

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of San Diego Gas & Electric Company (U902M) for authority to update its gas and electric revenue requirement and base rates effective on January 1, 2008.

A.06-12-009
(Filed December 8, 2006)

Application of Southern California Gas Company (U904G) for authority to update its gas revenue requirement and base rates effective on January 1, 2008.

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(Filed December 8, 2006)

Order Instituting Investigation on the Commission's own motion into the rates, operations, practices, services and facilities of San Diego Gas & Electric Company and Southern California Gas Company.

I.07-02-013
(Filed February 15, 2007)

**MOTION
OF THE DIVISION OF RATEPAYER ADVOCATES
FOR A STAY OF DECISION 10-04-003**

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I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

Pursuant to Rules 11.1 and 16.4 of the California Public Utilities Commission's ("CPUC" or "Commission") Rules of Practice and Procedure and Public Utilities Code Section 1735, the Division of Ratepayer Advocates ("DRA") files this Motion for A Stay ("Motion") of Decision ("D." or "the Decision") 10-04-003. DRA asks for the stay pending resolution of DRA's Application for Rehearing of D.10-04-003 which is also being filed today.

On April 13, 2010, the Commission issued D.10-04-003, *Decision Denying the Petition to Modify Decision 08-07-046 Which Requires Test Year 2012 General Rate Cases for San Diego Gas & Electric Company and Southern California Gas Company*.

D.10-04-003 denies the Petition to Modify D.08-07-046 and orders the Sempra Utilities, San Diego Gas and Electric Company (“SDG&E”) and Southern California Gas Company (“SoCalGas”), to file general rate case (“GRC”) applications for Test Year 2012. As described in detail in DRA’s Application for Rehearing, D.10-04-003 is based on legal and factual errors, ultimately reaching a conclusion that is arbitrary and capricious. DRA’s Application for Rehearing asks the Commission to grant the relief requested in the Petition to Modify, thereby setting the next general rate cases for the Sempra Utilities for a Test Year 2013.

In the meantime, however, DRA expects that the Sempra Utilities intend to comply with D.10-04-003 and are, thus, likely to serve their Notices of Intent (“NOIs”) this summer, and file their GRC applications at the end of 2010. DRA, therefore, asks for a stay of D.10-04-003 while the Commission considers DRA’s Application for Rehearing.

II. BACKGROUND

In December 2006, the Sempra Utilities filed GRC applications seeking a revenue requirement increase for the 2007 Test Year (“TY”). In August 2008, the Commission issued Decision 08-07-046 which adopted revenue requirements for TY 2008 for both SDG&E and SoCalGas, as well as for post-test years 2009, 2010 and 2011. In so doing, D.08-07-046 adopted various settlements between the Sempra Utilities, DRA and, in some cases, other parties. One agreement between the Sempra Utilities and DRA which the Commission did not adopt, however, would have had the next Sempra GRC with a Test Year of 2013.

In March 2009, the Commission issued its decision, D.09-03-025, in the Southern California Edison (“SCE” or “Edison”) TY 2009 GRC. D.09-03-025, among other things, set the next GRC for Edison for a TY 2012. With the adoption of D.09-03-025,

the possibility that the Commission would be facing GRCs for three of the four major California energy utilities in TY 2012 (and none in TY 2013) became a certainty.

On November 5, 2009, DRA and the Sempra Utilities filed a Petition to Modify D.08-07-046. The Petition to Modify asked the Commission to change the dates for the next Sempra Utilities' GRCs to a TY 2013. The Petition included a revenue requirement for SDG&E and SoCalGas that allowed them one year's protection against rising costs in the form of attrition increase and memorandum or one-way balancing account treatment for other limited costs.

The revenue requirement proposed in the Petition was opposed by The Utility Reform Network ("TURN"), Aglet Consumer Alliance ("Aglet") and the Utility Consumers' Action Network ("UCAN"). Their primary recommendation was that the Commission extend the GRCs of SDG&E and SoCalGas to TY 2013, but deny authorization of additional attrition revenue requirements and other ratemaking changes for 2012. The alternative TURN/Aglet/UCAN proposal was that the Commission extend the Sempra GRCs to 2013 and 'defer consideration of reasonable attrition revenue requirements to allow full participation by other parties.

On February 10, 2010, SDG&E and SoCalGas filed a motion to withdraw the Petition noting that, in the absence of a decision on the Petition, they needed to begin work to timely file a notice of intent to file a TY 2012 GRC application. On February 17, 2010, DRA filed a response to the Sempra motion asking the Commission to continue consideration of the Petition since the problem that prompted the filing of the Petition, overlapping GRCs, still had not (and has not) been resolved, and noting that, while there was disagreement on how best to determine an appropriate revenue requirement for the Sempra utilities if their next GRC were deferred, all active parties appear to agree that overlapping the GRCs of SCE, SDG&E and SoCalGas should be avoided.¹

On March 5, 2010, four months after the Petition for Modification was filed, a Proposed Decision (PD) was issued denying the Petition. DRA filed Comments to the

¹ DRA Response to Motion to Withdraw, p. 5.

PD identifying the legal and factual errors and proposing findings of fact and conclusions of law that would correct those errors. The final decision, D.10-04-003, made some changes to the PD, but still denied the Petition for Modification. D.10-04-003 requires SDG&E and SoCalGas to file TY 2012 GRCs.

As discussed in DRA's Application for Rehearing, D.10-04-003 is based on legal and factual errors and should be corrected to set the next Sempra Utilities' GRCs for a TY 2013. While the Commission considers the Application for Rehearing, DRA asks that D.10-04-003 be stayed.

III. GOOD CAUSE EXISTS TO STAY THE EFFECTIVENESS OF D.10-04-003

Section 1735 of the Public Utilities Code provides that:

[a]n application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission by order directs.

The Commission generally considers the following when deciding whether to grant a stay: (1) whether the moving party will suffer serious or irreparable harm if the stay is not granted; (2) whether the moving party is likely to prevail on the merits; (3) a balance of the harm to the moving party (or the public interest) if the stay is not granted and the decision is later reversed, versus the harm to other parties (or the public interest) if the stay is granted and the decision is later affirmed; and (4) other factors relevant to the particular case.²

² D.08-04-044, p. 3; D.07-08-034, p. 4.

A. Whether the Moving Party Will Suffer Serious or Irreparable Harm if the Stay is Not Granted

In this case, DRA's concern is the potential for serious or irreparable harm to the public utility customers DRA is charged with representing. DRA has the following mandate from the Legislature:

There is within the commission a Division of Ratepayer Advocates to represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the commission. The goal of the division shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels.³

In energy matters, the Commission itself has assigned DRA a prominent role in general rate cases.⁴ Thus, for the three major energy utilities' GRCs that D.10-04-003 now has scheduled simultaneously, DRA is responsible for reviewing the utilities' submissions even before they are filed⁵ and for representing the utilities' customers for the duration of the proceedings, however long they last.

Since none of the three utilities has filed an application yet, DRA obviously cannot say with certainty what harm will result. Nonetheless, DRA notes that, in recent years, the rate increase requests of each of the major energy utilities has increased substantially with every filing, even during this, one of the worst economic periods in California history.

Rates set in a GRC can have a profound effect on the lives and livelihoods of millions of the utility's customers. Rates set in a GRC can also have serious consequences for the health of the California economy. Thus, determining the appropriate revenue requirement in a GRC is a delicate balancing act, and one of the most important of the Commission's responsibilities. Therefore, and not surprisingly, energy utility GRC proceedings are enormous undertakings for all parties involved. The TY

³ Public Utilities Code Section 309.5.

⁴ D.07-07-004, Opinion Modifying Energy Rate Case Plan.

⁵ D.07-04-004

2008 Sempra GRC, for example, involved testimony, supplemental testimony and rebuttal from the Applicants, over 40 volumes of testimony from DRA, extensive testimony from other parties, and thousands of pages of discovery relating to hundreds of different rate increase requests.⁶ The TY 2008 SDG&E and SoCalGas cases eventually resulted in revenue requirement settlements adopted by the Commission.⁷

The last SCE GRC did not settle. To support its TY 2009 GRC application, SCE provided over 8,500 pages of testimony, 53,000 pages of workpapers and sponsored more than 100 witnesses. DRA presented more than 20 witnesses, each sponsoring a separate area of testimony. Numerous other parties also provided testimony and witnesses resulting in hundreds of exhibits and thousands of pages of transcripts.⁸ In all, there were four Alternate Draft Decisions in the SCE GRC before a final decision was adopted in March 2009.

Clearly, to do a thorough review of one general rate case application for a large energy utility places huge demands on the resources and time of all parties involved. As the party charged with representing and advocating on behalf of the utilities' customers, DRA is extremely concerned that the customers of SCE, SoCalGas and SDG&E will suffer serious or irreparable harm if the Commission tries to conduct these three GRCs simultaneously. For example, if the Commission adopts rates that include unjust or unreasonable charges because of a lack of thorough review of the utilities' applications, even if the error is discovered later, it may be difficult, if not impossible, to return the money to the affected ratepayers.

B. Whether the Moving Party is Likely to Prevail on the Merits

DRA should prevail on the merits of its Application for Rehearing. DRA's Application sets forth the specific legal and factual errors in D.10-04-003 and DRA will

⁶ D. 08-07-046, mimeo, p. 82.

⁷ D.08-07-046 as modified by D. 09-06-052.

⁸ D.09-03-025, p. 6.

not repeat them all here. One, however, should be of immediate concern to the Commission as it considers this Motion for a Stay: the potential violation of Public Utilities Code Section 309.5(c) if the errors in D.10-04-003 are not corrected.

As noted above, Section 309.5 states that “[t]here is, within the commission, a Division of Ratepayer Advocates to represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the commission.”² The Commission, for its part, is *required* to “provide for the assignment of personnel to, and functioning of the division.”

The statute goes on to state that:

[p]ersonnel, and resources, including attorneys and other legal support, shall be provided by the commission to the division at a level sufficient to ensure that customer and subscriber interests are effectively represented in all significant proceedings.¹⁰

As the Application for Rehearing notes, D.10-04-003 does not address this requirement. Instead, D.10-04-003 relies on a finding from an unrelated case two years to conclude that the Commission and DRA have sufficient resources to process simultaneous test year 2011 GRCs.¹¹

As the Application for Rehearing points out, scheduling three major energy utility GRCs for the same test year (TY 2012, *not* TY 2011) based on a dated finding from another case does not meet the requirements of Section 309.5. The Commission *must* ensure that DRA has the “[p]ersonnel, and resources, including attorneys and other legal support,” to represent and advocate on behalf of the interests of public utility ratepayers in all GRCs. D.10-04-003 does not do so. This failing, alone, merits granting DRA’s Application for Rehearing.

² Public Utilities Code Section 309.5(a).

¹⁰ Public Utilities Code Section 309.5(c).

¹¹ D.07-03-044, Finding of Fact 28, cited in D.10-04-003 at p. 9, emphasis added.

C. Balancing the Public Interest and Interest of the Parties

The balance of harm is greater if the stay is *not* granted and the decision is later reversed, than if the stay *is* granted and D.10-04-003 is later affirmed. If the stay is *not* granted and D.10-04-003 is later reversed, then the scarce time and resources that DRA, the Commission, and other involved parties will have spread thin to review three GRCs simultaneously will have to be redirected to do a thorough review of the SCE GRC application.

On the other hand, if the stay *is* granted and D.10-04-003 is affirmed, the Commission will, presumably, have found a way of correcting the errors that currently put the ratepayers of all three utilities at risk of serious harm of rates that are unjust or unreasonable, or service that is unsafe or unreliable. A stay will also protect the Sempra Utilities from being out of compliance with the orders of D.10-04-003.

IV. CONCLUSION

For all the foregoing reasons, DRA asks the Commission to stay D. 10-04-003 pending resolution of DRA's Application for Rehearing.

Respectfully submitted,

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May 13, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**MOTION OF THE DIVISION OF RATEPAYER ADVOCATES FOR A STAY OF DECISION 10-04-003**” in **A.06-12-009, A.06-12-010 and I.07-02-013** by using the following service:

E-Mail Service: sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **May 13, 2010** at San Francisco, California.

/s/ JAIME VADO
Jaime Vado

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