

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

Order Instituting Rulemaking on the Commission's  
Own Motion to Conduct a Comprehensive  
Examination of Investor Owned Electric Utilities'  
Residential Rate Structures, the Transition to Time  
Varying and Dynamic Rates, and Other Statutory  
Obligations.

Rulemaking 12-06-013  
(Filed June 21, 2012)

**REPLY OF SAN DIEGO GAS & ELECTRIC COMPANY (U902M) TO COMMENTS  
RESPONDING TO COORDINATION QUESTIONS SET FORTH IN  
ADMINISTRATIVE LAW JUDGES' RULING**

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**I. INTRODUCTION**

Pursuant to the Administrative Law Judges' Ruling Inviting Comments, dated November 6, 2012 ("Ruling"), San Diego Gas & Electric Company ("SDG&E") respectfully submits this Reply. Generally, SDG&E agrees with the Comments responding to the coordination questions filed by the other Investor-Owned Utilities ("IOUs") and most of the other parties. Accordingly, this Reply is limited to the Comments of only a few parties, and in particular, focuses on those of the San Diego Consumers' Action Network ("SDCAN"). As explained below, SDCAN's Comments represent an improper and defective attempt to use this Residential Rate OIR proceeding to delay Phase 2 of SDG&E's General Rate Case ("GRC Phase 2") and should be rejected.

**II. SDCAN'S PROPOSAL IN THIS RATE DESIGN OIR PROCEEDING TO STAY PENDING REQUESTS IN SDG&E'S GRC PHASE 2 PROCEEDING IS GROUNDLESS**

In response to two of the coordination questions (questions 1 and 3), SDCAN goes beyond addressing coordination issues and improperly attempts to argue the merits of several

issues that are being litigated in SDG&E's pending GRC Phase 2. SDCAN's substantive arguments are defective for a number of reasons. However, because SDG&E is already addressing SDCAN's merits arguments in its GRC Phase 2 proceeding, including in its reply brief to be filed on December 14, 2012, SDG&E will not also address them here.<sup>1</sup> Putting aside SDCAN's defective arguments on the merits, SDCAN's proposed "coordination" of proceedings boils down to a request to stay SDG&E's GRC Phase 2 until this Residential Rate OIR is complete. As shown below, SDCAN's stay request is unwarranted for all the following reasons:

- It is contrary to Assigned Commissioner Mark J. Ferron's Scoping Memo and Ruling in SDG&E's GRC Phase 2.
- It is contrary to SDG&E's due process right to have the full merits of its GRC Phase 2 heard in a timely manner and in accordance with the Scoping Memo and Ruling in SDG&E's GRC Phase 2.
- It is inconsistent with the Commission's recent ruling in Pacific Gas and Electric Company's ("PG&E's") GRC Phase 2, which (1) ruled on the merits of a similar PG&E proposal and (2) according to SDG&E's GRC Phase 2 Scoping Memo and Ruling, provided guidance regarding SDG&E's pending basic service fee proposal in A.11-10-002.
- It is inconsistent with the scope of this Residential Rate OIR.

No party other than SDCAN is requesting that SDG&E's GRC Phase 2 be stayed pending the outcome of this Residential Rate OIR. However, it should be noted that the Center for Accessible Technology ("CforAT") and Greenlining Institute ("Greenlining") commented on the pending status of SDG&E's GRC Phase 2, among other rate design proceedings. Although CforAT and Greenlining did not recommend changing the schedules

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<sup>1</sup> SDG&E incorporates its GRC Phase 2 Opening and Reply Briefs herein by reference, should the Commission incorrectly decide to consider these issues in this Residential Rate OIR proceeding.

of any of these other rate design proceedings, they do “recommend that no major changes to rate design be ordered in these proceedings pending the outcome of this proceeding.”<sup>2</sup> It is not clear what CforAT and Greenlining mean by “major changes.” In any event, their recommendation is defective for all the same reasons SDCAN’s request should be rejected.

**1. SDCAN’s Repeated Stay Request Runs Afoul of Commissioner Ferron’s Scoping Memo and Ruling in SDG&E’s GRC Phase 2**

On January 18, 2012, Assigned Commissioner Ferron issued his Scoping Memo and Ruling in SDG&E’s GRC Phase 2 (A.11-10-002) (“Scoping Memo and Ruling”). Among other things, this Scoping Memo and Ruling addressed a Motion filed by the Utility Consumers Action Network (“UCAN”) (formerly represented by Michael Shames, who is now representing SDCAN in SDG&E’s GRC Phase 2 and in this Residential Rate OIR).<sup>3</sup> UCAN’s Motion sought relief that is essentially identical to that which Mr. Shames is requesting in his Comments in this proceeding. That is, Mr. Shames argued against SDG&E’s proposed network use charge and residential basic service fee. Specifically, Mr. Shames asked that SDG&E be ordered to submit a new residential rate design without the network use charge and basic service fee or, in the alternative, that “they should be considered in a separate rulemaking.”<sup>4</sup> Mr. Shames based his request on the alleged “statewide interest in these rate design issues.”<sup>5</sup>

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<sup>2</sup> CforAT/Greenlining Comments Re Coordination at p. 5.

<sup>3</sup> Motion of Utility Consumers’ Action Network (UCAN) For A Preliminary Ruling Determining San Diego Gas & Electric’s Rate Design Application Violates The Public Utilities Code And Compelling SDG&E To Resubmit Its GRC Phase 2 Application, filed October 27, 2011 in A.11-10-002.

<sup>4</sup> Assigned Commissioner’s Scoping Memo and Ruling in A.11-10-002, dated January 1, 2012, at p. 3.

<sup>5</sup> *Id.*

After full consideration of Mr. Shames' Motion, Commissioner Ferron ruled that the scope of SDG&E's GRC Phase 2 would not include the network use charge issue, but that it would include "SDG&E's [other] electric revenue allocation and rate design proposals, including replacing the minimum bill charge for residential ratepayers with a Basic Service Fee."<sup>6</sup> SDG&E's GRC Phase 2 rate design proposal also included tier consolidation (going from four to three tiers) and elimination of the freeze on CARE Tier 3 rates. Thus, essentially all of the issues Mr. Shames wants to stay pending the outcome in this Residential Rate OIR have already been deemed by Commissioner Ferron to be properly within the scope of SDG&E's GRC Phase 2 and appropriate for a determination in that case, with no stay pending the outcome of this or any other proceeding. Indeed, the same "statewide interest" argument that Mr. Shames made in his Comments in this Residential Rate OIR was made in his prior Motion and failed to convince Commissioner Ferron that any stay was necessary or that these issues should be considered in another proceeding before being addressed in SDG&E's pending GRC Phase 2 proceeding. Mr. Shames' attempt to seek a delay of SDG&E's GRC Phase 2 in this Residential Rate OIR, after having essentially the same request rejected in the GRC Phase 2, is an improper collateral attack on Commissioner Ferron's prior ruling.

Moreover, in his Opening Brief in SDG&E's GRC Phase 2, dated November 16, 2012, Mr. Shames repeated his request to delay rulings pending the outcome of this Residential Rate OIR proceeding, including rulings on SDG&E residential basic service fee and tier consolidation proposals. In light of the fact that Commissioner Ferron has already deemed such issues to be properly within the scope of SDG&E's GRC Phase 2, it is

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<sup>6</sup> *Id.* at 9; see also Ordering Paragraph 5 ("The issues to be resolved in this proceeding are listed in Section 3 of this Scoping Memo and Ruling.").

reasonable to expect that Mr. Shames' repeated request will be rejected. If Commissioner Ferron believed that these issues should be stayed in SDG&E's GRC Phase 2, then he would have done so well before the briefing stage of that proceeding. Indeed, granting SDCAN's request in this Residential Rate OIR would require the Administrative Law Judges ("ALJs") in this proceeding to overrule Assigned Commissioner Ferron's Scoping Memo and Ruling in SDG&E's GRC Phase 2, thereby assuming authority over the proceeding assigned to ALJs Yip-Kikugawa and Roscow in A.11-10-002. Additionally, if Commissioner Ferron believed that some of SDG&E's residential rate design proposals were better left to be resolved in this Residential Rate OIR, it is reasonable to expect that he would have made such a ruling at or around the time this OIR was issued back in June 2012, almost six months ago. Accordingly, any decision on whether to stay issues in SDG&E's GRC Phase 2 is appropriately addressed in response to pleadings filed in that proceeding, and ruled on by the ALJs Yip-Kikugawa and Roscow and/or Assigned Commissioner Ferron, who are charged with relying on the full record of pleadings and testimony developed during the full course of that proceeding.

**2. SDG&E Is Entitled To A Timely Ruling On The Merits In Its GRC Phase 2**

P.U. Code §1701.2 requires that the assigned commissioner "shall hear the case in the manner described in the scoping memo." Refusing to act on SDG&E's rate design proposals in accordance with the Scoping Memo and Ruling would represent a violation of P.U. Code §1701.2 and SDG&E's due process rights.<sup>7</sup> Commissioner Ferron recognized

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<sup>7</sup> See *Southern Cal. Edison Co. v. PUC*, 140 Cal. App 4<sup>th</sup> 1085, 1106 (2006) (annulling the Commission's decision where the Commission failed to proceed in the manner required by law, in departing from the scoping memo and violating its own regulations).

these rights when he ruled on Mr. Shames' Motion and stated that “[a]s a general matter, a utility should have the ability to present and advocate its rate design proposals and should not be required to submit alternative rate design proposals on behalf of interveners.”<sup>8</sup>

The Proposed Decision in this Residential Rate OIR is not expected to be issued until September 2013, at the earliest. It would be extremely unreasonable to delay deciding SDG&E's GRC Phase 2 until after September 2013, especially since the final GRC Phase 2 briefs are scheduled to be filed on December 14, 2012. GRC Phase 2 was initially filed on October 3, 2011. It does not make sense to cause further delay by forcing SDG&E to wait over two years to implement its GRC Phase 2.

**3. As the Scoping Memo and Ruling in SDG&E's GRC Phase 2 Recognized, SDG&E Is Entitled To The Same Treatment As PG&E**

Just as the Commission believed that PG&E was entitled to a timely ruling on its GRC Phase 2 proposals, including its fixed charge proposal, without having to wait for the conclusion of a statewide rulemaking proceeding, SDG&E is also entitled to the same treatment. Moreover, in his Scoping Memo and Ruling rejecting the request to remove SDG&E's basic service fee proposal to a statewide rulemaking, Commissioner Ferron noted that PG&E had already obtained a ruling on a similar proposal and that PG&E's ruling provided Commission guidance for a decision in SDG&E's case: “Because the legal basis for imposing a fixed residential customer charge has been addressed by D.11-05-047 [PG&E's GRC Phase 2], this proceeding [SDG&E's Phase 2 GRC] may be guided by that decision.”<sup>9</sup> Thus, the Scoping Memo and Ruling held that SDG&E's proposed basic service fee was ripe

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<sup>8</sup> Assigned Commissioner's Scoping Memo and Ruling in A.11-10-002, dated January 1, 2012, at p. 6.

<sup>9</sup> *Id.* at p. 8.

for determination on the merits, just as PG&E received, and that PG&E’s ruling provided guidance on the substantive legal issues.

**4. The Scope Of This Rate Design OIR Is Focused On High Level Policy Issues And Not The Specific Rate Design Mechanics Of Each IOU**

This rulemaking proceeding is focused on high level policy changes related to rate design that can be incorporated by all the IOUs. SDG&E’s GRC Phase 2, on the other hand, is a ratemaking proceeding focused on the mechanics or application of SDG&E’s specific rate design. As noted in SDG&E’s comments, “if this Rate Design OIR begins to focus on the specific mechanics of how the new policies manifest themselves in the specific details of each utility’s rate structure, we risk creating a situation where there is less of an incentive to share strategies and the Commission’s ability to adopt statewide policies would be hindered.”<sup>10</sup> Thus, even if the new rate design policies adopted in this Residential Rate OIR are determined to have implications for the specific proposals adopted in SDG&E GRC Phase 2, such policies should be applicable in the next appropriate rate design proceeding (e.g., SDG&E’s next GRC or rate design window).<sup>11</sup> Rate design policies adopted in this Rate Design OIR should not be retroactive and should apply only to future rate design cases.

The same logic applies to SDCAN’s argument that refusing a stay would lead to prejudgment of issues in this proceeding. That is, since this proceeding is focused on the

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<sup>10</sup> Comments of SDG&E Responding to Coordination Questions Set Forth In Administrative Law Judges’ Ruling, dated November 21, 2012, at p. 4.

<sup>11</sup> The Utility Reform Network (“TURN”) Comments appear to support this approach when it stated the following: “In general we believe that existing rate design proceedings should continue, and that any major policy initiatives undertaken in this rulemaking should be implemented in the subsequent rate design proceeding for each respective utility.” TURN Comments at p. 2. The Division of Ratepayer Advocates (“DRA”) similarly recommends coordination but did not propose a delay or stay of SDG&E’s GRC Phase 2 (although DRA did recommend a delay in the future filing of PG&E’s GRC Phase 2). DRA Comments at p. 1 and 4.



broader policy issues, any GRC Phase 2 decision specifically applicable only to SDG&E and based on facts only relevant to SDG&E's specific and detailed rate design proposals cannot reasonably prejudice the broader policy issues addressed in this statewide Residential Rate OIR.

**III. THE SCHEDULE ADOPTED FOR THIS RATE DESIGN OIR SHOULD NOT BE ALTERED TO ACCOMMODATE THE SCHEDULE FOR COMPLETION OF THE LOW INCOME NEEDS ASSESSMENT IN THE CARE/ESAP PROCEEDING**

CforAT and Greenlining recommend that the schedule in this Rate Design OIR, which calls for a proposed decision in September 2013<sup>12</sup>, be delayed to accommodate incorporation of the Low Income Needs Assessment ordered by D.12-08-044 in A.11-05-017, *et al.* (Low Income-CARE/ESAP proceeding). CforAT and Greenlining state that the Low Income Needs Assessment is to be issued in August 2013 and argue that the delay it seeks in this proceeding is required by statute. However, none of the statutes cited in CforAT/Greenlining's argument specifically require the delay they seek. That is, none of the cited statutes require that before the Commission can issue a rate design decision, it must delay such decision until any pending Low Income Needs Assessment is complete. At most, the cited statutes require the Commission's consideration of the needs of low income customers when making rate design decisions, which the Commission has already committed to do in this proceeding.<sup>13</sup> Indeed, the Scoping Memo and Ruling of Assigned Commissioner in this Residential Rate OIR includes the following among its list of stated principles:

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<sup>12</sup> Scoping Memo and Ruling of Assigned Commissioner, R.12-06-013, dated November 26, 2012, at p. 12.

<sup>13</sup> *Id.* at pp. 5-6 (citing both P.U. Code §382(b) and §739(d)(2) and stating "parties should focus on how their proposed rate design ensures that low-income customers and customers with medical needs have access to sufficient electricity to meet basic needs at an affordable cost").

- Low-income and medical baseline customers should have access to enough electricity to ensure basic needs (such as health and comfort) are met at an affordable cost
- Transitions to new rate structures should emphasize customer education and outreach that enhances customer understanding and acceptance of new rates, and minimizes and appropriately considers the bill impacts associated with such transitions.<sup>14</sup>

With respect to the timing of the Low Income Needs Assessment, SDG&E believes that the Commission can consider and incorporate, where necessary, the data and information being used to develop the Low Income Needs Assessment, without having to wait until the final version is completed in August 2013. As noted in SDG&E's opening Comments, a timely decision in this proceeding should not be sacrificed for the sake of excessive coordination with other proceedings. Other proceedings, if necessary, should coordinate with this proceedings and not the other way around. Accordingly, if the Commission believes that a final Low Income Needs Assessment is necessary prior to issuing a decision in this Residential Rate OIR, then the schedule for completion of the Low Income Needs Assessment should be accelerated in A.11-05-017, *et al.*<sup>15</sup>

#### **IV. CONCLUSION**

As stated in SDG&E's opening Comments, coordination is necessary, but it should not be used to delay this or any other proceeding. In particular, SDCAN's improper request to use this Residential Rate OIR as an excuse to delay SDG&E's GRC Phase 2 should be

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<sup>14</sup> *Id.* at Attachment A (see Principle Nos. 1 and 10).

<sup>15</sup> In footnote 3 of its opening Comments, CforAT/Greenlining stated that they "would also be receptive to efforts to move up the release date of the updated Low Income Needs Assessment."

rejected.

DATED at San Diego, California, on this 7th day of December, 2012.

Respectfully submitted,

By:           /s/ John A. Pacheco          

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