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

In the Matter of the Application of San Diego Gas & Electric Company (U 902 E) for Authorization to Recover Unforeseen Liability Insurance Premium and Deductible Expense Increases as a Z-Factor Event.	Application 09-08-019 (Filed August 31, 2009)

**REPLY BRIEF OF
SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)**

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I. INTRODUCTION AND BACKGROUND

Pursuant to the April 7, 2010 ruling of Administrative Law Judge ("ALJ") Maribeth Bushey and Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission (the "Commission" or "CPUC"), San Diego Gas & Electric Company ("SDG&E") submits this Reply Brief responding to the Opening Briefs ("OBs") submitted by the Division of Ratepayer Advocates ("DRA"), Utility Consumers' Action Network ("UCAN") and Ruth Henricks ("Henricks") in the above-captioned proceeding.

In the Application, SDG&E requests Z-factor treatment of unforeseen and dramatic increases in liability insurance expenses incurred beginning in the 2009-2010 liability insurance renewal period through its next general rate case ("GRC") decision. SDG&E explains that beginning in 2009-2010 renewal, there was a significant reduction in the amount of liability insurance coverage available to Sempra Energy Risk Management, acting on behalf of SDG&E (for ease of reference, Sempra Energy Risk

Management acting on behalf of SDG&E is generally referred to herein as "SDG&E"),[1/] which caused a dramatic increase in liability insurance pricing. SDG&E's Application also requests authorization to recover any future unforeseen liability insurance premium and deductible expense increases until SDG&E's next GRC decision through a proposed advice letter and amortization process.

In its OB, SDG&E presents a detailed discussion of the applicable law related to Z-factor recovery.[2/] It points out that while the Z-factor mechanism was developed as a component of the "New Regulatory Framework" ("NRF") incentive-based ratemaking, the Application asks the Commission to consider application of the Z-factor criteria in the context of traditional cost-of-service ratemaking.

The Commission has observed that under traditional cost-of-service regulation, it has a "regulatory policy of allowing [cost-of-service regulated] utilities to recover reasonable costs incurred in the performance of utility service."[3/] Thus, while SDG&E's general transition from incentive-based back to cost-of-service ratemaking has not altered the eight Z-factor criteria, it is clear that application of the eight Z-factor criteria must now occur within the larger context of this obligation to consider whether rate recovery of unforeseen liability insurance costs is necessary in order to allow the utility the opportunity to earn a fair rate of return.[4/] While each of the eight Z-factor criteria remain relevant, the analysis is by necessity somewhat altered when conducted in a traditional cost-of-service regulation context rather than a NRF ratemaking context.

1/ Sempra Energy Risk Management is a shared service at the Sempra Energy parent company level. It procures insurance coverage on an aggregate basis for all Sempra Energy subsidiaries, including SDG&E, and allocates a share of premium expenses to each affiliate. SDG&E/De Bont, Exh. 3, p. 1.

2/ SDG&E OB, pp. 3-11.

3/ D.92-12-015, 1992 Cal. PUC LEXIS 864, p. *32.

4/ *See id*. at pp. *31-32 (citing *Fesler v. Pacific Tel. and Tel. Co*., 4 Cal R.R.C. 711 (1914) and *F.P.C. v. Hope Natural Gas Co.,* 320 U.S. 591 (1944)).

Where the key question under the NRF Z-factor analysis was the degree of utility control over the unforeseen cost and whether permitting recovery of the costs would undermine the incentives built into the NRF program,[5/] the central question under the cost-of-service Z-factor analysis must be whether the costs are reasonable and whether recovery should be permitted in order to allow the utility to earn a reasonable return.[6/] Thus, to the extent there exist ambiguities in the standards to be used in applying the Z-factor criteria in a cost-of-service context, the Commission must be guided by its general obligation to ensure that SDG&E has an opportunity to earn a reasonable return, as well as its policy of allowing cost-of-service regulated utilities like SDG&E to recover reasonable costs incurred in the performance of utility service.

In its OB, SDG&E establishes by a preponderance of the evidence that the Z factor event at issue in the instant case – *i.e.*, the insurance market changes resulting in a dramatic increase in SDG&E's liability insurance costs beginning in the 2009-2010 renewal period – satisfies all eight Z-factor criteria articulated in the Commission's Scoping Memo issued in this proceeding.[7/] DRA, UCAN and Henricks each argue that SDG&E has failed to carry its burden to demonstrate satisfaction of the eight Z-factor criteria. SDG&E responds to these claims below.

5/ *See* D.89-10-031, 1989 Cal. PUC LEXIS 576, p. *290 (observing that only factors clearly beyond a utility's control should be considered through the Z factor, in order to strengthen [NRF] efficiency incentives).

6/ D.92-12-015, *supra* note 3, pp. *31-32.

7/ *Scoping Memo and Ruling of the Assigned Commissioner* ("Scoping Memo") issued January 29, 2010 in A.09-08-019, p. 4.

II.
THE CLAIM THAT THE EVENT IS NOT EXOGENOUS TO SDG&E LACKS MERIT

In its OB, DRA asserts that SDG&E has failed to satisfy the "exogenous" criterion, arguing that "the insurance coverage transactions consummated by SDG&E during 2009 were not exogenous to the company."[8/] It points out that SDG&E exercised a "certain degree of control" over the procurement process and that general market conditions in existence beginning in the 2009-2010 renewal "are part of the company's business and market risk, and should be addressed through other proceedings."[9/] Finally, DRA offers several erroneous and misleading statements regarding allegations made in connection with the 2007 wildfires, and the relationship between these allegations and SDG&E's premium liability expenses.[10/]

It should be noted at the outset that DRA frames the issue improperly when it claims that the "insurance coverage *transactions* consummated by SDG&E during 2009 were not exogenous to SDG&E." The question before the Commission is not whether SDG&E was a party to individual insurance transactions. As SDG&E explained in its OB, Commission precedent makes clear that the mere fact that a utility participated in a contractual arrangement is not a basis for denying Z-factor treatment.[11/] Rather, the question before the Commission is whether SDG&E has experienced a Z-factor "event" – *i.e.*, an unforeseen circumstance largely outside the control of the utility causing

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8/ DRA OB, p. 3.
9/ *Id*. at pp. 3-6.
10/ *Id*. at pp. 4-5; s*ee also*, Henricks OB, p. 9.
11/ SDG&E OB, p. 21.

unexpected costs that have a material and disproportionate impact on the utility.[12/] The event in the instant case is the dramatic decrease in availability of liability insurance and a corresponding increase in price beginning in the 2009-2010 renewal. As discussed in detail in SDG&E's OB, while SDG&E procured insurance in that market and negotiated vigorously, it did not have control over insurance market conditions.

In conducting its "exogeneity" analysis, DRA articulates no general legal standard for application of this criterion and appears to erroneously assume that Z-factor treatment applies only in the limited circumstance where a utility has no ability to exercise any degree of control whatsoever over an event. It cites an isolated example of an event deemed to be exogenous by the Commission – a tax law change – and asserts that "[w]hile tax law changes are simply imposed on a given entity, the insurance procurement process is *impacted by* the actions of the utility, taking it out of the limited realm of exogenous event."[13/] DRA ignores the Commission precedent cited in SDG&E's OB establishing that a utility's exercise of some degree of control over an event does not preclude a finding that the relevant event is exogenous.[14/]

As SDG&E explains in its OB, Commission precedent makes clear that SDG&E's purported ability to "impact" the liability insurance costs it incurred does not by itself preclude Z-factor treatment of such costs. SDG&E's efforts in connection with its insurance procurement process did not somehow vest it with control over insurance market conditions. SDG&E is a price taker in the insurance market; while it did

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12/ *See,* SDG&E Preliminary Statement, Section IV.A.2 ("Z factors are exogenous events, unforeseen at the implementation of PBR, *largely uncontrollable by management*, having a material and disproportionate impact on SDG&E") (emphasis added). SDG&E requests pursuant to Rule 13.9 that official notice be taken of Section IV of its Electric Tariff Preliminary Statement.

13/ DRA OB, p. 4 (emphasis added).

14/ *See* SDG&E OB, pp. 12-16.

everything in its power to procure the greatest amount of insurance at the most reasonable cost, it ultimately could not control the pricing imposed by insurers or the terms of coverage offered. The market decisions made by insurers regarding offering liability insurance coverage are exogenous to SDG&E. Thus, any resulting premium cost increases are also exogenous to SDG&E.

DRA also points out that "a deeply-rooted principle in Z-Factor analysis is that general market conditions do not qualify for coverage."[15] DRA's discussion on this point is imprecise. While general market conditions resulting in increased costs typically would not, absent other facts, be treated as a Z-factor event, SDG&E's request for Z-factor treatment is not based solely on general market conditions. Moreover, DRA's attempt to characterize "insurance sector issues" as a general market condition is misguided.[16]

Determining whether the insurance sector issues evident beginning in the 2009-2010 renewal are in fact a "general economic condition" requires consideration of whether the event has had a disproportionate effect on the utility or was instead a cost imposed on an economy wide basis. This analysis relates to the "normal cost of doing business/disproportionate" criterion discussed in Section V below and in SDG&E's OB.[17] As SDG&E demonstrates, the insurance sector conditions prevalent starting in the 2009-2010 renewal did in fact have a disproportionate impact on SDG&E and therefore are not properly characterized as a "normal cost of doing business" or a "general economic condition." Accordingly, DRA's argument in this regard is flawed and must be rejected.

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[15] DRA OB, pp. 5-6.
[16] *Id*. at p. 5.

DRA's discussion of allegations made concerning responsibility for the 2007 wildfires, and the purported relevance of such allegations to SDG&E's premium liability expenses, is rife with error and distortion of facts. DRA asserts that "SDG&E has failed to meet its burden to demonstrate that it did not cause the October 2007 fires, which would be a necessary predicate to the conclusion that the 'loss coverage' activity and perception of riskiness was endogenous to SDG&E."[18] First, DRA's assertion that SDG&E bears the burden of demonstrating in the instant case that it did not cause the October 2007 fires is dead wrong and ignores the express direction of assigned Administrative Law Judge ("ALJ") Bushey to avoid "relitigating the cause of the fires" in the instant proceeding.[19]

At the December 14, 2009 pre-hearing conference held in this proceeding, Judge Bushey made clear that the scope of the proceeding would not include an examination of allegations made in separate Commission proceedings:

> I'm envisioning a party arguing, for example, that SDG&E could have kept these insurance costs down if it had done X. Right? That goes directly to the heart of the reasonableness review, which would be completely within the scope in my view.
>
> **On the other hand, if you were going to pull out particular facts from the record in that proceeding – and by "that proceeding" I meant the overall wildfire proceeding – and say because SDG&E did Y, they have acted unreasonably and set off a chain of events that have led to this, that's going too far because then I've got to go back and litigate what those facts mean.**[20]

17/ SDG&E OB, pp. 34-37.
18/ DRA OB, p. 5.
19/ PHC Tr., p. 7.
20/ *Id*. at pp. 17-18 (emphasis added).

The inquiry into the cause of the 2007 wildfires is plainly outside the scope of this proceeding and SDG&E does not bear the burden of demonstrating in the instant proceeding that it did not cause the 2007 wildfires.

Judge Bushey established clear parameters at the PHC for parties' reliance on arguments related to the cause of the 2007 wildfires. She explained that parties could rely on final Commission actions and "resolved issues" in making arguments regarding SDG&E's satisfaction of Z-factor criteria.[21/] DRA completely ignores this direction, however, and cites as fact the allegation that "SDG&E violated certain Commission general orders and safety standards" in connection with the 2007 wildfires.[22/] DRA's claim is based upon unproven allegations contained in a staff report issued by the Commission's Consumer Protection and Safety Division ("CPSD"). The CPSD report was considered in Orders Instituting Investigation ("OIIs") I.08-11-006 and I.08-11-007 (together, the "fire OIIs"), but was never adopted by the Commission.

The purpose of the fire OIIs was, among other things, to examine the safety allegations set forth in the CPSD report referenced by DRA in order to determine whether SDG&E had in fact violated any Commission rule.[23/] Consideration of the CPSD's allegations in the context of a formal Commission proceeding was undertaken in order to protect SDG&E's due process rights.[24/] In the fire OIIs, SDG&E mounted a vigorous response to the safety allegations made by CPSD, arguing that CPSD's safety

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21/ *See id*. at p. 18.

22/ DRA OB, p. 4.

23/ Order Instituting Investigation, Notice of Hearing, and Order to Show Cause, issued 11/12/2008 in I.08-11-006 ("I.08-11-006 Order"), p. 4; Order Instituting Investigation, Notice of Hearing, and Order to Show Cause, issued 11/12/2008 in I.08-11-007 ("I.08-11-007 Order"), pp. 3-4. SDG&E requests pursuant to Rule 13.9 that official notice be taken of the I.08-11-006 and I.08-11-007 Orders.

24/ I.08-11-006 Order, p. 5 (providing SDG&E notice and an opportunity to be heard on the issue of whether it violated applicable law, and whether penalties and/or any other forms of relief should be imposed); I.08-11-007 Order, p. 4.

allegations were incorrect. Ultimately, SDG&E and CPSD signed a settlement agreement in the fire OIIs that includes no admission of safety violations by SDG&E. The settlement was uncontested and was approved by the Commission on April 26, 2010 in D.10-04-047. Thus, the allegations that "SDG&E violated certain Commission general orders and safety standards" made by CPSD and referenced by DRA in its OB are unproven even if these allegations were germane here, which they are not.

DRA's OB fails, however, to acknowledge this fact. DRA was presumably aware of the terms of the settlement agreement given that the same attorney who represented CPSD in the negotiation of the settlement agreement represents DRA in this proceeding. The discussion of the CPSD report set forth in DRA's OB presents the allegations contained therein as fact, premises its argument on those purported "facts" and remains completely silent as to the final resolution of the fire OII proceedings and the fact that the CPSD report was never adopted by the Commission. In this respect, DRA's argument is misleading. The final Commission action regarding the fire OIIs included no formal finding of safety violations by SDG&E in connection with the 2007 wildfires; thus, there is no "resolved issue" upon which DRA may properly rely. DRA's discussion of the allegations contained in the CPSD report and its implication that these allegations should be relied upon by the Commission in this proceeding as proof that the 2007 wildfires were the fault of SDG&E is improper. As noted above, the argument also contravenes the Commission express direction to refrain from selectively relying upon allegations made in the fire OIIs. By citing unproven allegations contained in the CPSD report to support its arguments in the instant case, DRA asks the Commission to "go back and litigate what those facts mean,"[25] which is precisely what the Commission directed DRA not to do.

In addition to being based on the false premise that "SDG&E violated certain Commission general orders and safety standards" in connection with the 2007 wildfires,[26] DRA's argument regarding the impact of the 2007 fires on liability insurance premiums mischaracterizes the evidence set forth in the record of this proceeding. DRA asserts (incorrectly) in its OB that the fires were SDG&E's fault and therefore that SDG&E controlled two of the factors cited by Mr. De Bont as increasing insurance premiums: (i) "payback" for loss coverage activity; and (ii) assessment of the risk for future wildfire losses.[27]

With regard to "loss coverage" activity, DRA argues, in essence, that SDG&E's violations of various safety rules caused the 2007 wildfires, that losses were paid out as a result, and that the resulting increase in 2009-2010 premiums was therefore not exogenous. This argument is deficient in several respects. First, as noted above, DRA's assertion regarding the cause of the 2007 fires is an unproven allegation that cannot be relied upon in this proceeding. Second, insurers' payment of claims and the resulting "payback" was not prompted by their conclusion that SDG&E was at fault for the 2007 fires. At the time these losses were paid out, there was no final determination by either the Commission or the court that SDG&E bore any responsibility for the fires (and, indeed, there is none today). All that existed at that time, and all that exists to date, are unproven allegations regarding fault. Moreover, given insurers' perception that SDG&E could be held strictly liable under a theory of inverse condemnation for injuries and

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[25] *See* PHC Tr., pp. 17-18.
[26] DRA OB, p. 4.

damage, regardless of fault, the suggestion by DRA that insurers were motivated by unproven allegations of fault on the part of SDG&E makes little sense.

Mr. De Bont explained that in establishing 2009-2010 premiums, insurers responded to SDG&E's "legal liability" – *i.e.,* the legal requirement to pay for injuries sustained by third parties that arises for any reason, including under a theory of strict liability, the terms settlement agreement or any other basis.[28] "Legal liability" is an insurance term of art; it is not synonymous with being found legally "at fault" for injuries or damage, as Mr. De Bont explained:

> Q: . . . [C]an you clarify . . . whether the term "legally liable" means legally at fault?
>
> A It does not . . . . "Legally liable" in the insurance industry . . . means that you are legally liable to pay for those injuries sustained by third parties. That could be out of a court agreement adjudicated decision, it could be a settlement, it could be out of strict liability as with wildfire under inverse condemnation.
>
> Either of those would lead to the utility -- the insured, as being legally liable to pay for those injuries and damages sustained by third parties.[29]

Thus, mere allegations of fault were not what prompted insurers to dramatically adjust prices upward. Again, no findings of fault on the part of SDG&E exist to this day. Rather it was inverse condemnation combined with the fact that insurance claims were made and significant losses paid out in the months leading up to the 2009-2010 renewal.[30]

DRA's second argument, in which it addresses SDG&E's purported control over insurers' assessment of the risk for future wildfire losses, is not entirely clear. DRA first

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[27] *Id*.
[28] SDG&E/De Bont, Tr. Vol. 2, pp. 236-237, 245, 261-262, 270-272.
[29] *Id*. at 270-271.

appears to claim that a link exists between CPSD's allegations and insurers' risk assessment.[31] Mr. De Bont's testimony at the hearing, however, established that the exact opposite is true. In response to questioning by DRA counsel, Mr. De Bont explained that insurers do not base their risk assessment on claims of violations or negligence by the utility:

> Q . . . Is an element of the perceived risk the potential that SDG&E could have engaged in violations of general orders regarding the Witch, Rice and Guejito fires, if you know?
>
> A No, that is not correct. And I think it's a misconception on how the liability insurance policy provides coverage. ***The policy is written and it responds to our legal liability. Negligence has nothing to do with that fact. As long as we are legally liable for third-party injuries, that's how the insurance responds.*** [32]

Mr. De Bont explained further that, under a theory of inverse condemnation, SDG&E could be required to pay for injuries sustained by a third parties, even where there is no "fault" by the utility and merely involvement of utility facilities:

> [I]f a driver veers off the road, knocks down a distribution pole, the lines go down and touch brush and start a wildfire and third parties suffer damages, the utility is held strictly liable for that.[33]

Thus, rather than focusing on "fault" by the utility, insurers focus on whether the utility is "legally liable" to pay for injuries for any reason, including under a theory of strict liability.

DRA goes on to argue that "even small fires linked to SDG&E's facilities impact premiums."[34] It is not evident, however, what point DRA is making here. The

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[30] SDG&E/Schavrien, Exh. 2, p. LS-3.
[31] DRA OB, p. 4.
[32] SDG&E/De Bont, Tr. Vol. 2, pp. 236-237 (emphasis added).
[33] *Id*. at p. 274.
[34] DRA OB, p. 5.

testimony cited by DRA in its OB to support this proposition was part of a longer exchange regarding a hypothetical wildfire "just linked" to SDG&E facilities. DRA's hypothetical was incomplete and confusing in that it was unclear what was meant by the term "linked" used in the hypothetical. It was not evident whether the hypothetical involved (i) a circumstance where SDG&E was found to be at fault under a negligence theory for damage caused by electric facilities; or (ii) a circumstance where electric facilities were involved in an incident but SDG&E was not found to be legally at fault (*e.g.,* as in the driver hitting a pole example provided above). It was also not clear from DRA's hypothetical whether the scenario involved application of strict liability under the inverse condemnation theory.

In responding to DRA's hypothetical, Mr. De Bont indicated that he assumed the hypothetical to include the circumstance that SDG&E was "legally liable" for third-party injuries, even where the hypothetical did not make clear what the basis for that legal liability would be:

> MR. MOLDAVSKY: . . . there's two hypotheticals really -- there is a wildfire which is ***just linked*** to facilities; does that raise or lower insurance rates? And the second --
>
> ALJ BUSHEY: Hold that. Do you have an opinion on that?
>
> THE WITNESS: I do, your Honor.
>
> ALJ BUSHEY: Would you share it, please.
>
> THE WITNESS: This is hypothetically speaking. I can't speak for underwriters going forward. This is based upon information, some of which I shared in my earlier response about the Santa Barbara fires in 2009. If there is a significant wildfire, I believe we would not get any insurance.
>
> If we had a minor wildfire, let's say, I will throw a number out there for you, $5 million of third party liability damages, AEGIS would respond.

> I can't say exactly what their response would be in this coming renewal. It could be one of two things. They could decide they do not want to offer us wildfire liability coverage. They will continue to write us on the nonwildfire side. They could say we will continue to write you but we are going to increase your premium.
>
> ALJ BUSHEY: I think Mr. De Bont gave you too much, right, because you are just looking for a general up or down, if there is a significant wildfire do premiums go up or down.
>
> THE WITNESS: It could go away completely.
>
> ALJ BUSHEY: It could go so far up that they are gone.
>
> MR. MOLDAVSKY: Q When wildfires happen that are linked to SDG&E's facilities, will that cause insurance underwriters to increase premiums or decrease premiums?
>
> A It would be two things. It would not decrease. If there was a wildfire ***for which SDG&E's legally liable*** . . . it would do one of two things. Premiums would go up, or they would decide we are not going to write you any insurance coverage for wildfire liability risk.[35]

Thus, Mr. De Bont's testimony confirms the earlier point that where the utility is found to be "legally liable" as that term is understood in the insurance industry – *i.e.*, required to pay for injuries sustained by third parties for any reason, including under a theory of strict liability, the terms of a settlement agreement or any other basis – insurance premiums will be impacted. For all of the reasons stated above, DRA's discussion regarding the 2007 wildfires must be rejected as out-of-scope, erroneous and lacking in merit.

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[35] SDG&E/De Bont, pp. 241-243 (emphasis added).

III.
HENRICKS CLAIM THAT THE EVENT DID NOT OCCUR AFTER THE IMPLEMENTATION OF RATES IS INCORRECT

Henricks argues that SDG&E should have provided a forecast of the dramatic 2009-2010 liability insurance increases as part of its last GRC.[36/] Henricks asserts out that "[t]he wildfires of 2007 that purportedly caused the increase in wildfire insurance premiums occurred before and not after the GRC became final."[37/]

As explained by SDG&E witness, Mr. Schavrien, the Commission approved D.08-07-046, which authorized SDG&E's Test Year 2008 revenue requirement (including both liability insurance and deductible expense), in July 2008, but with an effective date retroactive to January 1, 2008.[38/] The forecasts used to formulate SDG&E's Test Year 2008 revenue requirement were submitted in December 2006. Specific details regarding the unexpected increase in liability insurance expenses were not known to SDG&E until early 2009, well after the rates were set in place as a result of D.08-07-046.[39/] Accordingly, Henricks' claim that SDG&E has could have provided an accurate forecast of 2009-2010 liability insurance increases as part of its last GRC is nonsensical.

IV.
THE CLAIM THAT THE EVENT WAS CONTROLLABLE BY SDG&E IS ERRONEOUS

UCAN, DRA and Henricks argue in their respective OBs that the market conditions leading to the dramatic increase in SDG&E's liability insurance costs were

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36/ Henricks OB, pp. 5, 9.
37/ *Id*. at p. 9.
38/ D.08-07-046, *mimeo*, Ordering Paragraph 12.
39/ SDG&E/Schavrien, Exh. 1, p. 8.

within SDG&E's control.[40/] Not one of these parties acknowledge the standard for "control" adopted in SDG&E's Commission approved tariff – *i.e.*, a Z-factor event is one that is "largely" outside of SDG&E's control.[41/] Rather, the parties offer analyses of the control criterion that ignore the applicable standard set forth in SDG&E's tariff and, likewise, ignore relevant Commission precedent or cite to it in such a selective manner that the analysis is inherently flawed and unreliable.

The "control" argument set forth in Henricks' OB consists of four sentences that contribute nothing to the Commission's consideration of the third Z-factor criterion. Henricks engages in no legal analysis regarding the "control" criterion and fails to provide any record support for its perfunctory claim that wildfire insurance premium costs are within SDG&E's control. Henricks fails even to address general liability insurance expenses.[42/] Given the lack of substantive argument in Henricks' OB, further discussion of Henricks' assertions regarding the degree of control exercised by SDG&E is not warranted.

DRA argues that SDG&E's participation in the procurement process and its execution of over 50 insurance policies establishes that it had a "certain level of control" over liability insurance costs.[43/] It asserts that the ultimate cost of SDG&E's liability insurance coverage was driven by its decision to obtain the "same level of coverage" as

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40/ UCAN OB, pp. 7-14; DRA OB, pp. 6-7; Henricks OB, p. 9.

41/ *See,* SDG&E Preliminary Statement, Section IV.A.2.

42/ Henricks' OB states that SDG&E reported in its 2009 Form 10-K filing with the Securities and Exchange Commission ("SEC") that the increase in wildfire insurance was $15 million. Henricks OB, p. 9. The relevance of this statement is unclear. Mr. Schavrien explained at the hearing that the data in the 2009 Form 10-K is reported in accordance with generally accepted accounting procedures ("GAAP") and does not reflect the entire liability insurance amount. SDG&E/Schavrien, Tr. Vol. 1, pp. 110-114.

43/ DRA OB, p. 6.

for the prior period, and notes that SDG&E was under no "mandate" to procure the same level of liability insurance coverage.[44]

SDG&E has already thoroughly addressed these arguments in its OB and above, and will therefore respond to them only briefly here.[45] As explained above, the mere fact that a utility participated in a contractual arrangement (regardless of whether it is one or 50) is not a basis for denying Z-factor treatment. Moreover, it is clear under SDG&E's Commission-approved tariff, as well as the Commission precedent cited in SDG&E's OB, that the question presently before the Commission is not whether SDG&E exercised a "certain degree of control" over the process; it is whether SDG&E "largely" controlled – *i.e.*, had substantial or significant control over – conditions in the liability insurance market such that it could have prevented the dramatic cost increases experienced in the 2009-2010 renewal.[46] As the record in the proceeding makes clear, the result of the 2009-2010 renewal belies the notion that SDG&E exercised a significant degree of control over the process.

As explained in detail in SDG&E's OB, DRA's claims regarding the level of insurance procured by SDG&E misstates the facts.[47] SDG&E did not in fact "obtain the same level of insurance" for the 2009-2010 renewal insurance as it had in the prior policy period. What SDG&E sought to do, in light of its risk assessment, was to obtain all the liability insurance that was reasonably available in the world insurance market; ultimately SDG&E was not able to secure the same level of coverage as in the previous year. Moreover, DRA cites no authority to support the proposition that a particular cost

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[44] *Id*. at pp. 6-7; *see also* UCAN OB, p. 9.
[45] SDG&E OB, pp. 24-34.
[46] SDG&E Preliminary Statement, Section IV; SDG&E OB, pp. 24-29.
[47] SDG&E OB, pp. 31-33.

must relate to a legal "mandate" enforced by the Commission in order to be afforded Z-factor treatment; indeed, no such authority exists. Procuring adequate liability insurance coverage is, in any event, a de facto Commission requirement. Plainly, the Commission would not view the failure to obtain adequate liability insurance as a reasonable and prudent action by the utility.

The conclusion that the Commission expects utilities to secure adequate liability insurance coverage is confirmed by discussion set forth in D.94-06-011, which is cited in DRA's OB:

> In Resolution T-15160, the Commission denied Z factor recovery for expenses incurred from natural disasters. Clearly, natural disasters, such as earthquakes and floods, are events beyond a NRF utility's management control. Nevertheless, we concluded that the opportunity to purchase disaster insurance to mitigate the resulting cost impact from a natural disaster is well within the control of a NRF utility. Not only does a NRF utility's management have the discretion to comparison shop for the best price, but it can also negotiate the level of insurance coverage and deductibles that it might pay. If Z factor treatment for natural disaster costs were assured, a NRF utility would have no need of insurance coverage: the ratepayer would become the insurer of last resort.[48/]

This discussion makes clear that a decision not to procure adequate liability coverage would be unreasonable and contrary to Commission policy.

DRA ignores this obvious conclusion, instead citing this discussion as support for the proposition that utilities <u>categorically</u> have control over the liability insurance procurement process and that costs related to procurement of insurance cannot under any circumstances be afforded Z-factor treatment. DRA's analysis is over-simplified, however, and ignores the clear distinction between the best case procurement process

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[48/] DRA OB, p. 7, citing D.94-06-011, 1994 Cal. PUC LEXIS 456, pp. *96-97. SDG&E notes that DRA's quotation of this portion of D.94-06-011 omits the "NRF" reference and that DRA fails to contemplated in the Commission's example, where the hypothetical utility has the ability to comparison shop for pricing and to dictate other terms, and the significantly more challenging procurement environment experienced by SDG&E beginning in the 2009-2010 renewal. The attempt by DRA to equate SDG&E's experience with that of the hypothetical utility described in the Commission's example is misguided where SDG&E was not able to "comparison shop" and was instead forced to avail itself of *every* viable option that it had.[49/]

As SDG&E demonstrated in its OB, it undertook aggressive efforts to develop the most comprehensive and cost-effective insurance package possible under the circumstances.[50/] It is important, however, to distinguish between a high degree of *effort*, such as that undertaken by SDG&E in the 2009-2010 renewal, and a high degree of *control* over the procurement process, which did not exist in the instant case. DRA's analysis fails to make this distinction. While SDG&E believes that it procured the most reasonable and cost-effective liability insurance package available to it under the circumstances, it controlled neither availability nor cost and was not able to prevent the dramatic cost increases imposed in the 2009-2010 renewal.[51/]

DRA also attempts to support its argument regarding the control criterion by baldly claiming, in complete disregard for the direction provided at the PHC, that "[i]f SDG&E had taken [fire risk mitigation] steps prior to the October 2007 fires, and thereby prevented such fires from occurring, then SDG&E's insurance premiums would

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address the fact that the discussion relates to a NRF-regulated utility rather than a cost-of-service regulated utility.

49/ *See* SDG&E/De Bont, Tr. Vol. 2, p. 227.

50/ SDG&E OB, pp. 39-49.

51/ *See* SDG&E/De Bont, Exh. 3, p. 8.

not have risen as high as they did."[52] As noted above, Judge Bushey specifically admonished parties at the PHC to not "pull out particular facts from the record in that proceeding – and by 'that proceeding' I meant the overall wildfire proceeding – and say because SDG&E did Y, they have acted unreasonably and set off a chain of events that have led to this," noting that "that's going too far because then I've got to go back and litigate what those facts mean."[53]

DRA's claim is premised on its earlier assertion that SDG&E "violated certain Commission general orders and safety standards" in connection with the 2007 wildfires. The only support DRA provides in its OB for either of these claims is the CPSD report included in the record of the fire OII proceedings. As discussed above, DRA may not rely on the unproven allegations included in the record of the fire OIIs to support its arguments in this proceeding. The causal relationship assumed by DRA is based wholly upon speculation, is not supported by a final Commission decision and cannot serve as the basis for a Commission decision in the instant proceeding. In short, DRA's argument is based on the incorrect conclusion that SDG&E negligently started the 2007 fires, and the further assumption that SDG&E could have, but failed to prevented the Witch, Rice, and Guejito fires. There is no evidence in this proceeding to support these allegations and assumptions. Further, even assuming *arguendo* that DRA had established these premises (which it has not), DRA is essentially arguing that subsequent remedial measures should be used as evidence against SDG&E. There are very strong public policy reasons not to do so, as the Commission is well aware.

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[52] DRA OB, p. 7.
[53] PHC Tr., pp. 17-18.

In its OB, UCAN observes that "[t]wo Commission cases serve to refine the Z-factor analysis first established in D.89-10-031."[54/] UCAN's analysis of Z-factor precedent applicable in the instant case is unduly limited. First, as noted above, it ignores the existence of the "control" standard approved in SDG&E's tariff – *i.e.*, a Z-factor event is one that is "largely" outside SDG&E's control. Second, it is in fact necessary to review *several* Commission decisions, including those detailing the history of the Z-factor mechanism, in order to derive an understanding of relevant Commission precedent regarding application of this criterion. SDG&E offers a detailed and comprehensive review of the relevant Commission decisions in its OB, noting that while the Commission's direction is murky and even contradictory in some instances, consideration of the relevant cases as a whole presents a reasonably clear picture of the Commission's thinking regarding application of the Z-factor mechanism. UCAN ignores for the most part the body of Commission decisions relating to Z-factor analysis, instead relying on select statements by the Commission that favor its position.

Moreover, while UCAN acknowledges that the Commission decisions upon which it relies relate to NRF-regulated utilities rather than cost-of-service regulated utilities, it fails to engage in any analysis of how that fact impacts the Z-factor analysis to be applied in the instant case.[55/] Regardless, the arguments made by UCAN are unpersuasive and are not supported by the cases cited. UCAN relies on a statement set forth in D.94-06-011 to the effect that an event is controllable where the utility's ability to respond to limit the financial impact is not "wholly limited." However, it ignores the fact that the Commission observed <u>in this same decision</u> that the question is whether the

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[54/] UCAN OB, p. 7.
[55/] *Id*. at p. 8.

utility had "substantial" or "significant" control over the event.[56/] SDG&E addresses this contradictory discussion in its OB, noting the following:

> In D.94-06-011 . . . the Commission indicated that it must consider "whether a utility was able to *substantially* affect the resulting cost impact of an event" in order to avoid frustrating the NRF efficiency incentives. It further observed that where "an outside entity initiates an event which imposes upon a NRF utility specific costs which can be objectively determined and which cannot be *significantly* affected by any action of the utility management" those costs would be Z-factor eligible.
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> While the Commission obscures the analysis somewhat by continuing on in the same decision to state that an event is controllable where the utility's ability to respond to limit the financial impact is not "wholly limited," the Commission's subsequent discussion of the control criterion helps to clarify its views regarding whether exercise of *some* degree of control by the utility makes an event "controllable" and therefore ineligible for Z-factor treatment.[57/]

As explained in SDG&E's OB, the Commission's discussion of the "control" criterion in various decisions establishes that the mere fact that the utility exercises *some* degree of control over an event does not preclude a finding that the event was "not controllable" for Z-factor purposes.[58/]

UCAN relies on D.00-01-021 to support its assertions that (i) agreeing to be bound by a contract is an indication of complete control over an event; and (ii) existence of a contract is indicative of SDG&E's ability to choose from among several viable options.[59/] Both claims are obviously false. As discussed above, the mere fact that a utility enters into a contract that relates to a Z-factor event does not establish that the Z-factor event is itself "controllable" by the utility. Likewise, the facts of the instant case are distinguishable from those in D.00-01-021; while the utilities in that case did in fact

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56/ *See* D.94-06-011, *supra* note 48, pp. *95-96.
57/ SDG&E OB, p. 25 (citations omitted; emphasis added).
58/ *Id*. at pp. 25-29.

exercise discretion in choosing *from among* various viable options identified by the Commission (*e.g.*, continuing litigation, negotiating a settlement, withdrawing from litigation to continue with the yearly assessment valuation process),[60] SDG&E did not choose from among options but rather availed itself of *every* viable option that it had, as explained above and in SDG&E's OB.[61] Plainly, the indicia of control discussed in D.00-01-021 (the ability to choose from among different viable options) did not exist in the instant case.

UCAN's claim that allowing recovery of increased insurance costs will remove SDG&E's incentive to keeps costs in check is erroneous. As SDG&E explained in its OB, liability insurance coverage is procured on its behalf by Sempra Energy Risk Management ("SE Risk Management"). SE Risk Management is a shared service at the Sempra Energy parent company level; it procures insurance coverage on an aggregate basis for all Sempra Energy subsidiaries (regulated and unregulated) and allocates a share of premium expenses to each affiliate. This shared service approach to insurance procurement offers the benefit of a built-in cost-control incentive. Non-utility subsidiaries subject to market forces must obviously keep costs in check; likewise, SDG&E and SoCalGas strive to protect ratepayers by maintaining costs at a reasonable level. Although the utility and non-utility subsidiaries are differently-situated in many respects, the cost-control imperative is the same for both.[62]

Mr. De Bont observed at the hearing that SE Risk Management's aggregate procurement approach reflects the commitment to cost-effectiveness of both the utility

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[59] UCAN OB, p. 8.
[60] *See* D.00-01-021, 2000 Cal. PUC LEXIS 7, pp. *14-15.
[61] *See* SDG&E/De Bont, Tr. Vol. 2, p. 227.
[62] SDG&E OB, pp. 39-41.

and non-utility subsidiaries, noting that SE Risk Management "buy[s] as a shared service insurance coverage for all the Sempra companies, including the utilities. And our goal . . . is to get the best coverage at the best price."[63/] He noted further that SE Risk Management's liability insurance procurement approach does not differ when funding is by ratepayers rather shareholders, observing that "the funding piece has nothing to do with how we go out and buy insurance . . . Our job, as I've stated, is to get the best coverage at the best price."[64/]

UCAN's assertion that the testimony of its witness, Mr. Sulpizio, demonstrates that SDG&E "could have taken numerous other actions to minimize its costs," is puzzling.[65/] On cross examination, UCAN's witness clarified that his testimony was not intended to suggest that SDG&E *should* have utilized any one of the alternative risk transfer ("ART") mechanisms options described in his testimony. Rather, he explained, his testimony was intended merely to convey that use of such options should have been considered.[66/] Thus, UCAN's suggestion that Mr. Sulpizio's testimony definitively establishes that pursuing ARTs would have reduced SDG&E's costs is without basis; Mr. Sulpizio's testimony does not provide solid support for this conclusion.

Moreover, as SDG&E noted in its OB, Mr. De Bont has explained that ARTs were considered in the 2009-2010 renewal and were deemed, for various reasons, to be infeasible.[67/] Mr. Sulpizio fixates in his testimony on the purported need for a "formal analysis" of each and every ART option.[68/] It is plain, however, that in light of the

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[63/] SDG&E/De Bont, Tr. Vol. 2, p. 230.
[64/] *Id*. at p. 231.
[65/] UCAN OB, p. 9.
[66/] UCAN/Sulpizio, Exh. 13, Responses #1, 6, 44.
[67/] SDG&E OB, pp. 46-47.
[68/] *See, e.g.*, UCAN/Sulpizio, Exh. 13, Responses #1, 4, 5, 39, 43(b).

internal and external labor that would be required to prepare several such analyses on an annual basis, this approach would not be an efficient use of resources. By leveraging the knowledge and judgment of experienced industry professionals, including Mr. De Bont, who has over 29 years of experience in the insurance and risk management industry,[69] it was possible to reach a determination regarding use of ARTs.

Mr. Sulpizio's enthusiasm for detailed formal analyses of options even where it is not clear such analysis is necessary is evident. Mr. Sulpizio in fact claims that even the option of having no insurance coverage or other risk mitigation strategy at all should be subjected to a formal written analysis.[70] It is unlikely that any responsible insurance professional, or indeed any reasonably well-informed layperson, would require much in the way of analysis to conclude that it would not be prudent for a utility to have no risk mitigation strategy whatsoever in place. Plainly, it is possible to reach an informed, well-considered decision regarding use of a particular ART without undertaking the burden in each case of developing a formal written analysis.

The arguments raised by UCAN related to the reasonableness of the liability insurance procurement process in the 2009-2010 renewal are addressed in detail in the testimony of SDG&E's witnesses and in SDG&E's OB, and need not be repeated here.[71] UCAN's discussion of the procurement process contains myriad misstatements of fact, including the erroneous and misleading claim that "SDG&E made a decision to accept a premium of $12.4 million for a net amount of $5.1 million of insurance in

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[69] SDG&E/De Bont, Exh. 3, p. 12.
[70] UCAN/Sulpizio, Exh. 13, Response #5.
[71] SDG&E OB, pp. 39-49.

excess of a $5 million deductible."[72] This assertion first appeared in Mr. Sulpizio's testimony and was corrected by Mr. De Bont:

> I have reviewed Mr. Sulpizio's calculations on page 10 of his testimony and have found numerous errors in Mr. Sulpizio's analysis. First, Mr. Sulpizio incorrectly lists the AEGIS coverage and premiums charged. The wildfire premium charged by AEGIS for wildfire coverage was $4.4 million, not $12.4 million. The $12.4 million premium includes $8 million for *non-wildfire* liability coverage, and is not applicable to his mathematical example used here. To clarify further, the $35 million limit for non-wildfire liability for $8 million in premium is neither aggregated nor quota-shared.
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> The following represents the correct data regarding what AEGIS was paid: $4.4 million for a net amount of $17.5 million of insurance, excess of a $5 million self insured retention. Thus, applying Mr. Sulpizio's line of thinking, but using the correct premium figures, SDG&E would have paid $4.4 million in premium for a "net" amount of $13.1 million of insurance ($17.5 million minus $4.4 million), and not $5.1 million. In comparison (and in reality) SDG&E is only exposed to $22.5 million in combined self insured retention and loss sharing ($5 million SIR plus $17.5 million loss sharing), and benefits from $17.5 million in coverage limits for the first $40 million in wildfire loss – all for $4 million in premium costs.[73]

UCAN's OB fails, however, to acknowledge the corrected information provided by Mr. De Bont and reiterates Mr. Sulpizio's faulty analysis.

UCAN's arguments related to the "control" criterion are premised on flawed legal analysis and an incorrect presentation of the facts set forth in the record. Accordingly, UCAN's arguments must be rejected.

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[72] UCAN OB, p. 12.
[73] SDG&E/De Bont, Exh. 4, p. MD-11 (emphasis in original).

V.
THE COSTS INCURRED IN THE 2009-2010 RENEWAL WERE PLAINLY NOT PROPORTIONATE AND WERE NOT A NORMAL COST OF DOING BUSINESS

The Commission's analysis of the "normal cost of doing business" criterion is comparatively clear. As discussed in SDG&E's OB, this criterion is closely linked to the "disproportionate impact" criterion. The Commission has explained that "[e]ssentially, the disproportionate impact test is simply a restatement of the requirement that the cost at issue be something other than a normal cost of doing business."[74/] The Commission's goal in applying these criteria in the NRF context was to avoid double-counting between the Z-factor adjustment and the inflation index.[75/] Thus, the analysis involved evaluation of whether a particular event changes costs for *all businesses* and would therefore be captured in the NRF inflation index.[76/]

The Commission has noted that "[i]f an event of nationwide significance affects all businesses approximately the same, or proportionately, then it would follow that the costs associated with that event are not eligible for Z-factor treatment."[77/] It observed further that "[t]his test provides a useful gauge for distinguishing between a utility's specific costs and those incurred by firms throughout the economy."[78/] In short, to be eligible for Z-factor treatment, the costs imposed by the event must not be the result of general economic conditions but must result from factors which specifically impact the utility or group of utilities.[79/]

74/ D.94-06-011, *supra* note 48, p. *101; D.00-01-021, *supra* note 60, p. *19.
75/ D.94-06-011, *supra* note 48, p. *100; D.00-01-021, *supra* note 60, p. *19.
76/ D.00-01-021, *supra* note 60, p. *16.
77/ *Id*. at p. *19.
78/ *Id*. at pp. *19-20.
79/ D.94-06-011, *supra* note 48, pp. *98-99.

UCAN argues that the liability insurance expenses imposed on SDG&E beginning in the 2009-2010 renewal are a normal cost of doing business.[80] UCAN's analysis of this criterion is confused and misstates facts. UCAN asserts that SDG&E "concedes" that it has failed to satisfy this criterion of the Z-factor analysis where SDG&E has pointed out that securing adequate liability insurance is necessary to the prudent operation of the utility.[81] UCAN's claim in this regard is obviously incorrect. While it is true, as discussed above, that SDG&E must have adequate liability insurance in place, the standard for the "normal cost of business/disproportionate impact" criteria adopted by the Commission is not whether the expense relates to a necessary component of the utility's business. Rather, it is whether the expense is one imposed on *all businesses* proportionately.

UCAN also seeks to rely on D.94-12-025 to support the proposition that "[m]erely because the costs are higher does not automatically turn these costs into non-normal costs of doing business."[82] SDG&E has not suggested otherwise; nowhere does SDG&E suggest that its increased liability insurance expenses should be afforded Z-factor treatment merely because they are high. As explained in SDG&E's OB and summarized above, the legal standard for this criterion is whether the cost imposed disproportionately impacts the utility or group of utilities and is not the result of general economic conditions.[83] SDG&E demonstrates in its OB that the liability insurance costs imposed upon SDG&E were disproportionate. That, together with satisfaction of the other Z-factor criteria, is the basis upon which SDG&E makes its recovery request.

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[80] UCAN OB, pp. 14-17; *see also* Henricks OB, p. 10.
[81] UCAN OB, p. 15.
[82] *Id*.
[83] SDG&E OB, pp, 34-37.

UCAN appears to suggest that the 1000 percent increase experienced by SDG&E in its liability insurance costs in 2009-2010 was experienced generally by all business, arguing that "[t]he increases may be high, but that does not make them unique costs."[84/]

As discussed in detail in SDG&E's OB, however, the significant liability insurance cost increases experienced by SDG&E were far in excess of what was experienced by other California IOUs and by businesses on an economy-wide basis. UCAN also asserts that "SDG&E failed to properly analyze changes in the insurance market and the impact the fires may have on its rates."[85/] As discussed above in response to the similar claim made by Henricks, the notion that SDG&E has could have provided an accurate forecast of 2009-2010 liability insurance increases as part of its last GRC is absurd. Clearly, the liability insurance costs imposed on SDG&E beginning in the 2009-2010 renewal were neither proportionate, nor a normal cost of doing business.

VI.
THE CLAIM THAT THE COSTS AT ISSUE WILL NOT HAVE A MAJOR IMPACT ON SDG&E'S OVERALL COSTS LACK MERIT

The record evidence demonstrates that an unanticipated cost increase of over 1,000 percent will plainly have a major impact on SDG&E's overall costs. Indeed, the cost increase would consume close to the entire attrition increase SDG&E received for normal inflation and operations in the 2008 GRC.[86/] The 2009-2010 increase represents approximately 8 percent of SDG&E's 2008 net operating income and over 10 percent of the total administrative & general expenses reported in 2008.[87/] It is also important to note that the impact will be cumulative. While the figures cited above establish that the

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[84/] UCAN OB, p. 15.
[85/] *Id*. at p. 16.
[86/] SDG&E/Schavrien, Tr. Vol. 1, p. 81.

2009-2010 costs, by themselves, will have a major impact, when considered on an aggregate basis with the costs expected to be incurred in the 2010-2011 and 2011-2012 renewals, it is even more clear that the impact will be major. UCAN nevertheless claims that the increased liability insurance expenses will not have a major impact on SDG&E's overall costs.[88/] The record evidence shows otherwise; the magnitude of the insurance cost increase incurred beginning in 2009-2010 will have a major impact on SDG&E's costs.

VII.
THE CLAIM THAT THE "MEASURABLE IMPACT" CRITERION HAS NOT BEEN MET IS INCORRECT

In discussing the "measurable" criterion in its OB, DRA confuses a Z-factor *event* that occurs over multiple years, and the resulting Z-factor *costs* over the same period that are incurred on an annual basis. DRA argues that if the $28,884,000 revenue requirement and future liability insurance expenses all result from one Z-factor event, SDG&E cannot recover any costs since it is not known today precisely what the total amount for subsequent years' liability insurance expenses will be.[89/] This claim by DRA ignores the fact that SDG&E's CPUC-approved tariff establishes that a Z-factor event may occur over a time frame that is greater than a single year.[90/] In discussing the multi-year event scenario, SDG&E's tariff does not express the Z-factor cost as a single aggregate cost; rather it expresses the cost on an annualized basis. Hence, one Z-factor *event* can result in multiple years' Z-factor *costs*:

87/ SDG&E/Schavrien, Exh. 1, p. 13.
88/ UCAN OB, pp. 16-17; *see also* Henricks OB, pp. 10-11.
89/ DRA OB, pp. 8-9; *see also* Henricks OB, p. 11.
90/ SDG&E Preliminary Statement, Section IV.D.4. Costs incurred in multiple years as part of a single Z-factor event are subject to a single $5 million deductible.

> The deductible is a one-time feature applicable to the first $5,000,000 in costs for each Z Factor event. For example, if a qualified Z Factor increased costs by $20,000,000 in each year 1, 2 and 3 above the base level, the deductible will apply in year 1. *Thus, the compensable amounts will be $15,000,000, $20,000,000 and $20,000,000 in years 1, 2 and 3, respectively*. (Emphasis added)

Thus, where the Commission concludes that the effects of a single Z-factor event will be felt in future years, it may apply Z-factor treatment on a forward-looking basis to costs incurred in future years rather than waiting until the multi-year Z-factor event has concluded and then applying Z-factor treatment to the aggregate expense.

As SDG&E explained in detail in its OB, the market conditions creating the increase in liability costs is a multi-year event.[91/] Mr. De Bont made clear that it is reasonable to expect that the increase in liability insurance costs experienced in the 2009-2010 renewal will continue in effect in the subsequent two renewals, noting that he had "high confidence, maybe 99.8 percent," that costs would remain high, adding "I will go out on a limb. I know for sure that [liability insurance cost] is going to stay high. I won't see it go from 47 million down to ten. I know that."[92/] Mr. De Bont observed further that he did not expect premiums to go up beyond 2009 levels and that he anticipated that premiums will be "in the area of where they are right now for the 2009 renewal."[93/]

Thus, although the exact amount of 2010 and 2011 liability insurance expenses is not presently known, it is possible to know "with reasonable certainty" or even a "high degree of certainty" that liability insurance costs will remain close to the level

91/ SDG&E OB, pp, 38-39, 49-51.
92/ SDG&E/ De Bont, Tr. Vol. 2, p. 252.
93/ *Id*. at p. 253.

experienced in the 2009-2010 renewal.[94] Moreover, as discussed in SDG&E's OB, the liability insurance expenses for the 2010-2011 and 2011-2012 renewals will be known with certainty prior to SDG&E booking them into the ZFMA and seeking recovery via Advice Letter. Accordingly, the seventh Z-factor criterion is satisfied

VIII.
PARTIES' CLAIMS THAT THE COST INCURRED IS NOT REASONABLE ARE NOT SUPPORTABLE

As SDG&E explained in the OB, the Commission has articulated a policy of "allowing [cost-of-service] utilities to recover reasonable costs incurred in the performance of utility service."[95] Thus, the question of whether the liability insurance costs incurred in the 2009-2010 renewal, and expected to be incurred in the 2010-2011 and 2011-2012 renewals, are reasonable must be the main focus of the Commission's cost-of-service Z-factor analysis in the instant case. The Commission must meet its obligation to ensure that SDG&E has the opportunity to earn a reasonable rate of return.[96] SDG&E devoted considerable attention in its OB to demonstrating the reasonableness of its liability insurance procurement strategy and need not repeat those arguments in full here.[97] As established in SDG&E's OB and discussed in brief below, the arguments raised by parties related to the "reasonableness" criterion are fully rebutted through the testimony of SDG&E's witnesses and are wholly lacking in merit.

UCAN's OB engages in a discussion of SDG&E's purported failure to mitigate its insurance premium expenses that would seem to relate to the reasonableness criterion, but which UCAN attempts to tie back to the "control" and "normal cost of

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94/ *See* D.89-10-031, *supra* note 5, *p, 382.
95/ D.92-12-015, *supra* note 3, p. *32.
96/ *See id.* at pp. *31-32.

business" criteria. UCAN's arguments are convoluted, confusing and unnecessarily inflammatory. UCAN accuses Mr. De Bont of lying, engaging in sophistry and deliberately offering "contorted interpretations of UCAN's expert testimony."[98/] These claims by UCAN are completely unfounded and improper. Plainly such attacks are not constructive and do not serve the regulatory process.

UCAN cites four "findings" of its witness, Mr. Sulpizio. It argues, first, that SDG&E should have placed greater emphasis on the existence of the inverse condemnation doctrine in its discussions with underwriters.[99/] It suggests that the decision not to do so indicates that SDG&E exercised control over the market conditions in existence in the 2009-2010 renewal. To the extent this "finding" reflects on the reasonableness of SDG&E's procurement process, SDG&E explains in its OB that the approach suggested by Mr. Sulpizio makes little sense where underwriters were well aware of the inverse condemnation issue and the goal of the underwriter presentation was to highlight the positive aspects of SDG&E's risk profile. Thus, SDG&E's decision to present information to underwriters that placed SDG&E in a positive light was reasonable. With regard to the assertion that the ability to control the content of the underwriter presentation equates to control over market conditions existing during the 2009-2010 renewal, UCAN's claim obviously makes no sense. While SDG&E believes that the presentation had a positive impact on insurers, the presentation obviously did not confer upon SDG&E the ability to "largely" control insurance market conditions in 2009.

97/ SDG&E OB, pp. 39-49.
98/ UCAN OB, pp. 19, 20.
99/ *Id*. at pp. 17-18, 21-22.

UCAN next cites Mr. Sulpizio's purported "finding" that SDG&E had accepted unreasonable terms of coverage from its primary insurer, AEGIS.[100/] Mr. De Bont provided a detailed rebuttal to this claim in his prepared testimony, addressing the flaws in Mr. Sulpizio's analysis and pointing out that SDG&E's complete past loss experience (wildfire and non-wildfire) "would lead any reasonable insurance professional to conclude that the terms offered by AEGIS were an economically viable risk transfer option."[101/] Thus, SDG&E acted reasonably in accepting the terms offered by AEGIS.

UCAN, however, cites this "finding" as proof that (i) "these" costs (it is unclear to what costs it is referring, costs associated with the first layer of insurance or all liability insurance costs) are not a normal cost of doing business; (ii) costs were in SDG&E's control and (iii) SDG&E will have a disincentive to negotiate reasonable insurance terms if liability insurance costs are granted Z-factor treatment.[102/] Since, as detailed above, the premise of the argument (*i.e.*, that SDG&E accepted unreasonable terms) is demonstrably false, further discussion of UCAN's flawed reasoning is not merited. SDG&E notes, however, that satisfaction of the "control" and "normal cost of business" criteria is demonstrated above and in SDG&E's OB, as is the fact that Z-factor recovery would have no negative impact on SDG&E's existing cost-control incentive.[103/]

UCAN's discussion of Mr. Sulpizio's third "finding" is somewhat confused. It notes Mr. Sulpizio's allegation that "SDG&E failed to thoroughly *explore* alternatives to

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[100/] *Id*. at pp. 23-25.
[101/] SDG&E/De Bont, Exh. 4, p. MD-5-6.
[102/] UCAN OB, pp. 24.
[103/] SDG&E OB, pp. 24-37, 39-41.

the traditional insurance market."[104/] It goes on, however, to conclude that SDG&E failed to avail itself of "feasible" alternative risk transfer mechanisms.[105/] In doing so, UCAN exceeds the scope of its own witness' testimony. As discussed above, Mr. Sulpizio made clear that his testimony was limited to the issue of ARTs that SDG&E should have *explored*, not claims regarding particular ARTs that were demonstrably "feasible" or that SDG&E should have actually *implemented*.

Contrary to UCAN's claim, SDG&E did in fact consider ART options and concluded for a variety of reasons that they were not viable, as is discussed above and in SDG&E's OB. UCAN argues that SDG&E's determination that ARTs were not a viable option for the 2009-2010 renewal indicates (i) that SDG&E was in control of liability insurance market conditions; and (ii) that liability insurance costs were not a normal cost of doing business.[106/] It does not, however, provide a clear rationale for these claims. As discussed above and in SDG&E's OB, the "control" criterion takes into consideration the utility's ability to choose from among multiple viable options; options that are not viable do not impact the analysis. The "normal cost of doing business" criterion evaluates whether a particular cost is disproportionately imposed on a utility or group of utilities. Thus, determinations regarding viability of particular ARTs would not be relevant to this analysis.

Finally, UCAN repeats Mr. Sulpizio's assertion that SDG&E should have developed an "alternative insurance plan" following the 2007 fires.[107/] Mr. De Bont provided detailed support for the conclusion that traditional insurance coverage is

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104/ UCAN OB, p. 25 (emphasis added).
105/ *Id.*, Section heading III.C.
106/ *Id.* at p. 27-28.
107/ *Id.* at pp. 18, 28.

preferable to the ARTs advocated by Mr. Sulpizio. As an experienced insurance professional intimately familiar with SDG&E's operations and risk profile, Mr. De Bont is well-positioned to engage in this analysis. Mr. Sulpizio cannot – and indeed makes clear that he does not – make supportable claims regarding the appropriate risk transfer approach to be undertaken by SDG&E. By his own account, Mr. Sulpizio's testimony is intended solely to suggest that SDG&E should include consideration of ARTs in its insurance procurement process. SDG&E has clarified that it does so. Hence, further discussion of Mr. Sulpizio's suggestion is not warranted where it would not assist the Commission in determining whether the eight Z-factor criteria have been satisfied.[108/]

In its OB, DRA argues that SDG&E fails to satisfy the "reasonableness" criterion where it did not provide DRA with a requested audit of the cost detail and supporting information for the 2009 insurance premiums.[109/] DRA's discussion does not set out the facts accurately. DRA requested an audit report in discovery, but SDG&E had not performed an audit thus no such report existed. SDG&E cannot provide DRA with a report that does not exist. SDG&E did, however, provide DRA with all of the information and documents that DRA would need to undertake its own audit. DRA suggests that a formal audit is a requirement for satisfaction of the "reasonableness" criterion, but cites no Commission precedent to support that assertion as, indeed, none exists. In any event, SDG&E notes that it has entered into a stipulation with DRA to

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[108/] UCAN also argues that SDG&E should have accounted for anticipated liability insurance cost increases in its 2008 GRC. This claim is addressed in Section III above in response to the same argument made by Henricks.

[109/] DRA OB, p. 9.

prepare an audit of 2009-2010 liability insurance costs approved in the instant proceeding.[110] Accordingly, DRA's claim is moot.

In addition to focusing on issues outside the scope of the proceeding, such as allegations regarding SDG&E's equipment maintenance, Henricks' OB is intentionally misleading to the extent it seeks to rely on the discredited testimony of Henricks' witness, Mr. Christensen.[111] In his testimony, Mr. Christensen engages in a detailed analysis of liability insurance invoices provided to Hendricks in discovery and concludes that SDG&E failed to establish the existence of "a new and separate classification of insurance called wildfire insurance,"[112]

Mr. De Bont explained, however, that Mr. Christensen's "investigation" involved analysis of the wrong documents.[113] He pointed out that the breakdown between general liability and wildfire premiums generally does not appear in the invoices. Instead, this information is typically set forth in insurance binder documents and/or broker documents. The binder documents, as well as a premium allocation spreadsheet prepared by Marsh that shows the breakdown in invoiced premium amounts between wildfire and general, were provided to Henricks in discovery.[114] Thus, the allegations set forth in Mr. Christensen's testimony concerning SDG&E's purported failure are demonstrably false.

Although this fact was brought to Henricks' attention through Mr. De Bont's rebuttal testimony, Henricks nevertheless relies on the discredited testimony in her OB, claiming that she "details SDG&E's failures of proof in the testimony of her investigator

[110] SDG&E/DRA, Exh. 20.
[111] Henricks OB, p. 11.
[112] Henricks/Christensen, Exh. 18, p. 1.
[113] SDG&E/De Bont, Exh. 4, pp. MD-14-15.

expert Kevin Christensen."[115] By ignoring the existence of documents that clearly substantiate the breakdown between wildfire and general liability insurance premiums and persisting in the false claim that SDG&E has failed to produce such documentation, Henricks intentionally attempts to mislead the Commission. Plainly, Henricks' argument must be soundly rejected.[116]

IX.
DRA'S ANALYSIS OF THE PROPOSED ADVICE LETTER PROCESS FOR RECOVERY OF FUTURE EXPENSES IS FLAWED

DRA argues that the Z-factor event at issue in the instant case should not be treated as a multi-year event subject to a single $5,000,000 deductible.[117] It objects to SDG&E's proposed recovery of increased liability insurance expenses for the 2010-2011 and 2011-2012 renewal periods, arguing that "the Z-factor analysis is designed to evaluate quantified expenses," and that the exact amount of these future costs is not presently known.[118] As discussed in detail in SDG&E's OB, however, it is clear under SDG&E's Commission-approved tariff that a single Z-factor event may occur over multiple years. Moreover, the Commission has stated that "[i]f future cost changes are known with a high degree of certainty, we would be willing to consider inclusion of such cost changes on a forecasted basis."[119] Thus, DRA's implicit suggestion that the Commission cannot consider future costs related to a single Z-factor event is plainly incorrect.

114/ SDG&E, Exh. 19.
115/ Henricks OB, p. 11.
116/ SDG&E notes further that cross-examination of Mr. Christensen would have served little purpose where his analysis was defective and wholly irrelevant.
117/ DRA OB, pp. 15-18.
118/ *Id*. at p. 10.
119/ D.89-10-031, *supra* note 5, *p, 382.

As pointed out above, Mr. De Bont made clear during the hearing that conditions in the liability insurance market looking beyond 2009 are very unlikely to change and that he expects premiums to remain at the level experienced in the 2009-2010 renewal.[120] No convincing evidence was presented to refute this claim. Clearly, it would be unreasonable to assume that the increase in liability insurance costs experienced in the 2009-2010 renewal will not continue in effect in subsequent renewals. Mr. De Bont has predicted future liability insurance costs with a high degree of certainty, noting that he has "high confidence, maybe 99.8 percent," that costs will remain high – *i.e.*, "in the area of where they are right now for the 2009 renewal."[121]

Thus, the Z-factor event at issue in the instant case is properly treated as a multi-year event. It is equally clear that given the high degree of certainty that future costs will remain in the vicinity of 2009-2010 levels, recovery of such costs on a forecasted basis is justified. DRA's arguments ignore the fact that SDG&E's approved tariff, as well as Commission precedent, specifically contemplate multi-year Z-factor events and recovery of forecasted costs. Accordingly, DRA's arguments lack merit.

DRA next argues that it is not possible to apply the Z-factor criteria to the costs expected to be incurred in these future years. As is discussed above and in SDG&E's OB, however, it is necessary to distinguish between a Z-factor *event* and the resulting *costs*.[122] The eight Z-factor criteria are applied to the Z-factor event – in this case, the dramatic decrease in availability of liability insurance and the corresponding increase in liability insurance costs. Once the Commission concludes that an event is eligible for Z-factor treatment, all cost resulting from that Z-factor event are recoverable, including

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[120] SDG&E/De Bont, Tr. Vol. 2, p. 251, 253.
[121] *Id*. at p. 252-253.

those incurred in future years. The process set forth in SDG&E's tariff does not contemplate application of the eight Z-factor criteria to future years' *costs*.

DRA suggests that SDG&E's advice letter proposal is unnecessary in light of the advice letter notification process currently included in SDG&E Z-factor mechanism. As discussed in detail in SDG&E's OB, however, the additional advice letter process proposed by SDG&E serves a different purpose than the existing advice letter notification process.[123] Specifically, SDG&E proposes to track *actual* liability insurance costs for 2011-2012 in the Z-factor Memorandum Account ("ZFMA") (rather than establishing a set revenue requirement for 2010 and 2011) and to use the additional advice letter process to convert these actual costs to a revenue requirement for 2011 and 2012. Thus, DRA is incorrect in alleging that SDG&E's proposed advice letter process is redundant.

DRA's claim that SDG&E's proposal amounts to an attempt to "bypass meaningful scrutiny of costs" is equally erroneous. First, SDG&E's proposed process for recovery of future years' costs allows for a greater level of scrutiny than exists under the current process. Under the current process set forth in SDG&E's tariff, if the initial advice letter requesting Z-factor treatment is approved, costs may be recovered through an annual revenue requirement. If the event is multi-year in nature, authorized costs are recovered on an annual basis *with no further memorandum account or advice letter process required*. By contrast, SDG&E's additional advice letter proposal will offer the Commission and interested parties the opportunity to protest and scrutinize liability insurance costs for the 2010-2011 and 2011-2012 renewals. Mr. Schavrien explained

[122] SDG&E OB, pp. 49-51.
[123] *Id*. at pp. 51-55.

that the proposed advice letter process will also provide incentive to SDG&E (in addition to the cost-control incentive discussed above and in SDG&E's OB) to keep liability insurance costs at a reasonable level.[124/] Thus, DRA's claim must be rejected.

X.
DRA MISINTERPRETS SDG&E'S DISCUSSION OF THE ACTION TO BE UNDERTAKEN BY FERC

The Application describes SDG&E's intent to seek a revision of the methodology used by the FERC to allocate wildfire liability insurance costs. Specifically, SDG&E will ask the FERC to allocate a larger portion of the wildfire liability insurance costs to the electric transmission department than would occur under the existing allocation methodology (the existing methodology will, however, be applied to allocate general liability insurance costs). This proposed re-allocation is intended to more accurately reflect the portion of wildfire liability expense that is associated with electric transmission lines.[125/] In the event the FERC does not approve SDG&E's proposed allocation methodology, certain costs that SDG&E proposed to treat as FERC-jurisdictional would remain CPUC-jurisdictional. Should this occur, SDG&E requests in the Application authorization to add these costs to the ZFMA and to recover them in rates in the same manner as future liability insurance premium and insurance deductible expense increases.

SDG&E's use of the word "disallowance" in its Application to refer to the FERC's potential rejection of the proposed new allocation methodology has been the source of some confusion in this proceeding. SDG&E has made clear in prior filings, however, that the "disallowance" reference in the Application refers to the potential

[124/] SDG&E/Schavrien, Tr. Vol. 1, pp. 35; *see also, id* at pp. 19, 39 and 128.

FERC "disallowance" (*i.e.*, rejection) of its proposed allocation proposal – not of particular costs deemed by the FERC to be unrecoverable based upon a prudence review of SDG&E's expenses.[126]

Nevertheless, the confusion persists, with DRA asserting in its OB that it "sees no reason why the Commission should essentially second-guess FERC. There may be good reasons why FERC would choose to disallow *such expenses*, and the Commission would be well-advised to at least consider those reasons." Again, as previously explained by SDG&E, the "disallowance" discussed in the Application and supporting testimony refers to FERC's potential rejection of the proposed allocation methodology, not disallowance of particular expenses based upon a prudence review. Thus, DRA's argument is inapposite.

XI.
DRA IS MISTAKEN IN CLAIMING THAT SDG&E HAS FAILED TO SUPPORT ITS REQUEST FOR GENERAL LIABILITY EXPENSES

DRA asserts that SDG&E has failed to offer support for its request to apply Z-factor treatment to increased general liability insurance costs incurred beginning in the 2009-2010 renewal (as distinguished from wildfire liability insurance costs). DRA is incorrect. SDG&E's application requests authority to "recover unforeseen liability insurance premium and deductible expense increases as a Z-factor event." [127] In applying the eight Z-factor criteria SDG&E does not impose a distinction between wildfire and general liability insurance costs; the insurance costs are an aggregate

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[125] SDG&E/Schavrien, Exh. 1, pp. 18; SDG&E/Yee, Exh. 5.
[126] *See* "Response of SDG&E to Motion of Division of Ratepayer Advocates," filed January 20, 2010 in the above-captioned docket, pp. 7-9; SDG&E OB 55-59.
[127] Application, p. 1.

expense. The analysis set forth by SDG&E in its witness testimony and OB relates equally to general and wildfire liability insurance expenses.

DRA appears to have erroneously concluded that the negative impact of certain wildfire-related *factors* discussed by Mr. De Bont was only felt in the area of wildfire liability insurance. DRA claims "[t]hese four factors all relate to wildfire issues, and are thus logically linked to the Wildfire Liability premium expense for 2009."[128/] This is *not* in fact a logical conclusion. As Mr. De Bont has explained, prior to 2009, there was not a separate category of wildfire insurance liability insurance: "Prior to the 2009-2010 policy year, wildfire liability risk and general liability risk were homogenous; wildfire and general liability losses were treated the same with no differentiation between the two."[129/] Thus, losses incurred in 2007 were paid on the basis of the "general" liability insurance in existence at the time (since wildfire liability was covered therein and no separate "wildfire" insurance was in place).

Given this fact, it is logical to conclude that the claims paid out related to the 2007 fires would have a residual effect in the form of "payback" on general liability insurance in the 2009 renewal. Moreover, Mr. De Bont made clear in his testimony that "payback" was also the result of non-wildfire losses. Thus, the "payback" factor described in Mr. De Bont's testimony is the result of both wildfire and non-wildfire related losses:

> SDGE had a nearly 100% loss ratio for the prior 10 years for *non-wildfire third party liability losses*.[130/] Coupled with the fact that SDG&E submitted three wildfire claims to AEGIS for $105 million in losses (three claims and the full policy limit of $35 million each claim), SDG&E's complete past loss experience, wildfire and non-wildfire,

[128/] DRA OB, p. 19, p. 1.
[129/] SDG&E/De Bont, Exh. 4, p, MD-14.
[130/] This means that AEGIS paid out $1 in claims for every $1 paid in premiums.

> would lead any reasonable insurance professional to conclude that the terms offered by AEGIS were an economically viable risk transfer option.[131]

DRA's claim that "SDG&E has presented no evidence to support the notion that its General Liability premium expense should be recoverable under Z-factor" is wholly without merit.

Moreover, the focus of DRA's analysis is misplaced. The Z-factor analysis requires satisfaction of the eight Z-factor criteria; it does not require the Commission to determine that all five factors described by Mr. De Bont as causing a change in the insurance market apply equally to both types of insurance. The market conditions experienced beginning in 2009 for the liability insurance market (*both* general and wild-fire) were exogenous and outside SDG&E's control. California utilities felt the impact of the insurance market changes disproportionately, as compared with the general economy, with by far the greatest impact being on SDG&E. The aggregate liability insurance expenditure occurred after implementation of rates, is measurable and will have a major impact on SDG&E. The procurement process undertaken focused on both general and wildfire liability insurance, and was demonstrably reasonable. Thus, SDG&E has satisfied all eight Z-factor criteria for its aggregate (*i.e.*, both general and wildfire) liability insurance expenses beginning in the 2009-2010 renewal.

XII.
UCAN's CLAIMS REGARDING THE NUSIPR REPORT ARE ERRONEOUS

In its OB, UCAN argues that SDG&E "fanned the flames" of liability insurance cost increases by funding a study (the "NUSIPR Report") of fire preparedness in San

[131] SDG&E/De Bont, Exh. 4, p, MD-5-6 (emphasis in original).

Diego County.[132] UCAN claims that the NUSIPR Report is flawed and biased. UCAN's arguments are without merit. First, it is beyond dispute that San Diego is ill-prepared for fires and that its fire services are under-funded. This is abundantly clear from the conclusions regarding fire preparedness in San Diego County set forth in the Grand Jury report appended to Mr. Schavrien's direct testimony.[133] The San Diego Grand Jury report has no reason to take any position favoring SDG&E.

Second, the primary author of the NUSIPR Report has impeccable firefighting credentials. He has worked extensively in counties other than San Diego and has no reason to demonstrate bias toward SDG&E. His credentials (as set forth in the NUSIPR Report) speak for themselves:

> **Jeff Bowman** is currently completing his second year as Chair of the Scripps Health Board of Trustees having been appointed to the Board in 2004. He has served on hospital system boards for the past 12 years and has significant insight into quality, culture and leadership. Mr. Bowman recently retired as Chief of the San Diego Fire-Rescue Department. Prior to his San Diego appointment, he served in the Anaheim Fire Department for 28 years, 16 as Fire Chief.
> He also serves as a founding member of the San Diego Regional Fire Safety Forum. Mr. Bowman served as President of the California Fire Chief's Association and the Orange County Fire Chief's Association and was appointed to the State Board of Fire Services by Governor Pete Wilson in 1997. He has served on committees of the National Fire Protection Association and the International Association of Fire Chiefs. In 2004 Governor Arnold Schwarzenegger appointed him to the Governor's Blue Ribbon Commission to address statewide fire and emergency issues. Mr. Bowman was tasked with managing San Diego Fire-Rescue resources during the October 2003 firestorms that devastated San Diego County and was subsequently appointed to co-chair the San Diego Regional Fire Prevention Emergency Preparedness Task Force by the Mayor of San Diego and the County Board of Supervisors. He received community recognition for his management of the 2003 firestorms and was named "Fire Chief of the Year for 2004" by the Metropolitan Fire Chief's Association."[134]

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[132] UCAN OB, pp. 29-30.
[133] SDG&E/Schavrien, Exh. 1, Appendix A.
[134] NUSIPR Report, p. 79. (http://www.nusinstitute.org/assets/resources/pageResources/final-fire-report-2009.pdf)

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Thus, UCAN's assertions regarding the NUSIPR Report are wholly without merit. The conclusions set forth in the report are independently supported by the Grand Jury report and the notion that a veteran Fire Chief who managed county-wide fire resources during the 2003 firestorms in San Diego would be biased in favor of any SDG&E position is absurd.

XIII.
CONCLUSION

The record developed in this proceeding demonstrates by a preponderance of the evidence that SDG&E has experienced a multi-year Z-factor event and should be allowed timely cost recovery for the incremental costs associated with this event, less the applicable one-time $5 million deductible. SDG&E has met its burden to show that the eight Z-factor criteria have been satisfied; no party has offered convincing evidence to the contrary. As discussed in SDG&E's OB, grant of the relief requested by SDG&E will satisfy the Commission's obligation to ensure that SDG&E has the opportunity to earn a fair rate of return. It will also further the Commission's regulatory policy of allowing cost-of-service regulated utilities like SDG&E to recover reasonable costs incurred in the performance of utility service. Accordingly, the specific relief requested in the Application should be granted.

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Dated this 28th day of May, 2010 in San Diego, California

Respectfully Submitted,

/s/ *Aimee M. Smith*
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing letter re **REPLY BRIEF OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)** on all parties identified in Docket No. A.09-08-019 by U.S. mail and electronic mail, and by Federal Express to the assigned Commissioner(s) and Administrative Law Judge(s).

Dated at San Diego, California, this 28th day of May, 2010.

/s/ JOEL DELLOSA
Joel Dellosa

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