

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

Petition of Black Economic Council,)
National Asian American Coalition, and)
Latino Business Chamber of Greater Los Angeles) Petition 12-02-016
to Adopt, Amend, or Repeal a Regulation)
Pursuant to Public Utilities Code § 1708.5)

**RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN
CALIFORNIA GAS COMPANY TO JOINT PARTIES' PETITION FOR
RULEMAKING**

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Pursuant to Rule 6.3(d) of the Commission’s Rules of Practice and Procedure, San Diego Gas & Electric Company (“SDG&E”) and Southern California Gas Company (“SoCalGas”) herein provide their Response to the February 23, 2012 Petition of the “Joint Parties”¹ seeking to Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code Section 1708.5 (hereafter, “Petition”)

The Petition seeks to have the California Public Utilities Commission (“CPUC” or “Commission”) open a new Rulemaking on the subject of external auditing firms. SDG&E and SoCalGas note that the request of the Joint Parties is unnecessary, costly and wasteful of resources, and duplicates a rulemaking currently underway by Public Company Accounting Oversight Board (“PCAOB”), as described further below. For these reasons we oppose the Joint Parties request.

The Joint Parties’ request is substantively lacking. This response focuses on whether the Commission should issue a rulemaking, as requested in the Joint Parties’ Petition. As noted below, there is no need to initiate a rulemaking at this time. This response also addresses the lack of merits of the proposal, including its cost, complexity, and whether substantial resources may be necessary to adopt any new regulation. This response also identifies where the subject of the requested rulemaking is already being addressed in other regulatory proceedings, in particular those of the PCAOB.

¹ Black Economic Council, Latino Business Chamber of Greater Los Angeles, and National Asian American Coalition.

The Joint Parties requests needlessly overlaps with the PCAOB's function and current proceedings. The PCAOB, a nonprofit organization, was established by the United States' Congress in 2002 under the Sarbanes-Oxley Act of 2002 ("SOX") to regulate public accounting services. The PCAOB's mission is "...to oversee the audits of public companies in order to protect the public interest by promoting informative, accurate, and independent audit reports". The PCAOB, whose board members are appointed to staggered five-year terms by the Securities and Exchange Commission, has the responsibility of conducting inspections of registered public accounting firms in accordance with the SOX and rules of the PCAOB and its Board.

The PCAOB is currently in the midst of examining the issue of mandatory rotation of auditors, including considering independence and "professional skepticism" in its own Rulemaking Docket Matter #37.² There is no useful purpose served by the CPUC also opening a rulemaking into this subject matter. In fact, the PCAOB is holding a public meeting in March, 2012 to obtain further input on ways to enhance auditor independence, objectivity, and professional skepticism, including through mandatory rotation, or term limits, for audit firms. The CPUC should let the PCAOB do their work, as it is their responsibility to protect the public interest and they are in the best position to draw conclusions with regard to such matters.

In addition to duplicating the PCAOB's work, the CPUC should not create rules that could contradict what the PCAOB may determine appropriate and increase costs to ratepayers and put California utilities at a competitive disadvantage. Rotating auditors involves substantial costs and is actively being evaluated by the audit profession's national regulator, the PCAOB. In addition, a rulemaking consumes substantial resources, both of the Commission itself and of the regulated entities who must participate.

A rulemaking at the CPUC would be of very limited usefulness. First, audited financials are of limited use to the CPUC, and typically don't impact rates paid by ratepayers (other than audit fees necessarily incurred). Second, the CPUC does its own audits of utilities. For example,

² In 2011, the PCAOB began soliciting public comment on ways that auditor independence, objectivity and professional skepticism could be enhanced, including mandatory audit firm rotation as one possible approach. See, e.g. Docket listing at: <http://pcaobus.org/Rules/Rulemaking/Pages/Docket037.aspx> and list of comments received at: <http://pcaobus.org/Rules/Rulemaking/Pages/Docket037Comments.aspx>

Public Utilities Code Section 314.5 requires an audit during General Rate Case (“GRC”) proceedings. This division of labor makes sense, since GRC data is not typically audited by outside auditors. Third, the Sarbanes-Oxley Act already includes provisions designed to increase auditor independence.³

Finally, the Commission should not overlook the fact that there are factual errors in the Joint Parties’ Petition. For example, the Joint Parties erroneously suggest that external auditors can provide management consulting services. However, external auditors may not provide management consulting services as suggested by the joint parties. See, Section 10A (g) of the Securities Exchange Act of 1934 (“Audit Requirements”) which sets forth these restrictions.⁴

³ These include, but are not limited to: (1) auditors are prohibited from providing certain non-audit services, (2) audit firms are required to rotate the lead client service and concurring partners, and (3) Audit Committees are responsible for hiring the auditor, overseeing the engagement and approving all services provided by external auditors. In the case of SDG&E and SoCalGas, their respective Boards of Directors approve all services provided by external auditors.

⁴ Section 10A(g) provides as follows:

"(g) Prohibited Activities.--Except as provided in subsection (h), it shall be unlawful for a registered public accounting firm (and any associated person of that firm, to the extent determined appropriate by the Commission) that performs for any issuer any audit required by this title or the rules of the Commission under this title or, beginning 180 days after the date of commencement of the operations of the Public Company Accounting Oversight Board established under section 101 of the Sarbanes-Oxley Act of 2002 (in this section referred to as the 'Board'), the rules of the Board, to provide to that issuer, contemporaneously with the audit, any non-audit service, including--
"(1) bookkeeping or other services related to the accounting records or financial statements of the audit client;
"(2) financial information systems design and implementation;
"(3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
"(4) actuarial services;
"(5) internal audit outsourcing services;
"(6) management functions or human resources;
"(7) broker or dealer, investment adviser, or investment banking services;
"(8) legal services and expert services unrelated to the audit; and
"(9) any other service that the Board determines, by regulation, is impermissible.

In conclusion, SDG&E and SoCalGas urge the Commission to reject the request of the Joint Parties, which is unnecessary and may result in conflicting rulemaking and requirements from the two regulatory agencies. There is no need for the CPUC to engage in a rulemaking process regarding external auditors. The PCAOB already is engaged in this task and a duplicative regulatory proceeding in California makes no sense. The CPUC should rely on the agency tasked by Congress to oversee audits of public companies, the PCAOB.

Respectfully submitted,

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