

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

Order Instituting Rulemaking to revise the time schedules
for the Rate Case Plan and fuel offset proceedings.

Rulemaking 87-11-012
(Filed November 13, 1987)

**RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY AND
SOUTHERN CALIFORNIA GAS COMPANY TO
MOTION OF INTERVENORS FOR DELAY IN FILING NOTICES OF
INTENT**

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INTRODUCTION

Pursuant to Rule 11.1 (e) of the Commission's Rules of Practice and Procedure, San Diego Gas & Electric Company ("SDG&E") and Southern California Gas Company ("SoCalGas") (jointly, "Utilities") hereby respond to the May 18, 2010 Motion filed by TURN, UCAN, Greenlining, FEA, and DIRA (jointly, "Intervenors"). Utilities strongly oppose the Motion on the grounds that it seeks an outcome which is contrary to (and is thus a collateral attack on) two Commission decisions. The motion is also improperly filed in a closed rulemaking proceeding¹, is lacking in factual support, and is likely to result in rate shock. For reasons more fully described below, the Motion must be denied.

**INTERVENORS' MOTION CONFLICTS WITH TWO COMMISSION
DECISIONS AND STATE POLICY**

Intervenors' Motion asks the Commission to delay the Notice of Intent ("NOI") date for SDG&E and SoCalGas' upcoming TY 2012 GRC applications until February, 2011. These NOIs would otherwise be served on July 30, 2010. The Motion does not even begin to justify the requested delay, and should be denied for reasons set forth below.

1. D.07-07-004, Ordering Paragraph 2 clearly states: "Rulemaking 87-11-012 is closed." SDG&E and SoCalGas believe that the Motion should be rejected on this basis alone, but are filing this response in the event that the Motion is accepted by the Docket Office.

1. Two Commission Decisions Have Ordered TY 2012 GRC Applications

The Commission adopted a four-year rate case cycle for SDG&E and SoCalGas in D.08-07-046 and specifically required the companies to file a Test Year 2012 GRC. D.08-07-046, mimeo at p. 3.

D.10-04-003 ratified the TY 2012 filing requirement. In the “*DECISION DENYING THE PETITION TO MODIFY DECISION 08-07-046 WHICH REQUIRES TEST YEAR 2012 GENERAL RATE CASES FOR SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA GAS COMPANY*” the Commission *again* required the filing of TY 2012 applications for SDG&E and SoCalGas.

Intervenors’ request that the NOI be delayed is a collateral attack on both D.08-07-046 and on D.10-04-003. Both of these decisions require a TY 2012 GRC to be filed by SDG&E and SoCalGas, and the latter decision specifically denied a request to delay those applications based on arguments that they overlap with SCE’s GRC, and that parties would be overworked if the overlap occurred. Nothing in either decision can be read to support Intervenors’ requested delay, and in fact their arguments in favor of a delay were considered by the Commission and rejected. Asking for a delay in the NOI is a procedural end-run, given that the Commission has already ruled that the applications should not be delayed.

Furthermore, timely conclusion of CPUC proceedings (and especially major ones such as GRCs) is an important goal of the Commission and of the State of California.² Since two decisions have ordered TY 2012 GRC proceedings, and the point of a GRC is to reset base rates at the beginning of the Test Year (i.e. a rate change on January 1, 2012), it would be counter to state policy regarding timely decision-making by the CPUC to delay the date of the Notices of Intent to file the GRCs.

² The CPUC is required to provide an annual report to the Governor and Legislature regarding timely resolution of its proceedings.

2. Intervenors' Argument For Delay Have Already Been Heard And Rejected.

In its Motion, Intervenors repeat the same arguments that TURN and UCAN made in their comments on the Proposed Decision of Administrative Law Judge Long³ when the subject of delaying the TY 2012 was proposed (hereafter "PD"). The PD was mailed on March 5, 2010; opening comments on the PD were filed on March 24, 2010 by DRA and on March 25, 2010 by The Utility Reform Network/Aglet /UCAN. The PD was revised after these comments were filed, but the delay argued for by TURN and UCAN was not adopted. The Commission then adopted the ALJ's PD without an alternate being drafted, and by a unanimous consent vote.

TURN/UCAN's arguments then were essentially the same as they are now. TURN and UCAN argued (p. 3, note 2 of comments) that they rely on one consultant (JBS Energy) and that JBS Energy arguably could not work on both GRCs at the same time. The same argument appears (word for word) at page 5, note 10 of the Motion. TURN/UCAN also argued that a reorganization at Sempra justified delaying the NOI. TURN/UCAN made the exact same argument to ALJ Long in their comments on the PD. They argued that the reorganization would complicate the GRC review process. However, their argument was not convincing enough to delay the GRC, as is shown by D.10-04-003.⁴

The arguments attempting to justify a delay in Intervenors' Motion have already been heard, denied, and the delay requested by TURN and UCAN rejected by the ALJ and by all five Commissioners. Given that TURN and UCAN already raised these arguments once, and they were rejected (by a unanimous vote), they are not entitled to a second bite at the apple, simply by filing a similar request in a different docket.⁵

³ The PD was mailed March 5, and the final decision issued April 13, 2010.

⁴ It is also an illogical argument, because even if the reorganization added any complexity to the GRC, the solution is not to start the GRC later (thus reducing the time available for all parties), but to begin on time.

⁵ Furthermore, Intervenors fail to justify filing the instant Motion in a Rulemaking proceeding, particularly one listed as "CLOSED" on the CPUC's web page. Rulemakings are intended to set statewide rules, not to provide procedural relief in a ratemaking proceeding.

**INTERVENORS MOTION LACKS FACTUAL SUPPORT AND IGNORES
THE HARM TO SDG&E AND SOCALGAS OF NOT TIMELY
PROCEEDING WITH THE UTILITIES' GRC, AS WELL AS THE LIKELY
RATE SHOCK TO RATEPAYERS**

Intervenors are not required to intervene in GRC proceedings. Where (as here) some intervenors allege that they are not staffed at a level adequate to participate in multiple proceedings, there is nothing preventing them from a) hiring new personnel; b) contracting with outside agencies; c) utilizing temporary labor; d) using staff who might otherwise work on different proceedings, or e) participating at a lesser level. As discussed below, it has been apparent for over a year that there would be multiple TY 2012 GRC proceedings, so parties had adequate time to make such arrangements.

Nor is there any form of proof offered for the claim that intervenors cannot meaningfully participate. The Motion is not supported by affidavits or any specific proof that this subset of Intervenors may suffer anything other than a period of inconvenience if they choose to work on multiple proceedings. An allegation that some of the potential intervenors could be busier than usual is not adequate proof to justify a delay in a proceeding that two separate decisions have already indicated should occur in time to change rates on January 1, 2012.

The Commission should also consider the harm that may result if a stay of the Decision is granted.⁶ If the NOI was delayed until February 2011, there is no possible way in which a GRC decision could be issued in time to set rates on January 1, 2012, and probably not even within the Test Year (2012) at all.

In the most recent SDG&E/SoCalGas GRC (A.06-12-009/010), the application was filed five months after the NOI, and DRA's testimony was not served until seven months after the application was filed. Thus, if there were similar time frames in the upcoming GRC, and if NOIs were delayed until February 2011, the applications would be filed in June, 2011, and DRA's testimony in December, 2011. This means the SDG&E/SoCalGas GRC proceeding would not even have reached the hearings stage by the time the Test Year started (and rates are supposed to change).

⁶ See, e.g., D.04.08-056, p. 6.

Similarly, in the most recent SDG&E/SoCalGas GRC, it took five months after DRA's testimony to conclude the briefing stage. Thus, if NOIs were delayed until February 2011, it is likely that briefing would be finalized in May, 2012. This means that there would not even be a proposed decision by mid-year 2012.

In the most recent SDG&E/SoCalGas GRC, it took nine months after the reply brief for the PD to be issued and for the Commission to adopt a final decision. Thus, if the NOIs were delayed until February 2011, and with a similar duration of hearings, briefing, and resolving the case as in the 2008 GRC, there would not be a final decision in the case until February, 2013.

In addition, if the Motion were granted, the electric rate design phase (Phase 2) of SDG&E's GRC would be delayed by an additional seven months. Intervenors have not addressed the harm that would occur by failure to timely address rate design, marginal costing, and cost allocation issues.

The longer the GRC decision is delayed, the less time there is over which to recover the 2012 revenue requirement. This is likely to cause rate shock and highly variable rates, as SDG&E and SoCalGas' will be required to recover both the 2012 revenue requirement AND the 2013 revenue requirement spread over only ten months of 2013.

If Intervenors' Motion were approved in a manner that prevented the Utilities GRCs from being timely filed and timely litigated (given the proposed seven month delay), this would mean that SDG&E and SoCalGas would be denied their right to seek necessary review of their current revenue requirements, and would have to operate their businesses for an extended length of time without knowing what level of rate recovery will ultimately be allowed. In short, the Motion is inappropriate and could harm ratepayers as well as the Utilities. Failure to timely process the Utilities' GRC could result in a lack of funding necessary to provide adequate, reliable and safe service, and could result in significant rate shock as well. The Utilities' GRC must occur on a timely basis.

**INTERVENORS HAVE BEEN AWARE OF OVERLAPPING GRCS FOR OVER
A YEAR**

The issue of overlapping GRCs is not a new one. In March 2009, the Commission issued D.09-03-025 in the Southern California Edison (“SCE” or “Edison”) TY 2009 GRC. D.09-03-025 set the next GRC for Edison for a TY 2012. Since D.08-07-046 had already ordered SDG&E and SoCalGas to file TY 2012 GRCs, it has been apparent for the last fourteen months that these proceedings would happen in parallel. However, Intervenors have chosen to wait until only mere weeks remain prior to the NOI deadline. This is unreasonable. Intervenors have had over a year to prepare, and to staff up as necessary should they *choose* to participate in more than one GRC. Intervenors’ apparent failure to be adequately prepared for such voluntary participation does not justify any delay in any of the TY 2012 GRCs.

**THE UTILITIES ARE REQUIRED TO FILE TY 2012 GRCS;
GRANTING A MOTION TO DELAY THE NOTICE OF INTENT WOULD BE
ARBITRARY AND CAPRICIOUS**

None of the Intervenors has sought rehearing of D.08-07-046, nor of D.10-04-003. Per both of those decisions SDG&E and SoCalGas are still under a requirement to file TY 2012 GRCs. Neither of those decisions discusses a notice of intent (which is only served and not a filed document). The request for a ruling ordering the NOI to be delayed would not change the fact that two Commission decisions require SDG&E and SoCalGas to file a Test Year 2012 GRC. The NOI is an aid to DRA and a delay in serving that document would not extinguish the otherwise applicable filing requirements; however it would make it virtually impossible to timely process the applications. Such a delay in the NOI timing is illogical, inconsistent with Commission decisions requiring TY 2012 GRC applications, and would preclude the utilities from obtaining a timely decision adjusting their respective revenue requirements. As such, any ruling substantially delaying the NOIs would be arbitrary and capricious.

CONCLUSION

In summary, Intervenors' collateral attack on D.08-07-046 and D.10-04-003 must be denied. The Motion lacks factual support and the delay sought is not warranted; furthermore it would cause harm to Utilities and ratepayers alike. For all the reasons set forth in this Response, the Commission must deny the Intervenors Motion.

Respectfully submitted,

SAN DIEGO GAS & ELECTRIC COMPANY
SOUTHERN CALIFORNIA GAS COMPANY

June 2, 2010

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA GAS COMPANY TO MOTION OF INTERVENORS FOR DELAY IN FILING NOTICES OF INTENT** on all known interested parties of record in R.87-11-012, A.06-12-009, A.06-12-010 and I.07-02-013 via email to those whose email address is listed in the official service list and via first class mail to those whose email address is not available.

Copies were also delivered to Administrative Law Judge Douglas Long and Michelle Cooke.

Executed this 2nd day of June, 2010, at San Diego, California.

/s/ LISA FUCCI-ORTIZ
Lisa Fucci-Ortiz