



**FILED**

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

Application of San Diego Gas & Electric Company (U902E) For Authority To Update Marginal Costs, Cost Allocation, and Electric Rate Design.

Application 11-10-002  
(Filed October 3, 2011)

**ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

This scoping memo and ruling (Scoping Ruling) sets forth the category, need for hearing, issues to be addressed and schedule of the proceeding, and designates the presiding officer pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure. The Scoping Ruling also addresses a motion filed by the Utility Consumers Action Network on October 27, 2011.

**1. Background**

On October 3, 2011, San Diego Gas & Electric Company (SDG&E) filed Application (A.) 11-10-002 to establish marginal costs, allocate revenues, and design rates for service provided to its customers in connection with its revenue requirements for service in 2013. This cost allocation and rate design proceeding is commonly referred to as "Phase 2" of a utility's General Rate Case (GRC).<sup>1</sup>

In that application SDG&E included two new rate elements: (1) a Network Use Charge (NUC) for all customers, which would recover distribution demand costs on the basis of a customer's actual distribution demand; and (2) a monthly

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<sup>1</sup> SDG&E's Phase 1 GRC application, primarily addressing revenue requirements, was filed as A.10-12-005 and is in progress.

Basic Service Fee, which would apply to all residential customers. SDG&E also proposed a Prepay Program, which would allow customers the option to prepay for electric and gas service and to amend Tariff Rule 20 to facilitate converting overhead facilities to underground for fire safety purposes.

Protests were timely filed by The Utility Reform Network (TURN), the Division of Ratepayer Advocates (DRA), the Center for Accessible Technology (CforAT), Californians for Renewable Energy (CARE), The Greenlining Institute, San Diego Public Agencies,<sup>2</sup> Utility Consumers Action Network (UCAN), City of San Diego, Solar Alliance, San Diego Solar Coalition (SDSC), and Vote Solar Initiative (Vote Solar). Southern California Edison Company (SCE) filed a response to the application. SDG&E filed a reply to the protests.

On October 27, 2011, UCAN filed a motion for a preliminary ruling determining that SDG&E's rate design application did not comply with the Public Utilities Code and directing SDG&E to resubmit its application without the NUC and Basic Service Fee. UCAN also requests that the proposed Prepay Program be removed from the application. Timely replies supporting the motion were filed by Vote Solar, DRA, jointly by TURN and CforAT, San Diego Public Agencies, Solar Alliance, Sierra Club, and SDSC. Replies opposing the motion were filed by SDG&E and jointly by PG&E and SCE. UCAN was granted leave to respond to these replies.

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<sup>2</sup> Carlsbad Municipal Water District, Fallbrook Public Utility District, Helix Water District, Lemon Grove School District, Padre Dam Municipal Water District, Poway Unified School District, San Diego County Office of Education, San Diego County Water Authority, Vallecitos Water District, and Valley Center Municipal Water District.

On December 9, 2011, the Commission held a duly noticed prehearing conference (PHC) to determine parties, create the service list, identify issues, consider the schedule, and address UCAN's motion. At the PHC, the assigned Administrative Law Judges (ALJs) also granted a motion filed by County of San Diego for party status.

## **2. UCAN's Motion**

UCAN's motion seeks a determination that the NUC, Basic Service Fee and Prepay Program violate various sections of the Public Utilities Code. As such, it asserts that none of these proposals may be considered and SDG&E's application should be rejected as incomplete. UCAN therefore requests that SDG&E be ordered to submit an alternate rate design proposal that does not contain these rate design elements. As an alternative, UCAN proposes that due to the statewide interest in these rate design issues, they should be considered in a separate rulemaking.

### **2.1. NUC**

SDG&E states that under its current rate design, Net Energy Metering (NEM) customers do not pay their fair share of costs incurred on their behalf by SDG&E to provide service, including use of the distribution system. As a result, SDG&E states that non-NEM customers subsidize NEM customers. SDG&E, therefore, proposes a NUC, which would charge customers for their actual use of the electric distribution grid. The proposed charge would apply the same rate for grid usage to all customers within each customer class.<sup>3</sup>

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<sup>3</sup> Application at 3-4.

UCAN argues that the NUC is contrary to Pub. Util. Code § 2827<sup>4</sup> and the Legislature's intent to subsidize the solar industry to promote deployment of solar distributed power.<sup>5</sup> First, it contends that since non-NEM customers do not export energy over the distribution network, the NUC is effectively a surcharge on net metering customers.<sup>6</sup> Further, it maintains that such a charge would reduce the benefits of installing solar and diminish customer incentives to invest in renewable energy sources.<sup>7</sup> Finally, UCAN asserts that the NUC, combined with the Basic Service Fee, could cause the annual rate increases for Tier 1 and Tier 2 customers to exceed the cap established by § 739.9.<sup>8</sup>

## **2.2. Basic Service Fee**

SDG&E's residential customers currently pay a minimum charge of \$0.17/day, or approximately \$5.10 for a 30-day month.<sup>9</sup> SDG&E proposes to replace this minimum bill charge with a Basic Service Fee of \$3.00/month. SDG&E states that this fee is intended to recover part of the costs that it incurs to

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<sup>4</sup> Unless otherwise specified, all statutory references are to the Public Utilities Code.

<sup>5</sup> Pub. Util. Code § 2827 was enacted to establish a net metering program for residential and small commercial customers. In enacting this statute, the Legislature found that this program would, be a way to "encourage substantial private investment in renewable energy, stimulate in-state economic growth, reduce demand for electricity during peak consumption periods, help stabilize California's energy supply infrastructure, enhance the continued diversification of California's energy resource mix, reduce interconnection and administrative costs for electricity suppliers, and encourage conservation and efficiency." (Pub. Util. Code § 2827, subd. (a).)

<sup>6</sup> UCAN Motion at 13-14.

<sup>7</sup> UCAN Motion at 14-18.

<sup>8</sup> UCAN Motion at 21.

<sup>9</sup> Application at 4.

provide service to every residential customer. To maintain compliance with Senate Bill (SB) 695, SDG&E proposes an offsetting reduction in the residential Tier 1 energy rates.

UCAN asserts that the Basic Service Fee, even when combined with the reduction in energy rates, may increase the bill of Tier 1 customers. It contends that this increase would violate § 739.9, as rate increases for Tier 1 and Tier 2 customers are to be based on the prior year's Consumer Price Index, and Decision (D.) 09-12-048, which requires a Tier 2 advice letter filing for rate adjustments.<sup>10</sup> UCAN further maintains that the Commission has already rejected a fixed customer charge on policy grounds.<sup>11</sup>

### **2.3. Prepay Program**

SDG&E proposes to offer a cost-free option to prepay for electric and gas service. It states that this program would provide customer benefits including no deposit to establish service, flexible payment amounts and no disconnect or reconnect fee.<sup>12</sup> SDG&E proposes to limit the availability of the prepay option to no more than 1% of its customers per year for the initial three years, ending December 31, 2016. After that time, SDG&E will determine whether the program should be continued.

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<sup>10</sup> UCAN Motion at 22-23.

<sup>11</sup> UCAN Motion at 24 (citing D.11-05-047).

<sup>12</sup> Application at 5.

UCAN believes that the Prepay Program is designed to appeal to customers with bad debt. It maintains that customers participating in the program would be deprived of the minimum termination notice requirements under §§ 779, 779.1, and 739.4, as well as other statutory protections. UCAN asserts that these disadvantages are contrary to § 453.

#### **2.4. Discussion**

UCAN's motion is premised on its belief that the NUC and Basic Service Fee will ultimately be found to be unlawful or contrary to Commission policy. However, it argues that many intervenors do not have the capability and resources to develop an alternative rate design proposal that does not contain these rate elements. As a result, UCAN believes the ALJ Division and Energy Division would bear the burden of developing an alternative rate design proposal. UCAN submits that this would likely delay the resolution of this proceeding. Therefore, UCAN argues that it is important to either resolve the lawfulness of the proposals at the onset or require SDG&E to provide an alternative rate design before proceeding further.

As a general matter, a utility should have the ability to present and advocate its rate design proposal and should not be required to submit alternative rate design proposals on behalf of intervenors. In prior instances where a utility proposed a new rate element, it was not required to include an alternative rate design proposal simply because the element had been contested on legal and/or policy grounds. Therefore, the novelty of the NUC, Basic Service Fee and Prepay Program do not, by themselves, warrant directing SDG&E to provide an alternate rate design proposal.

Based on the responses to UCAN's motion and comments at the PHC, I believe that the issue of whether to establish a NUC should not be included within the scope of this GRC proceeding. Development of such a rate element could affect not only SDG&E and solar customers, but also PG&E, SCE and other distributed generation and self-generation customers. Furthermore, upon consideration of UCAN's motion and the responses to it, I am concerned that this particular NUC charge may be inconsistent with current law, regardless of whether it is justified by cost causation principles or an analysis of the cross-subsidies inherent in current policies.

My concerns about the legality of the current proposal are based on the following analysis: The last sentence of subdivision (g) of Section 2827 in essence provides that a utility may not create a "new charge" that would increase an eligible customer generator's costs beyond those of other customers in the same rate class who are not eligible customer-generators. SDG&E's proposed NUC is a new charge. While the NUC rate would apply to both customer-generators and those who are not customer-generators, it would apply differently to customer-generators, who would pay the charge on both incoming and outgoing power under SDG&E's proposal. By contrast, the non-generator customer would pay a NUC only on incoming power. Thus, as proposed, the NUC might be viewed as imposing costs on customer-generators beyond those imposed on other customers in the same rate class. Further, the immediately preceding sentence of subdivision (g) states that "The charges for all retail rate components for eligible customer-generators shall be based exclusively on the customer-generator's net kilowatthour consumption over a 12-month period, without regard to the eligible customer-generator's choice as to from whom it purchases electricity that is not self-generated." SDG&E's NUC proposal raises concerns

under this provision was well, because the NUC would base the generator customer's charges on network usage that is unrelated to net kWh consumption.

I am not persuaded that the lawfulness of the Basic Service Fee or the Prepay Program needs to be resolved before the factual issues surrounding these proposals may be considered. Because the legal basis for imposing a fixed residential customer charge has been addressed by D.11-05-047, this proceeding may be guided by that decision.<sup>13</sup> Parties shall be provided the opportunity to explain the extent to which the determinations in D.11-05-047 are applicable here. Since the Prepay Program is a separate program and has no impact on rate design, there is no reason why the legal and factual issues surrounding this proposal cannot be considered in this proceeding.

Based on the above, UCAN's motion to require SDG&E to file an alternate rate proposal is granted in part. The NUC is outside of the scope of this proceeding. Therefore, SDG&E shall submit a revised rate design proposal and updated testimony that does not include the NUC. This revised proposal shall be submitted by February 17, 2012.

### **3. Scope**

Parties were provided an opportunity to comment in their protests and responses to the application, in their PHC statements and at the PHC on what issues should be included in the scope of this proceeding. SDG&E summarizes the issues on pages 2 - 6 of its application. As discussed in Section 2 above, the

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<sup>13</sup> D.11-05-047 concerned PG&E's residential rate design which addressed PG&E's request to approve a residential fixed customer charge. (D.11-05-047 at 23-35.)

NUC shall not be included in the scope of this proceeding and SDG&E shall be filing a revised rate design proposal that does not include this rate element.

Based on the filings, the discussion at the PHC and our discussion above, the following scope of issues are to be addressed in this proceeding:

- Should SDG&E's sales forecast and marginal cost proposals be adopted?
- Should SDG&E's electric revenue allocation and rate design proposals, including replacing the minimum bill charge for residential ratepayers with a Basic Service Fee, be adopted?
- Should SDG&E's proposed tariff and bill changes be adopted?
- Should SDG&E's proposed allocation and rate design proposals for street lighting be adopted?
- Should SDG&E's Electric Tariff Rule 20 be amended to facilitate undergrounding distribution lines for fire safety purposes?
- Should SDG&E's proposed Prepay Program be adopted?

#### **4. Public Participation Hearings**

Although not discussed at the PHC, it is anticipated that public participation hearings (PPH) will be scheduled as necessary. I understand that many speakers at the PPHs held for SDG&E's Phase 1 GRC (A.10-12-005) spoke about the proposed NUC. As this rate element is no longer an issue in this proceeding, and based on the size of SDG&E's territory, I believe that two to four PPHs should be scheduled. SDG&E should work with intervenors and the Public Advisor's Office to determine the appropriate locations and proposed dates for PPHs and provide that information to the assigned ALJ no later than January 31, 2012.

## 5. Schedule

SDG&E seeks to have rates effective January 1, 2013. Based on the decision to remove consideration of the NUC from this proceeding, SDG&E will need to file a revised rate design application and testimony. As such, it is unlikely that the rates adopted in this proceeding will be effective by January 1, 2013. The schedule adopted below anticipates that a decision will be voted out in December, 2012.

It is the desire of this Commission to encourage parties to settle disputed issues. As such, the schedule includes a mandatory settlement conference. SDG&E is directed to schedule this conference. Parties shall contact the assigned ALJ if they would like a Commission mediator assigned to facilitate. Upon completion of this meeting, parties shall inform the assigned ALJ whether they wish to continue to explore settlement opportunities in this proceeding. To provide parties sufficient time to explore settlement opportunities, there shall be a single round of evidentiary hearings.

The evidentiary hearings shall begin on July 16, 2012 in the Commission's Courtroom at 505 Van Ness Avenue, San Francisco, California. The first day of hearings will begin at 10:00 a.m.; on all subsequent days hearings will begin at 9:30 a.m.

EVENT	DATE
Prehearing Conference	December 9, 2011
SDG&E Revised Rate Design Application and Testimony	February 17, 2012
DRA Testimony	May 1, 2012
Intervenor Testimony	May 25, 2012
Concurrent Rebuttal Testimony	June 22, 2012

Mandatory Settlement Conference	Week of June 25, 2012
Public Participation Hearings	To Be Determined
Evidentiary Hearings Commission Courtroom 505 Van Ness Avenue San Francisco, CA	July 16, 2012 at 10:00 a.m. and each weekday through July 27, 2012, as needed.
Opening Briefs	August 24, 2012
Reply Briefs	September 14, 2012
Request for Final Oral Argument	September 25, 2012
Proposed Decision Mailed	November 2012
Comments on Proposed Decision	20 days after mailing
Reply Comments on Proposed Decision	5 days after Opening Comments
Final Commission Decision	December 2012

Legal briefing on the Basic Service Fee and the Prepay Program shall be included as part of the Opening Briefs.

The assigned Commissioner or ALJs may modify the schedule as necessary. The goal is to resolve this matter as soon as possible after it is submitted. In any event, it is anticipated this proceeding will be resolved within 18 months from the date of this scoping memo, pursuant to the requirements of Pub. Util. Code § 1701.5.

## **6. Hearing Preparation**

On or before July 12, 2012, SDG&E shall organize a telephonic meet-and-confer conference with all parties to identify the issues on which the hearings will focus, key disputes, and any stipulations or settlements. Parties should also use the meet-and-confer to discuss witness schedules, time estimates from each party for the cross-examination of witnesses, scheduling concerns, and the order

of cross-examination. A list with the witness schedule and cross-examination estimates shall be submitted to the ALJ by 5:00 p.m. on July 13, 2012.

By the conclusion of the hearings, parties must agree on a briefing outline and use that outline for the opening and reply briefs.

## **7. Discovery**

Discovery will be conducted according to Article 11 of the Rules. If the parties have discovery disputes they are unable to resolve by meeting and conferring, they shall raise these disputes under the Commission's Law and Motion procedure. (*See* Rule 11.3.)

## **8. Final Oral Argument**

Pursuant to Rule 13.13(b), a party in a ratesetting proceeding has the right to make a final oral argument before the Commission if the final oral argument is requested within the time and manner specified in the scoping memo or later ruling. In this proceeding, any party seeking to present a final oral argument shall file and serve a motion within 10 days of the filing date of reply briefs.

The motion shall state the request, the subjects to be addressed at oral argument, the amount of time requested, any recommended procedure and order of presentations, and all other relevant matters. The motion shall contain all the information necessary for the Commission to make an informed ruling on the motion and to provide an efficient, fair, equitable, and reasonable final oral argument. If more than one party seeks the opportunity for final oral argument, parties shall use their best efforts to present a joint motion, including a joint recommendation on procedure, order of presentations, and anything else relevant to the motion. Responses to the motion may be filed.

If no hearings are held in this proceeding, Rule 13.13(b) indicates that a party's right to make a final oral argument ceases to exist. As provided for in

Rule 13.13(a), the Commission may still, on its own motion or upon the recommendation of the assigned Commissioner or ALJ, schedule a final oral argument.

## **9. Filing, Service and Service List**

The official service list was created at the December 9, 2011 PHC and is now on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process Office, the service list, and the judge. Prior to serving any document, each party must ensure that it is using the most up-to-date service list. The list on the Commission's web site meets that definition.

Electronic service is now the standard under Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Parties are reminded that, when serving copies of documents, the document format must be consistent with the requirements set forth in Rule 1.10(a).

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing. All documents formally filed with the Commission's Docket Office must include the caption approved by the Docket Office and this caption must be accurate.

Other documents, including prepared testimony, are served on the service list but not filed with the Docket Office. We will follow the electronic service protocols adopted by the Commission in Rule 1.10, whether formally filed or just served. This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by

United States mail. Additionally, parties shall serve paper copies of all filings on the presiding officer and Assigned Commissioner.

### **10. Categorization and Need for Hearings**

This scoping memo confirms the Commission's preliminary categorization of both proceedings as ratesetting. This determination is appealable under the provisions of Rule 7.6. This scoping memo also confirms that hearings are necessary and sets forth the hearing schedule.

### **11. Ex Parte Communications**

In ratesetting proceedings, ex parte communications with the assigned Commissioner, other Commissioners, their advisors and the ALJ are only permitted as described in Pub. Util. Code § 1701.3(c) and Rules 8.2, 8.3, and 8.5.

### **12. Intervenor Compensation**

A party who intends to seek an award of compensation pursuant to Pub. Util. Code §§ 1801-1812 should file and serve a notice of intent to claim compensation no later than 30 days after the December 9, 2011 PHC.<sup>14</sup> Under the Commission's Rules, future opportunities may arise for such filings but such an opportunity is not guaranteed.

In this proceeding, parties intending to seek an award of intervenor compensation must maintain daily record keeping for all hours charged and a sufficient description for each time entry. Sufficient means more detail than just "review correspondence" or "research" or "attend meeting." In addition, intervenors must classify time by issue. When submitting requests for compensation, the hourly data should be presented in an Excel spreadsheet.

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<sup>14</sup> Pub. Util. Code § 1804(a)(1).

As reflected in the provisions set forth in Pub. Util. Code § 1801.3(f) and § 1802.5, all parties seeking an award of intervenor compensation must coordinate their analysis and presentation with other parties to avoid duplication.

### **13. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

### **14. Presiding Officer**

Pursuant to Public Utilities Code Section 1701.3 and Rule 13.2, ALJ Amy Yip-Kikugawa and ALJ Stephen Roscow are designated as the presiding officers.

#### **IT IS RULED that:**

1. The motion of Utility Consumer's Action Network to compel San Diego Gas & Electric Company to resubmit its General Rate Case Phase 2 Application without the Network Use Charge, Basic Service Fee and Prepay Program is granted in part.

2. San Diego Gas & Electric Company shall file a revised rate design proposal and testimony that does not include the Network Use Charge by February 17, 2012.

3. This proceeding is categorized as ratesetting. This ruling is appealable within 10 days under Rule 7.6.

4. The Commission's preliminary determination that hearings are necessary is confirmed.

5. The issues to be resolved in this proceeding are listed in Section 3 of this Scoping Memo and Ruling.

6. The procedural schedule is listed in Section 5 of this Scoping Memo and Ruling.

7. The prepared testimony in this proceeding shall be electronically served on the entire service list on the dates set forth in the adopted procedural schedule, and hard copies are to be provided to the assigned Commissioner and Administrative Law Judges.

8. Administrative Law Judge (ALJ) Amy C. Yip-Kikugawa and ALJ Stephen Roscow are designated the presiding officers for this proceeding.

9. Rules 8.2, 8.3, and 8.5 governing ex parte communications apply to this proceeding.

Dated January 18, 2012, at San Francisco, California.

/s/ MARK J. FERRON  
Mark J. Ferron  
Assigned Commissioner