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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Application of SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) For Authority To Update Marginal Costs, Cost Allocation, And Electric Rate Design.	Application 11-10-002 (Filed October 3, 2011)

RESPONSE OF THE VOTE SOLAR INITIATIVE IN SUPPORT OF THE MOTION OF UTILITY CONSUMERS' ACTION NETWORK FOR A PRELIMINARY RULING DETERMINING SAN DIEGO GAS & ELECTRIC'S RATE DESIGN APPLICATION VIOLATES THE PUBLIC UTILITIES CODE AND COMPELLING SDG&E TO RESUBMIT ITS GRC PHASE 2 APPLICATION

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Dated: November 17, 2011

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Pursuant to Rule 11.1(e) of the Rules of Practice and Procedure of the California Public Utilities Commission and the e-mail sent to parties in the docket on November 1, 2011 by Mr. Gregory E. Barnes notifying parties of Administrative Law Judge Yip-Kikugawa's ruling setting the date for responses as November 17, 2011, The Vote Solar Initiative (Vote Solar) hereby responds in support of the Motion of Utility Consumers' Action Network (UCAN) for a Preliminary Ruling Determining San Diego Gas & Electric's Rate Design Application Violates the Public Utilities Code and Compelling SDG&E to Resubmit its GRC Phase 2 Application filed in the above captioned proceeding on October 27, 2011 (Motion).

In its Motion, UCAN asserts that three aspects of SDG&E's Application (A.) 11-10-002 violate myriad provisions of the California Public Utilities Code: (1) a proposed Network Use Charge, (2) a proposed Basic Service Fee; and (2) a proposed Prepay Service Option. UCAN requests that the Commission issue a preliminary ruling rejecting A.11-10-002 and that the Commission direct SDG&E to resubmit an application that complies with the requirements of the Public Utilities Code. Vote Solar fully supports UCAN's Motion as it relates to the Network

Usage Charge. Vote Solar expresses no opinion regarding UCAN's Motion as it relates to the Basic Service Fee and Prepay Service Option, but reserves the right to comment on these issues if necessary.

I. SDG&E's Proposed Network Use Charge is Illegal Under the Public Utilities Code and is Premised on A Manifestly Faulty Rationale.

A. SDG&E's Proposed Network Charge is Illegal Under Sec. 2827(g) of the California Public Utilities Code and is Squarely At Odds with the Clear Intent of the California Legislature.

In relevant part, Sec. 2827(g) states:

> "…each net energy metering contract or tariff shall be identical with respect to rate structure, all retail rate components, and any monthly charges, to the contract or tariff to which the same customer would be assigned if the customer did not use an eligible solar or wind electrical generating facility…Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or any other charge that would increase an eligible-customer's costs beyond those of other customers who are not eligible customer-generators in the rate class to which the eligible customer-generator would otherwise be assigned if the customer did not own, lease, rent, or otherwise operate an eligible solar or wind electrical generating facility is contrary to the intent of this section, and shall not form a part of net metering contracts or tariffs."

A straightforward reading of section of Sec. 2827(g) shows that it is intended to achieve two goals: 1) require that net metering contracts and tariffs be "identical" in all major aspects – structure, components and charges – to those faced by non-net metering customers, and 2) prohibit "any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or any other charge…" from becoming part of any net metering tariff or contract if the result of such a charge would increase an eligible customer-generator's costs beyond those faced by other customers in the same rate class. Read together, these two sections demonstrate a clear legislative intent to prohibit tariffs or contracts that discriminate against net metering customers through the imposition of any charges that would

raise their costs of electric service beyond those born by non-net metering customers.

It is worth pausing for a moment to take in the breadth and scope of the prohibition established in Sec. 2827(g) against such additional charges. The language quoted above covers every conceivable charge that the authors of this response are aware of having been used in recent rate cases to develop customer tariffs – demand charges, standby charges, customer charges, minimum monthly charges, and interconnection charges – *and it bans them* if the impact of those charges would be to raise customer-generator costs beyond those faced by ratepayers in the same rate class. The breadth of the banned charges is striking in and of itself. However, almost certainly seeking to foreclose any newly conjured charges from being considered outside the breadth of the statutory prohibition, the Legislature went further and prohibited "any other charge" that would increase the costs faced by customer-generators when compared to non-customer-generators in the same rate class. This framework makes abundantly clear that the Legislature meant to protect customer-generators from discriminatory rate treatment.[1]

Despite this clear intent, SDG&E has proposed a Network Usage Charge that violates the core concepts embodied in Sec. 2827(g). By SDG&E's own admission, the proposed Network Use Charge would dramatically raise the costs faced by eligible customer-generators when compared to non-participating customers by imposing a "usage fee" on customer-generators' exports of energy to the grid. Thus, by SDG&E's own admission, the proposed Network Usage Charge is intentionally structured in a manner that increases the costs faced by eligible customer generators beyond those faced by non-participating customers due to a customer-generator's

[1] Section 2827(g) requires identical tariffs/contracts for net metering customers and then proceeds to ban any other charges that would result in an increase in costs faced by net metering customers that are not similarly faced by non-net metering customers.

operation of solar or wind facility.[2] Simply put, SDG&E's proposed Network Usage Charge is in direct contravention of Sec. 2827(g) and thus "shall not form a part of net metering contracts or tariffs" under the plain terms of Sec. 2827(g).

Moreover, the substance of UCAN's motion is ripe for adjudication by the Commission. First, the rationales offered by SDG&E for seeking to impose the Network Usage Charge are irrelevant in determining the legality of the Network Usage Charge proposed by SDG&E. Second, hearings on the impact of the Network Usage Charge on eligible customer-generators are unnecessary as SDG&E's testimony already contains illustrative rates showing a direct and substantial "increase [in] an eligible-customer's costs beyond those of other customers who are not eligible customer-generators in the rate class to which the eligible customer-generator would otherwise be assigned if the customer did not own, lease, rent, or otherwise operate an eligible solar or wind electrical generating facility…".

In light of this situation, judicial and administrative economy counsel for a rejection of SDG&E's proposed Network Use Charge as illegal and inappropriate for further consideration by the Commission or parties to this case.

B. SDG&E's Proposed Network Use Charge is Premised on A Manifestly Faulty Rationale

SDG&E's alleged concerns about future impacts on non-participating customers are squarely at odds with the current framework for net metering established by the Legislature in Sec. 2827. The net metering program is statutorily capped at 5% of aggregate customer peak demand pursuant to Sec. 2827(c)(1). In light of this fact, the concerns raised by SDG&E of ever

[2] See SDG&E Application, Chapter 2, Appendix B (containing sample bills showing the direct cost impact of imposition of the proposed NUC showing an increase in an illustrative NEM customer's bill from $5.95 to $13.92 (an increase of approximately 230%) and a decrease in an illustrative non-NEM customer's bill from $43.60 to $43.45.).

increasing cross subsidies are simply not cognizable under current law and are therefore speculative at best. This fact also weighs in favor of rejection of the proposed Network Usage Charge as a matter of judicial and administrative economy. Parties should not be required to litigate an illegal proposal based on speculation of future scenarios far beyond what the framework of the current net metering statute will allow.

Respectfully submitted this 17th day of November, 2011 at San Francisco, California.

Dated: November 17, 2011

Respectfully submitted,

/s/

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