

Application No. A.11-05-24

Exhibit No: \_\_\_\_\_

Witness: Reguly, Ted

**PREPARED REPLY TESTIMONY OF TED REGULY  
ON BEHALF OF SAN DIEGO GAS & ELECTRIC COMPANY'S  
ENERGY SAVINGS ASSISTANCE PROGRAM AND  
CALIFORNIA ENERGY FOR ALTERNATE RATES PROGRAM PLANS  
AND BUDGETS FOR PROGRAM YEARS 2012, 2013 AND 2014**

Before the Public Utilities Commission  
of the State of California

December 9, 2011

1                   **I. INTRODUCTION**

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3                   Pursuant to the September 26, 2011 Assigned Commissioner and Administrative Law  
4 Judge’s Joint Scoping Memo and Ruling, San Diego Gas & Electric (“SDG&E”) hereby submits  
5 this reply testimony to the opening testimonies of parties submitted on November 18, 2011.

6                   **II. SUMMARY OF SDG&E’S OPENING TESTIMONY**

7                   The following summarizes the Opening Testimony of Ted Reguly on behalf of SDG&E’s  
8 2012-2014 California for Alternate Rates for Energy (“CARE”) and Energy Savings Assistance  
9 (“ESA”) Program plans and budgets submitted on May 16, 2011, which focused primarily on  
10 recommendations to revise certain Commission-adopted policies and processes beginning in  
11 2012.

- 12                   • SDG&E proposes modifications to the categorical eligibility enrollment process by  
13 requesting the Commission revisit under which public assistance programs  
14 customers may categorically enroll in the CARE and Energy Savings Assistance  
15 Programs.
- 16                   • SDG&E requests authorization to 1) revise its CARE and Energy Savings  
17 Assistance forms to require customers who categorically enroll in the programs to  
18 also provide their total household incomes to ensure it does not exceed the  
19 programs’ income guidelines; and 2) require categorically enrolled customers to  
20 provide income documentation in addition to providing proof of participation in one  
21 of the categorical programs when and if they are randomly selected for post-  
22 enrollment verification for the CARE program.
- 23                   • SDG&E proposes to make minor modifications to the Commission’s adopted  
24 methodology for calculating the projected number of homes to be treated by the  
25 Energy Savings Assistance Program through 2020<sup>1</sup> by revising the calculation for  
26 projecting the “unwillingness” and “ineligible” estimates based on 2009-2010  
27 program activity and by revising the calculation for estimating the number of homes

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<sup>1</sup> See D. 08-11-031 at pp. 108-144114.

1 to be treated by the Low Income Home Energy Assistance Program (LIHEAP)  
2 through 2020.

- 3 • SDG&E requests that the date the Annual CARE and Energy Savings Assistance  
4 Program Income Eligibility Updates be changed from May 1<sup>st</sup> to April 1<sup>st</sup> of each  
5 year beginning in 2012.
- 6 • SDG&E proposes an Advice Letter process for requesting mid-cycle program  
7 modifications to allow utilities flexibility to modify their programs more  
8 expeditiously than the current process requiring a Petition for Modification or  
9 Motion.
- 10 • SDG&E requests that the due date for the 2015-2017 CARE and Energy Savings  
11 Assistance Program Plans and Budgets be changed from May to July 2014 and that  
12 the Guidance Document for the 2015-2017 be issued by the Commission no later  
13 than December 31, 2013.
- 14 • SDG&E, along with the other Investor-Owned Utilities (“IOUs”), proposes that the  
15 Joint Utility Quarterly Meetings be replaced by an annual Low Income Program  
16 public forum.

### 17 **III. REPLY TO PARTIES’ OPENING TESTIMONY**

#### 18 **A. CATEGORICAL ENROLLMENT**

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20 Although most parties support the IOUs’ request for Commission workshops to revisit  
21 the public assistance programs under which a customer can qualify for CARE and the Energy  
22 Savings Assistance Program,<sup>2</sup> some parties ask the Commission to reject the utilities’ proposals  
23 to eliminate categorical eligibility.<sup>3</sup> SDG&E would like to clarify that it did not propose a  
24 wholesale elimination of categorical enrollment in advance of Commission workshops as

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<sup>2</sup> SDG&E, Southern California Gas Company, and Pacific Gas & Electric made this request in their Applications.

<sup>3</sup> Prepared Direct Testimony of K. Camille Watts-Zagha on Behalf of the Division of Ratepayer Advocates at p. 1-1, Testimony of Dmitri Belser on Behalf of the Center for Accessible Technology at p. 7, and Testimony of Eduardo Gallardo on Behalf of The Greenlining Institute at p.6,

1 asserted in the Opening Testimonies of the Division of Ratepayer Advocates (“DRA”) and The  
2 Greenlining Institute (“Greenlining”).<sup>4</sup>

3 Several parties<sup>5</sup> also indicate that the IOUs have not provided sufficient data to  
4 demonstrate the extent to which some categorically enrolled customers have total household  
5 incomes that exceed the CARE eligibility guidelines. It is for this reason that SDG&E requested  
6 Commission authorization to revise its CARE and Energy Savings Assistance Program forms to  
7 require categorically enrolled customers to also be required to provide their total household  
8 income. In addition SDG&E requests authorization to require household income information  
9 from customers selected for CARE post-enrollment verification, in addition to proof of  
10 participation in one of the public assistance programs, to allow SDG&E to better track the extent  
11 to which certain categorically enrolled customers have income that exceed the Commission’s  
12 income guidelines.<sup>6</sup> At this time, SDG&E does not propose to deem ineligible customers who  
13 categorically enroll whose incomes exceed the program income guidelines.

14 DRA challenges a statement made in SDG&E’s Opening Testimony that it “did not  
15 believe the Commission intended for utility ratepayers to subsidize those households with  
16 incomes that exceed the CARE income eligibility guidelines “when the Commission explicitly  
17 sought to expand the eligible pool when it mandated automatic enrollment in 2002.”<sup>7</sup> However,  
18 DRA fails to recognize that since the implementation of CARE automatic enrollment in 2002  
19 and categorical eligibility in 2007, Senate Bill 685 was enacted which revised §739.1 (b) (1) of  
20 the Public Utilities Code. The revision required the Commission to establish that the CARE

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<sup>4</sup> See the Prepared Testimony of K. Camille Watts-Zagha on behalf of the Division of Ratepayer Advocates at p. 1-1 and the Prepared Testimony of Eduardo Gallardo submitted on behalf of the Greenlining Institute at p. 6.

<sup>5</sup> Prepared Testimony of Dmitri Belser on Behalf of the Center for Accessible Technology at p.8, Prepared Testimony of Hayley Goodson on Behalf of The Utility Reform Network, The Greenlining Institute, and the Center for Accessible Technology at p.6.

<sup>6</sup> Testimony of Ted Reguly at p. TMR-9.

<sup>7</sup> Testimony of K. Camille Watts-Zagha at p. 1-7.

1 program provide assistance to low-income electric and gas customers with annual household  
2 incomes that are no greater than 200% of the federal poverty guideline levels. (Emphasis  
3 Added). Continuing to allow public assistance programs participants with incomes that exceed  
4 the CARE income guidelines is now contrary to this legislation. It may also create an equity  
5 issue because customers, who do not participate in one of the categorical enrollment qualifying  
6 public assistance programs but who have equivalent total household incomes, are not permitted  
7 to enroll in CARE or the ESA Program because they have incomes that exceed the programs'  
8 income guidelines.

9 SDG&E agrees with parties that continued focus on solutions to provide greater  
10 assistance to customers is necessary, balanced by the need to ensure those solutions do not place  
11 an undue cost burden on other customers who are also struggling in the current economic  
12 climate. The Commission must strike a fair balance between assisting low income customers in  
13 need and not overly burdening other ratepayers with the costs of doing so.

#### 14 **B. ESA PROGRAM ELIGIBILITY GUIDELINES**

15 The Commission, in Decision (“D.”) 05-10-044, established income eligibility guidelines  
16 to determine whether a household is eligible to participate in the ESA program and directed the  
17 IOUs to make the income eligibility requirements for the Energy Savings Assistance Program  
18 consistent with CARE.<sup>8</sup> The Commission’s income eligibility guidelines require that when  
19 determining income eligibility, the ESA program must assesses the total household income. For  
20 purposes of the program income eligibility, income is defined as: “all revenues, from all  
21 household members, from whatever source derived, whether taxable or non-taxable, including,

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<sup>8</sup> D. 05-~~04~~10-044 at p.13. Prior to 2005, the Commission, in Resolution E-3254, dated January 21, 1992, determined that it was reasonable to conform the Low Income Weatherization Program (the former name of the Energy Savings Assistance Program) to the ULTS/LIRA Standards and permitted the utilities to revise their LIW program levels accordingly. (Finding 5 and Ordering Paragraph 3.)

1 but not limited to: wages, salaries, interest, dividends, spousal support and child support, grants,  
2 gifts, allowances, stipends, public assistance payments, social security and pensions, rental  
3 income, income from self-employment and cash payments from other sources, and all  
4 employment-related, non-cash income.” GO 153 Section 2.1.52. (effective May 3, 2007). In  
5 D.99-07-016, the Commission determined that household income includes “income derived from  
6 such assets, such as interest and dividend, and income derived from the gain from their sale.”  
7 D.99-07-016, at Ordering Paragraph (“OP”) 3. In the same decision, the Commission  
8 determined that household income excludes “liquid assets,” “borrowed monies, or [] monies  
9 transferred from one checking, savings, or similar account to another account.” In its definition  
10 of income, the Commission also includes income sources such as public assistance payments,  
11 military family allotments, grants, and allowances.

12           However, in its testimony, National Consumer Law Center (“NCLC”), National Housing  
13 Law Project (“NHLP”) and California Housing Partnership Corporation (“CHPC”) recommend  
14 that “housing subsidies” be removed as a source of income in the Energy Savings Assistance  
15 Program income eligibility guidelines and that the list of income eligible buildings developed by  
16 the U.S. Department of Housing (“HUD”) for use in its weatherization assistance program  
17 (“WAP”) be used as a means to expedite enrollment in the Energy Savings Assistance Program<sup>9</sup>  
18 which would “require conformity of the Energy Savings Assistance Program definition of  
19 income to that agreed to by the U.S. Department of Energy (DOE) and HUD”.<sup>10</sup> SDG&E may  
20 consider supporting a resource that would assist in identifying income-qualified customers for  
21 participation in the ESA Program. However, in order for such a resource to be useful, it must to

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<sup>9</sup> NCLC/NHLP/CHPC Testimony, at p. MS-9

<sup>10</sup> NCLC/NHLP/CHPC Testimony, at p. MS-9

1 align with current income eligibility guidelines for the ESA program as established by the  
2 Commission.

3 **C. REPLY TO COMMENTS OBJECTING TO THE PROPOSED MINOR**  
4 **REVISIONS TO THE COMMISSION-ADOPTED METHODOLOGY**  
5 **FOR CALCULATING THE ESTIMATED ELIGIBLE POPULATION**  
6 **OF THE ENERGY SAVINGS ASSISTANCE PROGRAM**

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8 **1. SDG&E's Proposed Revisions to the "Unwillingness Factor"**

9 In D.08-11-031, the Commission permitted that the IOUs may propose a revised  
10 "unwillingness" factor in their 2012-2014 Applications if they had more precise information on  
11 which to base the "unwillingness" calculation.<sup>11</sup> In Opening Testimony, SDG&E requests  
12 authorization to revise the estimate for the number of customers "unwilling" to participate in the  
13 program and to also include the number of customers who are "ineligible" for the program based  
14 on information tracked during 2009-2010. SDG&E requested that a new "unwillingness and  
15 ineligible" factor of 15% be used instead of the 5% unwillingness factor adopted by the  
16 Commission in D. 08-11-031.<sup>12</sup> Several Parties<sup>13</sup> object to SDG&E's proposed revisions to the  
17 Commission-adopted methodology for calculating the eligible population for the ESA program,<sup>14</sup>  
18 specifically the proposed revisions to the "unwilling" and "ineligible" estimates and the  
19 estimates used to project low income households treated under the California Department of  
20 Community Services and Development's Low Income Home Energy Assistance Program  
21 ("LIHEAP").

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<sup>11</sup> D. 08-11-031 at p. 17.

<sup>12</sup> See Table 3 of the Prepared Direct Testimony of Ted Reguly on Behalf of San Diego Gas & Electric at p. TMR 11. Results of SDG&E's tracking showed an actual "unwillingness" factor of 19-20%. However, SDG&E lowered its recommendation to 15% to account for the likelihood that the statewide branding and additional marketing efforts planned by SDG&E may help reduce its "unwillingness" estimate and that the economy and unemployment rates may improve during the 2012-2014 program cycle (Prepared Direct Testimony of Sandra Williams on Behalf of SDG&E's Energy Savings Assistance Program at p.SW-13).

<sup>13</sup> Testimony of C. Watts-Zagha on Behalf of DRA at p. 2-9; The Testimony of Alan Rago on Behalf of the Energy Efficiency Council at p. 7; Prepared Testimony of Enrique Gallardo on Behalf of the Greenlining Institute at pp.1-5.

<sup>14</sup> See Prepared Direct Testimony of Ted Reguly on behalf of San Diego Gas & Electric at p. TMR-10.

1            However, the Parties objecting to SDG&E’s proposed revision fail to offer any factual  
2 basis for rejecting its proposal. Rather, their objections are based on statements such as “its too  
3 aggressive and inaccurate” and “that the estimates may be more dependent on the practices used  
4 by utilities and its service contractors.”<sup>15</sup>

5            Yet, SDG&E’s proposed revision to the unwillingness factor is based on factual  
6 information tracked during 2009-2010 and was based on better information than what was  
7 available during the Applications for the 2009-2010 program cycle. Therefore, SDG&E requests  
8 that the Commission adopt its proposed revision to the “unwillingness factor”.

9            **2. Proposed Revisions for Estimating the Number of Homes Served by**  
10 **LIHEAP**

11            DRA objects to the IOU’s proposed modification to the Commission’s adopted  
12 methodology for determining the ESA program’s eligible population which is to deduct the  
13 number of homes to be treated by LIHEAP from 2011-2020 to project the number of homes to  
14 be treated through the ESA program in order to meet the Commission’s programmatic  
15 initiative.<sup>16</sup> SDG&E’s projection for the number of homes to be treated by LIHEAP from 2011-  
16 2020 is conservative because it is based on the actual number of homes treated by the program  
17 between 2002-2007 and estimates for the number of homes treated during 2009-2010 provided  
18 to the IOUs by the California Department of Community Services and Development.

19            The estimates do not take into account increased LIHEAP activity resulting during the  
20 period of expanded LIHEAP funding due to the American Recovery and Reinvestment Act of  
21 2009. Therefore, SDG&E believes its request to modify the Commission’s adopted  
22 methodology for determining the number of homes to be treated by the ESA program by  
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<sup>15</sup> Testimony of Alan Rago on Behalf of the Energy Efficiency Council at p.7, Testimony of Eduardo Gallego on Behalf of The Greenlining Institute at p. 3.

<sup>16</sup> Testimony of K. Camille Watts-Zagha on Behalf of the Division of Ratepayer Advocates at p.2-10.



1 deducting the estimated number of homes to be treated through LIHEAP for 2011-2020 is  
2 reasonable and should be adopted by the Commission.

3 **D. DRA’S PROPOSAL TO REQUIRE UTILITIES TO RE-RUN ESAP**  
4 **MODELS WITH NEW PARAMETERS, FOR A FEW DIFFERENT**  
5 **SCENARIOS, IS UNREASONABLE AND COSTLY AND SHOULD BE**  
6 **REJECTED.**

7  
8 SDG&E opposes DRA’s suggestion to rerun the cost effectiveness analyses for the  
9 PY2012 to 2014 program application using different energy savings estimates, installation  
10 quantities, escalation rates, or other parameters.<sup>17</sup> SDG&E believes that chasing an extra point  
11 or two above the arbitrarily set 0.25 benchmark is a costly exercise and that more fundamental  
12 issues surrounding the cost effectiveness methodology should be assessed and resolved before  
13 redoing these analyses. Rather, SDG&E supports a forward thinking review of the cost  
14 effectiveness analysis to inform the next program cycle.

15 **IV. THE COMMISSION SHOULD EXPLICITLY AUTHORIZE JOINT**  
16 **CONTRACTING ON STATEWIDE PROGRAM ACTIVITIES TO FURTHER**  
17 **THE GOALS OF THE LOW INCOME PROGRAMS**

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19 Parties such as OPower, TELACU/ACCES/Maravilla, NCLC/NHLP/CHPC, and Niagara  
20 Conservation Products have requested that the Commission direct the IOUs to implement their  
21 proposals for conducting Statewide Pilot Programs. SDG&E believes that further Commission  
22 direction is needed to address any legal issues regarding joint-utility cooperation posed by the  
23 antitrust laws that could impede the IOUs’ ability to comply with these directives unless the  
24 Commission specifically grants the IOUs immunity for such cooperation.

25 Specifically, agreements between competitors such as the IOUs concerning core element  
26 of the competitive process, including agreements on price and output, could be viewed as  
27 unlawful under the antitrust laws under certain circumstances, thus subjecting the ratepayers and

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<sup>17</sup> Testimony of K. Camille Watts-Zagha on Behalf of the Division of Ratepayer Advocates at p. 2-57.

1 shareholders to the significant costs of defending an antitrust lawsuit and the potential of treble  
2 damages if the lawsuit is successful. SDG&E, therefore, has concerns regarding coordinating the  
3 IOUs' activities or otherwise work cooperatively in order to contract with third parties, absent  
4 direct and explicit Commission authorization to do so, as well as continued supervision by the  
5 Commission over such activities. SDG&E asks the Commission to address this issue in this  
6 Application and make certain explicit findings as follows:

7           A State Action Doctrine defense to an antitrust action exists where: (a) the challenged  
8 conduct is a result of directions clearly articulated and affirmatively expressed as state policy;  
9 and (b) there is continued active supervision of the Joint IOUs' activities in this regard.<sup>18</sup> Here  
10 the SDG&E understands and asks the Commission to explicitly state, that implementation of  
11 required statewide low income program activities as called for in the Commission's final  
12 decision regarding the utilities' 2012-2014 low income program activities represent a state policy  
13 goal and that the Commission intends the IOUs to work collaboratively to achieve this goal. In  
14 particular, SDG&E asks the Commission for a finding that explicitly authorizes the IOUs to  
15 engage in certain specific activities which will be necessary to collaboratively implement the low  
16 income statewide activities as ordered by the Commission. These activities may include:

- 17           1. Joint and cooperative consultations between and among the Joint IOUs and low  
18           income program contractors or consultants to assist with the determination of  
19           contract requirements of their jointly administered and jointly funded low  
20           income programs.

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<sup>18</sup> The state-action doctrine is an exemption to federal antitrust laws for actions taken by a state while operating in its sovereign capacity, or where the actions of private individuals are authorized, overseen or compelled by the state. The basic parameters of state-action immunity have been developed through a series of Supreme Court decisions which have relied upon principles of federalism and state sovereignty. *See e.g., City of Columbia v. Omni Outdoor Advertising, Inc.*, 499 U.S. 365 (1991); *Southern Motor Carriers Rate Conference, Inc. v. United States*, 471 U.S. 48 (1985); *Town of Hallie v. City of Eau Claire*, 471 U.S. 34 (1985); *Hoover v. Ronwin*, 466 U.S. 558 (1984).

- 1                   2. Joint cooperative process among the Joint IOUs for the sourcing and negotiation  
2                   (including program requirements, performance, price, quantity, and  
3                   specifications) of joint contracts for low income programs to be managed and  
4                   run by one lead IOU, subject to approval and review by the other IOUs.
- 5                   3. Joint submission to the Commission for its approval of proposed low income  
6                   contracts pertaining to the implementation of statewide programs; and
- 7                   4. Other joint and collaborative low income program activities as the Joint IOUs  
8                   may determine is necessary for the implementation of statewide programs,  
9                   subject to the Commission’s oversight.

10                   Finally, SDG&E believes the Commission intends to actively supervise and is  
11 supervising the IOUs in this regard and asks the Commission for an explicit finding to that  
12 effect. It is important for the Commission to make these explicit findings to mitigate the risk of  
13 potential allegations of antitrust violations resulting from its adherence to Commission-ordered  
14 collaboration, and ultimately, to further the effective implementation of the statewide low  
15 income programs and activities.

16                   **V.           CONCLUSION**

17                   For the reasons cited in this Reply Testimony, SDG&E requests that the Commission:

- 18                   a. Adopt SDG&E’s request for the Commission to revisit the public assistance  
19                   programs under which a customer can categorically qualify for CARE and  
20                   the ESA program to ensure they align with the Commission-adopted and  
21                   legislative income eligibility requirements and income definitions.
- 22                   b. Find SDG&E’s proposed revisions to its categorical enrollment processes  
23                   for CARE and the ESA program to be reasonable.
- 24                   c. Adopt SDG&E’s proposed revisions to the Commission’s methodology for  
25                   estimating the ESA program’s estimated eligible population for estimating  
26                   the “unwilling and ineligible” population, and for estimating the number of  
27                   low income households projected to be treated by LIHEAP from 2011-2020.
- 28                   d. Reject the NCLC’s, NHLP’s, and CHPC’s recommendation to conform with  
29                   the eligibility guidelines developed for the U.S. Department of Energy’s  
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1 WAP and HUD programs because they do not align with the Commission's  
2 eligibility guidelines and definition of income adopted for CARE and the  
3 ESA program.  
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- 5 e. Reject DRA's proposal to require utilities to re-run ESAP cost effectiveness  
6 models and instead adopt the IOU recommendation issues surrounding the  
7 cost-effectiveness model be should be assessed and resolved for  
8 incorporation for the 2015-2017 program cycle.  
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- 10 f. Include findings in its final decision in this proceeding that explicitly  
11 authorizes the Joint IOUs to engage in certain specific activities which they  
12 feel will be necessary to collaboratively implement the low income  
13 statewide activities as ordered by the Commission as outlined above.  
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- 15 g. Adopt uncontested CARE and ESA program revisions proposed by SDG&E  
16 in its 2012-2014 Application, and summarized above, as proposed.

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**VI. STATEMENT OF QUALIFICATIONS**

**TED REGULY**

My name is Ted Michael Reguly, and I am employed by San Diego Gas & Electric Company (SDG&E). My business address is 8326 Century Park Court, San Diego, California, 92123.

My present position is Director of Customer Programs and Assistance Department at SDG&E. My primary responsibility is to oversee SDG&E Energy Efficiency, Demand Response, and Customer Assistance programs. I have been employed by SDG&E since 1981. I have held various positions of increasing responsibility in Electric Generation, Electric and Gas Distribution, Supply Management, and Gas and Electric Customer Service. From 2005 through 2010, I was responsible for SDG&E's AMI/Smart Meter program. I am a registered California Mechanical Engineer. I received a B.S. in Mechanical Engineering from California State University, Long Beach, and an MBA from San Diego State University.

I have previously testified before the California Public Utilities Commission.