

**TESTIMONY OF JAMES AVERY**  
SENIOR VICE PRESIDENT, SAN DIEGO GAS & ELECTRIC  
**REGARDING H.R. 3476**  
United States House of Representatives  
Committee on Resources  
April 17, 2002

Good afternoon, my name is Jim Avery, Senior Vice President of San Diego Gas & Electric (SDG&E). I am responsible for managing all aspects of electric transmission for SDG&E, a distribution utility that provides service to 3 million customers through 1.3 million electric meters and 775,000 natural gas meters in San Diego and southern Orange counties. SDG&E is a California Public Utilities Commission (CPUC)-regulated subsidiary of Sempra Energy, a San Diego-based Fortune 500 energy services holding company. I appreciate the opportunity to provide testimony on H.R. 3476.

SDG&E opposes H.R. 3476. If enacted into law, this legislation would preempt the laws of the State of California by overriding the state's authority to condemn and compensate private landowners for land that is needed for a public purpose. More specifically, H.R. 3476 would exempt a parcel of private land that the Pechanga Band of Luiseno Mission Indians owns in fee from the operation of state condemnation law until a final decision is reached on the Tribe's request to take the land in question into trust. It would have the practical effect of blocking indefinitely SDG&E's construction of the Valley Rainbow Interconnect, a major new transmission project that will serve as a critical link in the Southern California electricity system, providing increased reliability and access to electricity supplies for customers throughout southern California.

H.R. 3476's proposed preemption of state law authorities raises serious federalism concerns that go beyond the facts of this case. California has only recently been able to end the need for instituting blackouts and bring spiraling prices under control, and has a long way to go before it will completely emerge from a severe energy crisis that threatened the State's economic future and well being. Although the crisis was caused by many factors, a lack of transmission and an insufficient supply was identified as a

leading contributor. Constraints on electricity production and transmission in California continue to create uncertainties in the marketplace; passage of H.R. 3476 would send the wrong message to citizens and businesses in California. The bill would hold out a single parcel as being above state law and off-limits for a critical right-of-way that is needed to help resolve California's uncertain electricity situation.

In addition to raising serious questions about the relative role of federal and state authorities in installing needed electricity infrastructure in California and other states, H.R. 3476 represents an unnecessary and unwise overreaction to a land use conflict between the Tribe's desire to convert fee land into trust land and SDG&E's need to obtain a suitable right-of-way for its Valley Rainbow Interconnect project. This bill is the latest in a series of attempts to legislatively circumvent or influence the regular process of administrative review and decision. SDG&E does not oppose the Tribe's request to take the Great Oak Ranch property into trust, so long as a right-of-way corridor is identified and set aside for public use at the same time. The Company has made it clear that it is interested in moving forward with a consensual resolution of its land use conflict with the Tribe; there is no need to preempt a condemnation action that may never arise. The siting of this line would not be an act by SDG&E alone, but would be the result of a multi-year review by state agencies to identify the need and the optimum resolution. So no condemnation is pending. SDG&E is concerned that removing any possibility of such an action in the future, however, would send a message to the Tribe that there is no need to participate in discussions or negotiations on this issue. Indeed, SDG&E believes that Congress should encourage the Secretary of the Interior to assist in resolving this conflict, rather than helping to create more barriers to a common-sense solution to this matter.

## **BACKGROUND AND NEED FOR THE VALLEY RAINBOW INTERCONNECT TRANSMISSION PROJECT**

The Valley Rainbow Interconnect project is a proposed 500,000-volt electric transmission line that would connect the existing Valley substation in Riverside County to a new substation 30 miles south in the community of Rainbow in San Diego County. The Interconnect will provide an important new link between the growing San Diego market and the rest of the State. The California Independent System Operator

(ISO), the agency responsible for managing and planning the California transmission grid, has confirmed the important role that the Valley Rainbow Interconnect will serve in California's electricity system. I have attached the ISO's letter of support from September 2001.

The business community in the greater San Diego region also recognizes the importance of the Valley Rainbow Interconnect project. In a November 2001 letter (attached for the record), the San Diego Regional Chamber of Commerce, the San Diego Regional Economic Development Corporation, and the San Diego-Imperial Counties Labor Council agreed that the proposed transmission line is "critical to helping to solve the long-term energy demands of the San Diego region" and would "help maintain a strong regional economy and job base for many years to come."

### **SELECTION OF A RIGHT-OF-WAY CORRIDOR FOR THE VALLEY RAINBOW PROJECT**

San Diego Gas & Electric studied more than 80 different routes and hundreds of miles of alternatives to determine the corridors for its Valley Rainbow project that would have the least impact on the residents, businesses and environment in Riverside and San Diego counties. Three primary corridors in the southern region of Riverside County emerged as potential alternatives. The first route, identified as the preferred route, is located on the southern and eastern boundary of the Pechanga Reservation. This route would have the least impact on the environment and communities of Southwest Riverside County. A second route was also identified; it would go through a large undeveloped parcel of land known the Great Oak Ranch, west of the city of Temecula. This route appeared to be feasible, and potentially desirable, because it traversed private land, and it raised fewer environmental concerns than the third potential option. The third route, situated west of Interstate 15, has been recognized as problematic because it would traverse an environmentally sensitive area and, in addition, would enter populated areas, triggering the need to remove several businesses and homes.

Based on the outcome of its extensive route analysis, San Diego Gas & Electric initially sought Tribal approval to site the Valley Rainbow line over the preferred route along the southern and eastern edge of the Pechanga Reservation. In June 2000, we met with Chairman Mark Macarro to discuss the Valley Rainbow Interconnect and our

desire to acquire an easement along the eastern and southern borders of the Pechanga Reservation to locate the transmission line. During the following year, numerous meetings were held with the Pechanga Tribal Council, between Ed Guiles, CEO of the Sempra Energy Utilities and Chairman Macarro, and with many other members of the Pechanga Tribe.

Unfortunately, SDG&E's efforts to negotiate a right-of-way for the preferred route was unsuccessful, and the Tribal Council passed a resolution opposing the proposed siting of the Valley Rainbow Interconnect line along the preferred route. Because of the Tribe's opposition, SDG&E focused its attention on the second route through the privately owned Great Oak Ranch, adjacent to the reservation. In March 2001, SDG&E filed an application with the CPUC for approval of the Valley Rainbow line and the Great Oak route.

In April 2001, SDG&E once again met with the tribe to discuss the possibility of using the preferred route over the proposed route. In May 2001, shortly after SDG&E indicated that it would be proceeding with the Great Oak route for the Valley Rainbow project (rather than the preferred route, which was opposed by the Tribe), the Pechanga Tribe purchased the Great Oak Ranch. When the Company learned that this private property had changed hands, we continued our dialogue with the Pechanga Tribe, making a formal offer for an easement over the Great Oak property and requesting another meeting between Mr. Guiles and Chairman Macarro to explore potential solutions. On August 14, 2001, Mr. Guiles and members of SDG&E management met with Chairman Mark Macarro, John Macarro and Tribal Council Members at the Great Oak Ranch to discuss alternatives. Shortly thereafter, we were informed that the Tribe opposed the siting of the Valley Rainbow Interconnect on the Great Oak property, much as it had previously opposed the inclusion of such a transmission corridor on tribal lands.

### **SDG&E'S INTEREST IN REACHING A NEGOTIATED RESOLUTION OF THE RIGHT-OF-WAY ISSUE**

During the summer and fall of 2001, the Tribe sponsored an Interior appropriations rider that would have overridden statutory authorities and mandated that the Great Oak Ranch be taken into trust without undergoing the required review, thereby blocking the proposed use of a narrow corridor on the property for

the Valley Rainbow transmission line. That rider was removed by the House-Senate Conference Committee. A subsequent effort to offer a rider similar in approach to H.R. 3476 to the Defense appropriations bill did not advance. Throughout these efforts, SDG&E has continued to emphasize that the Company does not oppose the Tribe's request to take additional land into trust, so long as the State's legitimate needs for a narrow transmission corridor are accommodated. For its part, SDG&E has not sought a legislative remedy, but instead has consistently recommended that the corridor issue be addressed, and resolved, through negotiations among the parties, under the auspices of the U.S. Department of the Interior.

Earlier this year, the Interior Department agreed to seek a negotiated resolution of this matter. Indeed, the Department took the initiative and arranged for face-to-face negotiations among the parties in a meeting that was scheduled to take place in southern California on March 20, 2002.

Regrettably, a few days before the March 20 negotiating session, the Tribe informed the Interior Department that it would not participate in the scheduled talks, and the Interior Department was forced to cancel the meeting. The very next day, on March 21, 2002, the Bureau of Indian Affairs regional office in Sacramento, California released a Notice of Decision to accept the Great Oak Ranch in trust for the Pechanga Indians without any hold-back of a transmission corridor, and without any effort to seek a negotiated resolution of the issue.

SDG&E is appealing BIA's decision. The decision contains serious flaws, particularly with regard to its mischaracterization of the real availability of alternative routes for the siting of the Valley Rainbow Interconnect. Even more importantly, the decision was issued without apparent regard for serious public policy issues raised by the conflict between the Tribe and SDG&E, and prior to the convening of a dispute resolution process among the parties. SDG&E believes that the decision should, and will, be reversed on appeal. The Company continues to prefer, however, that the corridor issue be addressed through Interior-led negotiations with the Tribe. If the Department is to take any action on the pending action, it should take the land into trust with the reservation of a corridor for the Valley Interconnect transmission line, so that the land in trust process is not used inappropriately to block this needed project.

## **CONCLUSION**

In summary, SDG&E opposes HR 3476 and asks that the Committee take no action on the legislation. SDG&E renews its request to Congress, and to the Secretary, to help it negotiate a resolution of the existing conflict in a manner that will meet Tribal needs, while also addressing the state's needs for a new right-of-way for the installation of the Valley Rainbow Interconnect transmission project.