

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Develop a Risk-Based Decision-Making Framework to Evaluate Safety and Reliability Improvements and Revise the General Rate Case Plan for Energy Utilities.

RULEMAKING 13-11-006

(FILED NOVEMBER 14, 2013)

**SECOND ROUND REPLY COMMENTS OF SAN DIEGO CONSUMERS'  
ACTION NETWORK ON ORDER INSTITUTING RULEMAKING TO  
DEVELOP A RISK-BASED DECISION-MAKING FRAMEWORK TO  
EVALUATE SAFETY AND RELIABILITY IMPROVEMENTS AND REVISE  
THE GENERAL RATE CASE PLAN FOR ENERGY UTILITIES**

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Pursuant to the Joint ALJ/Commissioner May 15, 2014 Revised Scoping Memo and Ruling, San Diego Consumers' Action Network (SDCAN) submits reply comments to the opening comments of TURN, ORA and the two Sempra IOUs. SDCAN offers the following three summary observations:

1. SDCAN largely supports the TURN and ORA observations that merely modifying the RCP timeline without reduction of complexity will make Rate Cases unwieldy.<sup>1</sup>
2. SDCAN opposes all but one of the proposed recommendations by the Sempra Utilities. The Sempra recommendations are all designed to hamstring the Assigned Commissioner and ALJs in their processing of GRCs, obstruct independent scrutiny of their applications and impede intervention by consumer groups. Moreover, they do not address the underlying causes of GRC complexity.
3. In its First Round Comments, SDCAN presented recommendations of reforms into processing of GRC applications. The General Rate Case (GRC) procedure has historically been plagued by utility strategic gaming, as exemplified by IOU expenditures on assets and cost authorized that have no apparent use. GRCs will continue to be complex and ineffective until regulators reduce gaming opportunities. SDCAN offers very specific recommendations that include the return to a historical rate base process, a

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<sup>1</sup> TURN Second Round Opening Comments, p. 3

move towards investment-based regulation, longer time intervals between rate cases and two new factors by which rates of return should be assessed, among others.

## **1. *TURN COMMENTS***

TURN properly argues the Commission should move away from future test-year forecasts.<sup>2</sup> SDCAN concurs that the costs of safety, reliability and regulatory programs should be excluded from the rebuttable presumption placed upon base year O&M recorded costs, escalated for inflation.

In addition, it supports and reiterates TURN's suggestions that IOUs present spending requests on a programmatic level, provide five years historical data for O&M costs, direct utilities to present capital spending with and without overheads and justify changes in accounting practices.<sup>3</sup> SDCAN urges the Commission to shift the burden of proof and remove rebuttal presumptions for any IOU that makes changes to its accounting practices between rate cases.

## **2. *ORA COMMENTS***

SDCAN concurs with ORA in regards to the needs to establish a four-year GRC cycle, retain the Notice of Intent process and assign two ALJs to the large energy IOU GRCs.<sup>4</sup> After having suffered through a slew of overlapping rate cases, it is clear that

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<sup>2</sup> Id, p. 3

<sup>3</sup> Id, p. 4

<sup>4</sup> ORA Second Round Opening Comments, p. 2

small intervenors (and even well-resourced groups such as ORA and TURN) cannot adequately process overlapping GRCs. The addition of a safety review compels a more reasonable process.

### **3. *SEMPRA UTILITY COMMENTS***

SDG&E and SoCalGas (hereinafter referred to as “Sempra”) largely reiterates its recommendations contained in its First Round Comments.<sup>5</sup> It emphasizes the need to enforce the RCP timeline, but this proposal is problematic as past history is replete with examples where the RCP schedule has been delayed due to evidentiary or tactical delays caused by applicant IOUs. Strict enforcement of timelines merely raises new opportunities for gaming by parties. The Assigned Commissioner and ALJs’ discretion should not be hamstrung by an arbitrary schedule.

Sempra also requests that the NOI be eliminated or shortened.<sup>6</sup> For the reasons articulated by ORA, SDCAN disagrees. In fact, a bolstered NOI process should reduce the processing time for a GRC.

Sempra also seeks to shorten the discovery window. This is a solution in search of a problem that doesn’t exist.<sup>7</sup> The reason that discovery is often prolonged is due to the complexity of the IOUs application and their evasive responses to data requests. Intervenor often have to engage in three or four rounds of discovery just to get

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<sup>5</sup> Sempra Second Round Comments, p. 1

<sup>6</sup> Id., p. 2

<sup>7</sup> Id., p. 4

responsive data from the IOUs. Discovery will be shortened if the data in support of the application is uniform, clear and streamlined, as noted by both ORA and TURN. The problem is not abusive or unjustifiably lengthy discovery by parties. Moreover, ALJs are well positioned to make informed determinations about discovery; their hands should not be tied by an arbitrary fiat.

Sempra's argument that intervenors should be given less time to prepare testimony is also geared to obstruct scrutiny to which their applications are subjected.<sup>8</sup> This self-serving proposal should be rejected entirely.

SDCAN does agree with Sempra, and others, that the integration of the RAMP and S-MAP processes into the current GRC will add complexity and effort to the GRC process absent some changes to that process.<sup>9</sup> Once the Commission makes decisions about the Phase 1 Risk Framework, it will be better positioned to propose Phase II reforms to the RCP.

#### ***4. SPECIFIC SDCAN RCP REFORM RECOMMENDATIONS***

SDCAN refers the Commission to the many GRC streamlining reforms that SDCAN articulated in its January 15, 2014 Opening Comments and revised in its June 13<sup>th</sup> First Round Reply Comments. While some intervenor parties concurred with a move away from future test-year forecasts, Sempra and the other IOUs failed to comment most all of SDCAN suggested reforms. These necessary reforms are

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<sup>8</sup> Id, p. 3

<sup>9</sup> Id, p. 4

summarized below, with perhaps the most important ones being a return to historical test years, requiring the IOUs to support infrastructure investments with investment plans, allowing the use of reopeners, requiring the use of a standard accounting code of accounts and restricting granularity of sub-accounts. SDCAN strongly urges the Commission to incorporate GRC streamlining measures into any final decision in this docket.

As to those measures, SDCAN has, and continues to recommend, the following:

**#1: Return to a historical test year adjusted for a limited number of macro-level known and measurable changes.**

Current reliance upon forecast test year methodology is adding unneeded complexity to the GRC process. Future GRC filings should be based upon a historic year adjusted for known and measurable changes with a high burden of proof to change costs from the test year, in which:

- The utility files costs based on a historic year.
- It adjusts for known and measurable changes by normalizing or removing one-time expenses in the test year.
- It can add a limited number of known and measurable post-test year changes (no more than two or three dozen based on my review of rate cases in other states – not thousands, and known and measurable changes rather than requests based on speculative forecasts).

It could receive inflation and unusual increases or decreases such as pensions or rapidly shifting healthcare costs, but it would bear a high burden of proof to change costs from the test year other than for inflation or changing economic and demographic conditions.

## **#2: Move to Investment-Based Regulation**

Adopt an “investment-based” approach to future GRCs similar to the applications submitted by the state’s IOUs in A. 11-06-006. In their GRC applications, the utilities must present long-term “investment plans” that ensured that utility expenditures did more than just build rate base and increase profits for the utilities, but also paid for themselves through greater efficiencies and improved services for customers. If IOUs decline to use a “business case” approach to present proposed network upgrades, the Commission should reject such cost recovery models. A capital expenditure tracking mechanism should also be mandatory. In essence, rather than granting IOUs a lump sum of money for all distribution operations combined with a “trust us, we’ll spend it well and if we can squeeze out any savings we might share it with customers”, the Commission has an opportunity to approach network service operations differently. It can insist that IOUs submit a business-plan type application seeking “investment” in maintaining and/or upgrading the distribution grid, much like IOUs did in A. 11-06-006. The utilities can make a showing of how the investment will pay for itself and ratepayers, effectively, made whole, as if they were partners in the investment.

Each investment plan will, much like their Smart Grid plans, identify specific technologies and explain how it fits in a greater plan to move to an intelligent, integrated network, an adoption plan for utilizing the technology, projected quantification of the return on this investment and a joint-risk sharing plan, similar to

that adopted by the Commission in D. 07-04-043. Use of investment plans will give the utilities greater incentives to take the risks in these emerging technologies and will accelerate movement to embracement of Smart Grid functionalities than will inflated revenue applications extended from three to six years.

### **#3: Use of Reopeners Combined with Longer Intervals Between Cases**

A rate case deals with a limited future period. The length of that period depends on a number of decisions, e.g. the utility's decision to file rates, a consumer representative's decision to file complaints, and/or a commission's decisions to initiate a rate case. Performance has different time dimensions. Payback periods vary for new meters, for employee education, for a purchase of in renewable energy, and for creating a new staff division relating to technology. These performance time periods often do not bear any connection to rate case time periods. As a result, there are multiple mismatches between the period in which rates are in effect, and the periods necessary to realize the benefits from expenditures. There is a legitimate concern that this time period mismatch creates a risk-reward mismatch. A re-opener is needed to provide IOUs ratepayers with additional benefits associated with operational efficiencies beyond those projected in the utilities' GRC four-year submissions. Where a party, (IOU or intervenor) has secured SRG approval, an application for a reopener will be considered by the Commission.



**#4: Other Modifications to GRC Process.**

In future rate cases, all California IOUs should adhere to FERC accounting standards or another uniform code of accounts, as established by the Commission. Similarly, the Commission should establish a minimum adjustment or minimum account threshold, under which adjustments may not be sought. Finally, the Commission should direct ED staff to coordinate amongst incentive mechanisms to ensure that the multiplicity of methods, of obligations, cost recovery mechanisms and other motivators, all intended to boost performance in different ways, is sufficiently inter-related that all involved understand their interactions and effects.

Respectfully submitted,

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/s/

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