

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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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)

**APPLICATION FOR REHEARING
OF THE DIVISION OF RATEPAYER ADVOCATES
OF DECISION 10-04-003**

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I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

On April 13, 2010, the Commission issued *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*. Pursuant to Rule 16.1 of the Commission's Rules of Practice and Procedure¹, the Division of Ratepayer Advocates ("DRA") files this Application for Rehearing of the Decision.

¹ Rule 16.1 provides that an application for rehearing shall be filed within 30 days after the date the Commission mails the order or decision. The date of issuance of D.10-04-003 was April 13, 2010.

Decision (“the Decision” or “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 applications for Test Year 2012. D. 10-04-003 is based on legal and factual errors, ultimately reaching a conclusion that is arbitrary and capricious. DRA asks the Commission to grant rehearing of the Decision, and 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.

II. BACKGROUND

In December 2006, the Sempra Utilities filed GRC applications seeking a revenue requirement increase for the 2007 Test Year (“TY”). As part of those applications, the Sempra Utilities also asked for revenue requirement increases in each of the next five attrition years so their next GRCs would be for TY 2014. As required by law, the notices the Sempra Utilities sent to customers, and caused to be published, included both the revenue requirement amounts the utilities sought, and the fact that they were asking for attrition years 2009 through 2013.²

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 GRCs 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,

² SoCal Gas Proof of Publication and Posting, and SDG&E Proof of Publication and Posting (A.06-12-009/ A. 06-12-010.)

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.

Determining the appropriate outcome for a GRC is one of the most important and fundamental of the Commission's responsibilities. In deciding a GRC, the Commission must set a revenue requirement that ensures the provision of safe, reliable utility service and infrastructure at reasonable rates.

Rates set in a GRC can have a profound effect on the lives and livelihoods of millions of the utility's customers, as well as serious consequences for the health of the California economy. GRCs, especially those of the major energy utilities, are also extremely labor and resource intensive for everyone involved: the utilities, DRA, intervenors, the Commission's Energy Division and Administrative Law Judge Division, and, ultimately, the Commissioners and their staff. In fact, as the Commission recognized in D.08-07-046, "[b]ecause of the burden of these GRCs on all parties, we prefer to avoid overlapping proceedings."³

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

³ D.08-07-046, Finding of Fact 34.

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.⁴

On March 5, 2010, four months after the Petition to Modify was filed, a Proposed Decision (PD) was issued denying the Petition. DRA filed Comments to the PD identifying the legal and factual errors and proposing findings of fact and conclusions of law that would correct those errors. The final decision made some changes to the PD, but still denies the Petition to Modify and requires SDG&E and SoCalGas to file TY 2012 GRCs. As discussed below, the final decision is based on legal and factual errors and should be corrected to grant the relief requested in the Petition for Modification setting the next Sempra GRCs for a TY 2013.

III. STANDARD OF REVIEW

Public Utilities Code Section 1757 provides that, when a reviewing court undertakes consideration of the validity of a Commission decision, it considers, among other things, whether “...the findings in the decision of the commission are not supported by substantial evidence in light of the whole record.”⁵ Rule 16.1 directs applicants for

⁴ DRA Response to Motion to Withdraw, p. 5.

⁵ Public Utilities Code §1757(a)(1) and (a)(4).

rehearing to “...set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous.”⁶

The conclusion of D.10-04-003 to deny the Petition to Modify violates Section 309.5 of the Public Utilities Code, and is arbitrary and capricious in that the Findings of Fact and Conclusions of Law specified below are not supported by the law or the record, and are contradicted by acts of the Commission and facts not reasonably subject to dispute. The Commission should grant rehearing and order the Sempra Utilities to file their next GRCs for a TY 2013.

IV. LEGAL AND FACTUAL ERRORS

A. Scheduling Three Major Energy Utility GRCs Simultaneously As D.10-04-003 Has Done Violates Public Utilities Code Section 309.5

D.10-04-003 denies the Petition to Modify and requires SDG&E and SoCalGas to file TY 2012 GRCs. SCE is also filing a TY 2102 GRC.⁷

As justification for scheduling these three major energy utility GRCs simultaneously, the Decision says that, in D.08-07-046, the Commission “... found, as a matter of public policy, six years was too long a period without a *thorough* review of utility operations.”⁸

In fact, denying the Petition to Modify as D.10-04-003 has done ensures that there will *not* be a thorough review of utility operations for SCE, SDG&E and SoCalGas. D.10-04-003 violates Section 309.5 of the Public Utilities Code.

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.”⁹ The Commission,

⁶ Rule 16.1.

⁷ See D.09-03-025, p. 2

⁸ D.10-04-003, p. 8, emphasis added.

⁹ Public Utilities Code Section 309.5(a).

for its part, is *required* to “provide for the assignment of personnel to, and functioning of the division.”

The statute is clear:

Personnel, 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

Rather than address this requirement, that the Commission provide staff and resources sufficient to represent ratepayers in three major energy utility GRCs simultaneously, D.10-04-003 relies on a finding from an unrelated case two years ago that is irrelevant to the situation now. That Finding of Fact is the following:

28. The Commission and DRA have sufficient resources to process simultaneous test-year 2011 GRCs for PG&E, SDG&E and [SoCalGas.]¹¹

The Petition challenged that argument noting that there is no factual basis to apply Finding of Fact 28 to the instant case.¹² Finding of Fact 28 refers to processing simultaneous test- year **2011** GRCs. The subject at hand is whether the Commission and DRA have sufficient resources to process three simultaneous GRCs for test-year **2012**. As DRA noted in its Comments to the PD, nothing in the record in this case, or the record in *any* case that DRA is aware of, supports applying Finding of Fact 28 to test year 2012.¹³

Even if Finding of Fact 28 actually addressed the right year, circumstances have changed greatly since 2007 when D.07-03-044 was issued. Scheduling three major energy utility GRCs for the same test year based on a dated finding from another case does not meet the requirements of Section 309.5. The Commission must ensure that

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.

¹² Petition to Modify, p. 4.

¹³ DRA Comments, p. 9.

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. The conclusion of D.10-04-003 to schedule three major energy GRCs simultaneously sets the Commission on a course to violate Section 309.5, and is legal error.

B. Scheduling Three Major Energy Utility GRCs Simultaneously Is Arbitrary and Capricious

Not only does scheduling these three overlapping GRCs as D.10-04-003 has done violate Section 309.5, it also puts the Commission in jeopardy of failing to meet its own mandate. The point of a GRC is to conduct a “thorough” review of a utility’s operations, and the Commission must allow sufficient time and sufficient staffing for such a review to take place. Far from advancing any legitimate public policy, scheduling three major energy utility GRCs simultaneously undermines one of the key functions of the Commission: to ensure safe and reliable service at just and reasonable rates. Although the Petition raises that issue, D.10-04-003 fails to address it.

The Petition points out that:

[a]s the Commission well knows, the processing of general rate case proceedings is a resource intensive effort, particularly for the Commission, its staff and DRA. Given limited CPUC staff resources, the Joint Parties believe that a one-year extension will promote administrative efficiency by eliminating the administrative burden that would otherwise be imposed on the Commission staff (and the Commission itself by allowing these issues NOT to be litigated in the same time period as SCE’s TY 2012 GRC. Furthermore, a one-year deferral, as proposed in this petition, will eliminate the requirement that other parties try to participate in more than one GRC proceeding simultaneously.

Instead of addressing this resource issue, D.10-04-003 dismisses it as “DRA’s concern for its workload¹⁴”

As discussed above, the Commission, too, should be concerned for DRA’s workload since the Commission is *required* to ensure DRA has adequate resources to

meet it. However, in characterizing the Petition as based merely on DRA's concern for DRA's workload, D10-04-003 fails to explain how the Commission is going to ensure a thorough review of three major energy utilities' operations and rates simultaneously. Ratepayers of these three major energy utilities are certainly entitled to know that, and the failure of D.10-04-003 to address the issue at all is arbitrary and capricious.

As the Petition points out, energy utility GRC proceedings are enormous undertakings for all parties involved. The TY 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.¹⁵ The TY 2008 SDG&E and SoCalGas cases eventually resulted in revenue requirement settlements adopted by the Commission.¹⁶

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.¹⁷ In all, there were four Alternate Draft Decisions in the SCE GRC before a final decision was adopted in March 2009.

Clearly, processing one general rate case for a large energy utility places huge demands on the resources and time of all parties involved. In the end, the Commission must make a determination of the appropriate revenue requirement by weighing the evidence the parties have introduced in the record. Given the recent experience of the Commission in processing just *one* major energy utility GRC, how the Commission

(continued from previous page)

¹⁴ D.10-04-003, p. 12.

¹⁵ D. 08-07-046, mimeo, p. 82.

¹⁶ D.08-07-046 as modified by D. 09-06-052.

¹⁷ D.09-03-025, p. 6.

intends to process *three* simultaneously is a material issue. The failure of D.10-04-003 to address the issue at all is error.

C. Errors Relating to “Allegations of New Facts,” Finding of Fact 3 and Conclusion of Law 1

D.10-04-003 cites to Rule 16.4 and says that:

Petitioners must also ensure that any allegations of “new or changed facts must be supported by an appropriate declaration or affidavit.” We find that Petitioners failed to make any showing of new or changed facts, and included no affidavit to support any such allegations as required in Rule 16.4.¹⁸

This language is taken from the Proposed Decision and is factually wrong. In Comments to the PD, DRA pointed out that the Petition clearly identified new or changed facts since D.08-07-046 was issued. As the Petition states:

[I]n the instant case, the Commission issued its decision in the SDG&E and SoCalGas GRCs in July 2008. At that time, it was not clear that there would be a conflict with any other major energy utility for overlapping GRCs in TY 2012. However, when the Commission issued its decision in March 2009 setting SCE’s next GRC for TY 2012, the threat of an overlap became a certainty.¹⁹

Thus, when the Commission issued D.08-07-046, overlapping GRCs were a possibility. When the Commission issued D.09-03-025, overlapping GRCs became a certainty. This is a “new fact.”

Apparently to address this factual error in the PD, the final Decision adds the following language:

DRA asserts in its Comments ... that it satisfied the “new facts” requirement and thus there was a legal error in the proposed decision. This is not true. DRA incorrectly asserts that because the overlap of two rate cases foreseen in D.08-07-046 has now occurred, this is therefore a new fact.

¹⁸ D. 10-04-003, p. 10.

¹⁹ Petition, p. 3.

Nothing has changed: the expected overlap is simply expected to occur later this year as anticipated in 2008. Nor has anything substantively changed about the relative size of DRA or its skill set then or now that constitutes a new or changed fact. The anticipated impacts and challenges to the parties in 2008 are still the likely impacts and challenges later in 2010 when the applications are filed.²⁰

The Decision then adopts the PD’s Finding of Fact 3 which says that “[n]o new facts were identified in the petition.”²¹ The Decision also adopts the PD’s Conclusion of Law 1 which says that “[t]he petition to modify D.08-07-046 does not comply with the requirements of Rule 16.4.”²²

Nothing in these statements, nor in the text quoted above, salvages the fallacious reasoning of the PD. Instead, the text adds to the legal and factual errors on which the PD was based.

Three overlapping major energy utility GRCs only became a fact, as opposed to a “likelihood,”²³ when the Commission adopted D.09-03-025, seven months *after* the Commission adopted D.08-07-046. A “fact” is defined as an “actuality;”²⁴ a “likelihood” is defined as a “probability.”²⁵ There is a difference. And, when a probability becomes an actuality, there is a change. Basing denial of the Petition on the argument that the Petition did not allege new facts or that “nothing has changed,” is factual error.

As to basing denial of the Petition on the argument that “the anticipated impacts and challenges to the parties in 2008 are still the likely impacts and challenges later in 2010 when the applications are filed,” this, too, is error. In fact, the Petition includes information about “impacts and challenges to the parties” in 2008 and 2010 that directly contradicts this conclusion.

²⁰ D.10-04-003, p. 10, emphasis added.

²¹ D.10-04-003, p. 13.

²² D.10-04-003, p. 13.

²³ D.10-04-003, p. 13, Finding of Fact 2, emphasis added.

²⁴ Merriam-Webster’s Collegiate Dictionary, (10th ed. 2001) p. 415.

²⁵ Merriam-Webster’s Collegiate Dictionary, (10th ed. 2001) p. 673.

The Petition described a number of energy proceedings as new or changed facts since D.08-07-046 was issued.²⁶ As the Petition noted:

For example, in the area of wildfire related matters alone, there has been an unprecedented spate of activity. In August 2008, the Commission opened a Rulemaking²⁷ to revise and clarify the safety regulations that apply to electric and telecommunications facilities. Phase 1 of that Rulemaking led to the adoption of new measures to reduce fire hazards. Phase 2 has recently started, and involves so many difficult issues and active parties that the Commission has taken the step of naming two neutral Administrative Law Judges (ALJs) for alternative dispute resolution, in addition to the ALJ presiding over the proceeding. As of this writing, no Phase 2 Scoping Memo has been issued, but the ALJ Ruling setting the pre-hearing conference describes six major areas that “require more time to consider and implement.”²⁸ One of the issues in that proceeding is how the utilities will track and recover the costs of these expenses, which is an important issue for DRA.

In August 2009, SDG&E filed an application for authorization to recover “unforeseen liability insurance premium and deductible expense increases as a Z-factor event.”²⁹ Also in August 2009, SDG&E and the other investor owned utilities initiated a proceeding in which they seek authority to establish a “Wildfire Expense Balancing Account (WEBA).”³⁰ As of this writing, none of these proceedings has resolved, and all appear likely to involve significant investments of time and resources by parties and the Commission for the remainder of 2009, into 2010, and possibly 2011.

In addition to these pending proceedings, in the past year, the Commission has seen an increase in filings by energy utilities

²⁶ Petition, pp. 4-5.

²⁷ Order Instituting Rulemaking (R.) 08-11-005.

²⁸ ALJ Ruling Setting a Prehearing Conference (PHC), September 18, 2009.

²⁹ A.09-08-019.

³⁰ A.09-08-020.

outside of GRCs. For example, in May 2008, PG&E filed an application seeking to establish a \$2.4 billion Distribution Reliability Improvement Program.³¹ As of this writing, this application is still pending.

On October 16, 2009, Sierra Pacific Power Company and the California Pacific Electric Company, LLC filed an application seeking authorization for transferring control of the utility that provides service in California.

These and other filings are a significant drain on the Commission's and DRA's resources. Nor is there any indication that this trend in increased filings is likely to abate. With a finite pool of resources and an ever-increasing workload, it is no longer reasonable or prudent to attempt to process three GRCs simultaneously when, as here, it is also not necessary. In fact, absent approval of this petition granting a one-year deferral, there will be three GRCs (SCE, SDG&E and SoCalGas) filed simultaneously for TY 2012 and no GRC for a major utility for TY 2013. This would be an unproductive and inefficient use of Commission resources.³²

The proceedings discussed in the Petition are only a microcosmic example of the increased volume and complexity of other energy proceedings vying for the time and attention of the Commission, DRA and other interested parties.³³ To DRA's knowledge, no party argued that these anticipated impacts and challenges are "likely the same" as in 2008, and there is no factual basis to support the statement that they are.

D. Errors Relating to the Decision's Discussion of Citations to the Record

The Decision includes language from the PD that "Petitioners failed to make any showing of new or changed facts, and included no affidavit to support any such allegations as required in Rule 16.4."³⁴ This criticism is unfounded. As discussed

³¹ A.08-05-023.

³² Petition, pp. 4-5.

³³ Petition, pp. 4-5.

³⁴ D. 10-04-003, p. 10.

above, the Petition’s allegations of “new or changed facts” were based on decisions and proceedings issued, initiated or being addressed after the Commission adopted D.08-07-046. Each of the decisions and proceedings that is the basis of the “new and changed facts” alleged in the Petition is cited in the Petition.

Unless the Commission is now classifying Commission decisions as “allegations” or suggesting that parties must include declarations or affidavits to draw the Commission’s attention to its own decisions, orders or proceedings before it, rehearing should be granted to delete this passage. Basing denial of the Petition on the argument that the Petition “included no affidavit to support any such allegations” of new or changed facts is error.

The text of D.10-04-003 also says:

Petitioners must also ensure that any ‘factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed.’ We find that Petitioners fail to make any of the necessary citations to the record in A.06-12-009 et al., and thus fail to comply with this required element in Rule 16.4.³⁵

This language, too, is taken from the Proposed Decision. In its Comments to the PD, DRA pointed out that the Petition includes numerous citations to D.08-07-046, which decided A.06-12-009. In case the Commission truly intended to establish a policy that parties petitioning the Commission to modify a decision must ask the Commission to take official notice of its own decisions or proceedings, DRA asked that the Commission take official notice of D.08-07-046, D.09-03-025, R.08-11-005, A.09-08-019, A.08-09-020 and A.08-05-023.

According to Rule 13.9, “[o]fficial notice may be taken of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 et seq.”

According to Section 452 of the Evidence Code:

³⁵ D.10-04-003, p. 10.

452. Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:

- (c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.
- (h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

Thus, in its Comments, DRA asked the Commission to take official notice of Decisions 08-07-046 and 09-03-025.³⁶ These are official acts of the California Public Utilities Commission and fall within the meaning of Evidence Code Section 452(c).

In its Comments, DRA also asked the Commission to take official notice of R.08-11-005, A.09-08-019, A.08-09-020 and A.08-05-02.³⁷ These are all proceedings before the Commission. That these are Commission proceedings are facts not reasonably subject to dispute, but, rather, are facts capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

D.10-04-003 does not address either DRA's argument or DRA's request that the Commission take official notice of its own proceedings. Unless the Commission is now saying that parties petitioning the Commission to modify a decision must ask the Commission to take official notice of its decision, rehearing should be granted to delete this passage. Basing denial of the Petition on the argument that the Petitioners failed "to make any of the necessary citations to the record in A. 06-12-009 et al." is error.

E. Errors Relating to Customer Notice, Finding of Fact 4, and Conclusion of Law 2

The Decision adopts language from the PD that:

[t]he petition also fails because, if granted as filed, it would grant a rate increase without notice to customers (Rule 3.2)

³⁶ DRA Comments, p. 6.

³⁷ DRA Comments, p. 6.

and without notice there could be no due process. There has been no examination of the rate proposals added to the 2012 attrition allowance over the allowances included in the original settlement proposal.³⁸

In Comments, DRA pointed out that these statements are factually and legally wrong.³⁹ After filing their TY 2008 GRC Applications, the Sempra Utilities each filed a Proof of Compliance with Rule 3.2 on February 27, 2007. Both the SDG&E and the SoCalGas Proofs of Compliance with Rule 3.2 are part of the Commission's formal file in A.06-09-012 et al. These documents include the notices mailed to governmental entities, the bill inserts mailed to customers, the notices posted in the utilities' branch offices and payment offices, and the notices published in newspapers.

All of the notices reference the revenue increase the utilities sought in their applications. For SoCalGas, that was a \$167.356 million proposed revenue increase for TY 2008.⁴⁰ For SDG&E it was a \$192.5 million (electric) proposed revenue increase, and a \$44.2 million (gas) proposed revenue increase or a total \$236.7 million increase for TY 2008.⁴¹ The notices for each utility say that, in addition to the request to increase base rates effective January 1, 2008, the utility "...proposes a formula for adjusting its base rates in 2009 through 2013 to reflect the cost of equipment and the impacts of inflation during that time period."⁴² The formula the utilities proposed in their application was to be applied to the utilities' proposed 2008 base margin revenues.⁴³

The *authorized* 2008 base margins for both SoCalGas and SDG&E were less than the levels noticed to customers. The reduction in the authorized base margin of about

³⁸ D.10-04-003, p. 11-12.

³⁹ DRA Comments, p. 6.

⁴⁰ SoCalGas Proof of Publication and Posting (A.06-12-009/ A.06-12-010.)

⁴¹ SDG&E Proof of Publication and Posting (A.06-12-009/ A.06-12-010.)

⁴² Southern California Gas Company Notice of Proposed Increase in Gas Rates Application No. 06-12-010; San Diego Gas and Electric Company Notice of Proposed Increase in Gas and Electric Rates Application No. 06-12-009.

⁴³ See Motion of Joint Parties for Adoption of Settlement Agreement Regarding Post-Test Year Ratemaking, p. 4.

\$195 million below the amount the utilities requested in their application also reduces the annual increases and resulting base margins for the post test years from what the utilities noticed to their customers.

Using the lower authorized 2008 base margin, SoCalGas' proposed annual increase for 2012 was \$68.4 million and SDG&E's was \$50.7 million.⁴⁴ Since the authorized 2008 base margin was lower than authorized, the ultimate 2009, 2010, 2011 and 2012 base margins will also be much lower than originally noticed due to the much lower test year base margin. The attrition levels in the Petition are \$56 million for SoCalGas, and \$41.2 million for SDG&E. Even including the potential amounts that would be subject to reasonableness review or possible disallowance later, the total base margin for 2012 in the Petition is much lower than the base margin that would have resulted from the formula in the original application that were noticed.

Apparently to address the factual and legal errors relating to the issue of notice, the final Decision adds the following footnote:

In its Comments ..., DRA asserts incorrectly that there was adequate notice and thus legal error in the proposed decision. DRA cites to the original customer notice on February 27, 2007 for the original application, making the tenuous argument that the rate increase proposed by DRA in its petition to modify is less than the increase originally sought in the application. The proceeding was closed by D.08-07-046 and customers should be able to rely on such closure to end their risk for a rate increase without new notice.⁴⁵

The Decision then adopts the PD's Finding of Fact 4 which states that "[t]here was no customer notice of the proposed rate increase within the proposed 2012 attrition year requested in the petition."⁴⁶ The Decision also adopts the PD's Conclusion of Law 2

⁴⁴ Motion of Joint Parties for Adoption of Settlement Agreement Regarding Post-Test Year Ratemaking, Attachment A, p. 1.

⁴⁵ D.10-04-003, p. 12, footnote 8.

⁴⁶ D.10-04-003, p. 12.

which states that “[t]he petition to modify D.08-07-046 does not comply with the requirements of Rule 3.2.”⁴⁷

Nothing in these statements, nor in the footnote, refutes the fact that the utilities’ original notices to customers referenced a post test year formula added to the test year 2008 base margin request that comprised a much higher cumulative base margin (and increase) for the year 2012 as compared to the amounts proposed in the Petition. Nor is any authority provided in the Decision to support the conclusion that the notice actually given to customers did *not* meet the requirements of due process.

For the reasons discussed above, both Finding of Fact 4 and Conclusion of Law 2 are factually and legally wrong.

V. CONCLUSION

For all the foregoing reasons, DRA recommends that the Commission grant this Application for Rehearing and amend Decision 10-04-003 and D.08-07-046 to incorporate the changes discussed above.

Respectfully submitted,

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⁴⁷ D.10-04-003, p. 13.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**APPLICATION FOR REHEARING OF THE DIVISION OF RATEPAYER ADVOCATES 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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