval track for all of its assets being divested. SDG&E now proposes to hold two separate auctions, one for its tangible assets and one for its intangible assets (SDG&E and ORA, 1998). Pending the completion of this environmental review, it is anticipated that the auction of the tangible assets will be held before the end of 1998. The auction of the intangible assets is likely to occur sometime in 1999.

2.3.2 TERMS OF THE PROPOSED SALES

As summarized in SDG&E's PEA (SDG&E, 1997b), SDG&E's Application No. 97-12-039 seeks authority to sell its fossil-fueled generating assets, 24th Street Terminal Refueling Facility, SONGS ownership interest, and long-term power supply contracts under the following terms and conditions:

1. The fossil-fueled generating assets (including the South Bay Power Plant if the sale to the Port District does not occur) would be offered for sale through an auction process to qualified bidders to ensure that the power plants and the CTs sold through the auction would continue to operate when needed to protect system reliability, and, when no longer needed, would be decommissioned in accordance with applicable laws.
2. SDG&E would retain ownership and control of certain transmission-related facilities associated with the generating assets being divested.
3. Subject to applicable federal, state, and local laws and regulations, SDG&E and the new owner(s) would apportion the respective liability and responsibility for conducting any necessary remediation of any environmental conditions at the power plants, CTs, or the 24th Street Terminal Refueling Facility, as required by any governmental agency having jurisdiction over such laws and regulations.
4. The power plants and CTs have been determined by the ISO to be "must-run" generating facilities. Accordingly, the new owner(s) of such facilities would be assigned of SDG&E's "must-run" contract with the ISO to ensure that electric power would be available when needed for reliability, to maintain transmission ratings, and to prevent price manipulation during times when market power exists, for as long as such facilities remain "must-run" facilities.
5. SDG&E would operate the Encina and South Bay Power Plants and the CTs on behalf of the new owners for at least two years following their sale pursuant to a contract with the new owner, in accordance with Public Utilities Code §363.

6. The power plants, CTs, and the 24th Street Terminal Refueling Facility would be transferred to the new owner(s) subject to all the limits and conditions of existing permits, approvals, licenses, regulations, contracts, and other entitlements affecting their use, modification, and operation to the extent permissible. SDG&E and the buyer(s) would prepare, execute, and file all documentation necessary to transfer or assist in the reissuance of such permits, licenses, approvals, contracts, and other entitlements to the new owner(s).
7. SDG&E would, as part of its “due diligence” disclosures, provide the new owner(s) of the power plants, CTs, and the 24th Street Terminal Refueling Facility with all material information and training documentation pertaining to any of the resources listed below that are known to exist at each facility:
 - wetlands;
 - endangered, threatened, candidate, or other sensitive species and their habitat, including biological resources of special sensitivity or significance;
 - worker health and safety programs, emergency preparedness plans, hazardous materials management programs, spill prevention and countermeasure plans, stormwater pollution prevention programs, waste reduction, and best management practices; and
 - paleontological, archaeological, and historical resources, including resources with unique ethnic cultural values and religious or sacred uses.

In addition to the terms and conditions specified in SDG&E’s divestiture application, SDG&E and the City of Chula Vista signed a Memorandum of Understanding (MOU) on June 3, 1998 regarding future uses of the South Bay Power Plant site. SDG&E agreed to prohibit the future placement of any gas- or steam-powered turbines, heat recovery steam generators, or electric generators on portions of the South Bay Power Plant located north of Telegraph Creek (see Figure 2.7 later in this section), but to eliminate any other restrictions on future land uses at the South Bay Power Plant site. Although the MOU does not directly apply to the Encina Power Plant, SDG&E also eliminated the requirement for a deed restriction on future land uses at the Encina Power Plant site.

If the South Bay Power Plant and related facilities were sold to the Port District, the transfer would be for the most part subject to the same terms and conditions as identified in Application No. 97-12-039 for the auction. The Port District, which has announced its intentions to close and decommission the South Bay Power Plant as soon as is feasible (i.e., as soon as the plant is no longer considered a “must-run” facility needed to achieve grid reliability standards by the ISO), would be responsible for all costs associated with the decommissioning of the plant.

Decommissioning includes the decontamination, demolition, dismantlement and removal of any portions of the plant included among the assets being sold. With respect to site remediation, SDG&E would continue to be responsible for remediation of “existing soils contamination” at the South Bay Power Plant to industrial standards. Existing soils contamination includes contamination known to SDG&E at the time of the closing of the plant sale, and contamination discovered within 15 years of the closing that is demonstrated by clear and convincing evidence to have existed at closing. The Port District would be responsible for all decommissioning and

any remediation beyond industrial standards. The Port District would also be responsible for all existing and future hazardous material contamination and soil and groundwater contamination at the LNG site and the transmission property. Prior to the closing of the sale, the Port District must demonstrate to SDG&E that it, or an authorized agent of the Port District, has the power plant experience and operational expertise necessary to obtain government and regulatory approvals and demonstrate financial ability to close the deal.

With respect to the divestiture of its ownership interest in SONGS, SDG&E would not retain any environmental liabilities associated with the facility. Instead, all of SDG&E's responsibility for decommissioning SONGS, together with all of SDG&E's accumulated nuclear decommissioning funds (over \$400 million), would be passed to the buyer upon its sale (SDG&E, 1998). According to SDG&E, this approach is consistent with the CPUC's Preferred Policy Decision (D.95-12-063, as modified by D.96-01-009), which states:

In the event that a nuclear plant changes ownership, the existing trust fund balances would follow the asset to the new owner. The new owner would be obliged to comply with Nuclear Regulatory Commission regulation to continue funding for decommissioning.

Stringent Nuclear Regulatory Commission criteria would ensure that the buyer of SDG&E's SONGS ownership interest has the financial means to continue full funding for decommissioning.

2.3.3 DESCRIPTIONS OF THE ASSETS TO BE SOLD

As described previously, SDG&E's proposed divestiture includes the sale of both tangible and intangible assets. The tangible assets include physical facilities owned, operated, maintained, and controlled by SDG&E. More specifically, these assets include the Encina Power Plant, the South Bay Power Plant, the 17 additional CTs, and the 24th Street Terminal Refueling Facility. The intangible assets include financial contract rights held by SDG&E. The intangible assets for sale include SDG&E's ownership interest in SONGS and its 11 long-term power supply contracts. These contract rights allow SDG&E to acquire a prescribed level of power output but do not entitle SDG&E to any operational control over the underlying generating facility. The general characteristics of each of the assets for sale are described below.

TANGIBLE ASSETS

Fossil-Fueled Power Plants

The general characteristics of each plant to be sold are presented in Table 2.1 and are described below.

Encina Power Plant

The Encina Power Plant, SDG&E's largest fossil-fueled power plant, is located on a 671-acre site at 4600 Carlsbad Boulevard in the City of Carlsbad. The area in the vicinity of the plant is highly developed, consisting principally of residential areas and associated shopping centers.