

fees. The O&M fees are subject to adjustment based on actual operations of the Boardman Power Plant. SDG&E has no control over the operation of the plant. It is only entitled to schedule and receive power output under prescribed conditions at prescribed rates. The termination date for this contract is December 31, 2013.

Agreement With the Public Service Company of New Mexico (PNM). Under this contract, SDG&E is entitled to schedule delivery of up to 100 MW from the PNM power system. SDG&E, in turn, pays a capacity fee and an energy payment. The price of firm capacity under this contract is \$280.00/kW-Yr. SDG&E pays PNM for energy in accordance with the energy rate specified in its agreement with PNM that is based on PNM's system generation costs, including purchased power. SDG&E has no control over the operation of any portion of the PNM system. It is only entitled to schedule and receive power under prescribed conditions at prescribed rates. The termination date for this contract is April 30, 2001.

2.4 PURPOSE OF ENVIRONMENTAL REVIEW

Implementation of the proposed divestiture application entails discretionary decision-making by the CPUC. The CPUC is responsible for considering and making the determination as to what level of environmental review is required under the California Environmental Quality Act (CEQA). Furthermore, the CPUC is the lead agency under CEQA and is responsible for preparing this Initial Study, as defined in Section 15365 of the CEQA Guidelines, to determine if the proposed divestiture of SDG&E's fossil-fueled generating assets, refueling facility, ownership interest in SONGS, and the power supply contracts may have a significant effect on the environment. This Initial Study provides the CPUC with adequate information to determine whether an Environmental Impact Report (EIR) or a Negative Declaration should be prepared.

The CPUC Energy Division staff has recommended to the CPUC Commissioners that a Notice of Exemption under CEQA be prepared and filed with respect to the proposed sale by SDG&E of its intangible assets (i.e., SDG&E's ownership interest in SONGS and the long-term power supply contracts, discussed above). The three independent bases for such exemption from CEQA are as follows:

1. Approval by the CPUC of SDG&E's sale of the intangible assets would not be a "project" under CEQA because the transfer of such assets has no potential for resulting in a physical change (CEQA Guidelines Sections 15061[b][1] and 15378). The sale of the power contracts and the interest in SONGS would not change the underlying operations of the electricity generating facilities involved, since such operations would not be controlled by the new owner, and thus the transfer of the intangible assets would not produce any physical changes.
2. The sale of SDG&E's intangible assets would merely result in the continued operation of existing electricity generating facilities, involving negligible or no expansion of use of such facilities (CEQA Guidelines Section 15301).
3. There is no possibility that the transfer of the intangible assets may have a significant effect on the environment (CEQA Guidelines Section 15061[b][3]). Again, the sale of the power contracts and the interest in SONGS would not change the underlying operations of the

electricity generating facilities involved since they would not be controlled by the new owner. Thus, the transfer of the intangible assets could not result in significant environmental impacts.

Simultaneous with considering SDG&E's application for divestiture, the Commission will consider the recommendation of the CPUC Energy Division to file a Notice of Exemption as to the proposed sale of the intangible assets.

Even if CEQA were to apply to the sale of SDG&E's SONGS interest and power contracts, it is evident that the transfer of ownership of these assets would not result in changes to the physical environment. SDG&E does not now manage or control the operations of SONGS or of the electricity generating facilities that produce the power covered by the power supply contracts. The new owner of such assets would be in a position identical to that of SDG&E. Therefore, a mere change in ownership of these assets would have no physical consequences, and thus no environmental impacts. For this reason, the proposed sale by SDG&E of its intangible assets is not further explored in the detailed analyses provided in subsequent sections of this Initial Study.

2.5 PROJECT APPROVALS

SDG&E's proposed divestiture is subject to approval by the following agencies: the CPUC; the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, and the Federal Trade Commission.

In addition, the proposed divestiture would require the transfer of permits or other entitlement rights and other regulatory approvals or consents for the sales to close. In some cases, the re-issuance of existing permits would be ministerial, and the permits would be reviewed in light of the operations of the buyer when they come up for renewal. Permit transfers or re-issuances for individual assets may trigger review or approval by responsible agencies. The following responsible agencies may have some approval authority:

- California Coastal Commission,
- California Department of Toxics Substances Control,
- California State Lands Commission,
- City of Carlsbad,
- City of Chula Vista,
- San Diego Regional Water Quality Control Board,
- San Diego Air Pollution Control District,
- San Diego Unified Port District,
- San Diego County Department of Health,
- San Diego Industrial Wastewater Department,
- United States Environmental Protection Agency, and
- United States Army Corps of Engineers.

REFERENCES – Project Description

SDG&E, *Application of San Diego Gas & Electric Company (U902-E) for Authorization to Sell Electric Generation Facilities and Power Contracts (Application No. 97-11-039)*, December 12, 1997a.

SDG&E, *Proponent's Environmental Assessment: San Diego Gas & Electric Company's Proposed Sale of Its Electrical Generation Facilities and Power Contracts*, December 19, 1997b.

SDG&E, *Direct Testimony of San Diego Gas & Electric Company in Support of Application for Authority to Sell Electrical Generation Facilities and Power Contracts*, February 26, 1998.

SDG&E and Office of Rate Payer Advocates (ORA), *Motion of the Office of Ratepayer Advocates and San Diego Gas & Electric Company (U 902-E) for Adoption of Procedural Schedule*, April 1, 1998.