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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)

OPENING BRIEF OF THE GREENLINING INSTITUTE AND THE CENTER FOR ACCESSIBLE TECHNOLOGY

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In this brief, the Center for Accessible Technology and the Greenlining Institute urge the Commission to reject San Diego Gas & Electric Company's (SDG&E) proposals to introduce a Basic Service Fee, to consolidate Tiers 3 and 4 and to remove the rate cap on the CARE Tier 3 rate. In a separately-filed brief in conjunction with the National Consumer Law Center and The Utility Reform Network, we urge rejection of SDG&E's proposed Prepay Program.

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I. Introduction

In accordance with Rule 13.11 of the California Public Utilities Commission's Rules of Practice and Procedure, the Greenlining Institute (Greenlining) and the Center for Accessible Technology (CforAT) submit this opening brief in response to the Application of San Diego Gas & Electric Company (SDG&E) for Authority to Update Marginal Costs, Cost Allocation, and Electric Rate Design (Application). CforAT/Greenlining focuses its comments on contested issues in residential rate design, specifically the proposed Basic Service Fee, the proposed consolidation of Tiers 3 and 4, and the proposal to remove the rate cap on the CARE Tier 3 rate.

In response to the proposal for a prepay pilot program, CforAT/Greenlining joins in a brief also filed by the National Consumer Law Center and The Utility Reform Network urging rejection of SDG&E's proposed Prepay Program.

CforAT/Greenlining does not make comments in Sections II-IV below, set forth in accordance with the common briefing outline agreed to by parties in this proceeding, but we reserve the opportunity to respond to other parties' comments.

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II. Revenue Allocation and Rate Design Settlement

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A. Residential Rate Design

CforAT/Greenlining opposes three of SDG&E's residential rate design proposals: the Basic Service Fee, the Consolidation of Tiers 3 and 4 and the removal of the California Alternate Rates for Energy (CARE) Tier 3 rate cap. These proposals are all designed to lower bills for customers who use substantial amounts of energy at Tier 4 levels, while collecting additional revenue from low income and low-usage customers. In fact, for customers with the most extreme usage, the rate design proposals would reduce bills by hundreds of dollars while increasing bills for people with much lower levels of discretionary usage.

SDG&E does not present evidence that the Tier 4 rate is overly oppressive, or that many Tier 4 customers are having difficulty paying their bills. Rather, SDG&E justifies the need for its requested changes by arguing that they will promote fairness and equity and they will provide clear and accurate price signals. CforAT/Greenlining refute these claims below.

Taken as a whole, SDG&E's rate redesign proposals would result in disproportionate bill increases on CARE customers. For example, while 36.7% of non-CARE residential customers would receive bill increases as a result of SDG&E's proposals, about 80% of CARE customers would see bill increases.[1] Moreover, as discussed below, the Basic Service Fee proposal raises

[1] *See* Exh. DRA-1: Division of Ratepayer Advocates Testimony on SDGE's 2012 General Rate Case, Phase 2, A.11-10-002, served May 18, 2012 ("DRA-1"), p. 5-11:13-15.

bills on customers whose usage is limited to Tier 1, essentially raising rates for customers who use very modest amounts of energy to meet essential needs. These bill impacts contravene state law mandating affordability energy supplies for essential uses and represent poor public policy.

1. Basic Service Fee

SDG&E proposes to replace its current minimum bill of 17 cents per day ($5.10 per 30 day month) with a $3.00 monthly Basic Service Fee for residential customers. This Basic Service Fee is essentially a monthly fixed customer charge, with all of the aspects of fixed charges that make for poor rate-making. The proposal for a Basic Service Fee should be rejected.

As previously demonstrated by the Utility Consumers Action Network and the Division of Ratepayer Advocates (DRA), the proposed Basic Service Fee cannot be adopted because it violates Public Utilities Code §§ 739.9 (a) and 739.1(b) (2).[2] The Utility Reform Network also files a brief today making a similar argument. CforAT/Greenlining joins in these arguments demonstrating that the Basic Service Fee is explicitly prohibited by statute. In addition to the overt statutory violations, state and Commission policy weigh against the Basic Service Fee.

a. California requires that essential supplies of electricity be affordable.

The California Public Utilities Code mandates that essential levels of electricity must be affordable for *all residential customers*, with special attention given to the needs of to low income ratepayers. Most explicitly, Section 382(b) of the Cal. Public Util. Code recognizes "that electricity is a basic necessity, and that *all residents* in the state should be able to afford *essential electricity and gas supplies*." (emphasis added) The same statute further mandates that "the

[2] *See* Motion of the Utility Consumers' Action Network for a Preliminary Ruling Determining that SDG&E's Rate Design Application Violates the Public Utilities Code and Compelling SDG&E to Re-submit Its GRC Phase 2 Application, filed Oct 27, 2011, pp. 19-24; Division of Ratepayer Advocates Testimony on SDGE's 2012 General Rate Case, Phase 2, A.11-10-002, served May 18, 2012 ("DRA Testimony"), pp. 5-4 to 5-10.

commission shall ensure that low-income ratepayers are not jeopardized or overburdened by monthly energy expenditures."[3] Of note, the affordability mandate is not limited to low-income households; as noted above, the statute provides that "essential" supplies of electricity must be affordable for "all residents." Thus, essential supplies of electricity are subject to specific affordability protections.

The manner through which the state provides that essential supplies of electricity will remain affordable for all customers is through the baseline quantity. As stated by Cal. Pub. Util. Code § 739(a):

> The commission shall designate a baseline quantity of gas and electricity which is necessary to supply a significant portion of the reasonable energy needs of the average residential customer.

It is this requirement for affordable baseline levels of electricity that has led the legislature and the Commission to limit increases in rates charged for usage up to 130% of baseline quantities.[4] Thus, both the legislature and the Commission have taken steps to implement the charge contained in Cal. Pub. Util. Code § 382(b) that essential supplies of electricity – defined as up to 130% of baseline quantities – remain affordable. However, SDG&E's Basic Service Fee proposal raises bills for many customers who limit their usage to Tier 1.

By statute, it is impermissible to dismiss the needs of low income and Tier 1 customers in order to focus on upper-tier usage by customer who are not low-income. SDG&E representatives admitted that they did not perform any studies to determine if the bill impacts resulting from their rate design proposals would raise bills for low-income or low usage customers to unaffordable levels.[5] The Commission should not adopt a vision for residential rate

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[3] Cal. Pub. Util. Code § 382(b).
[4] *See* Cal. Pub. Util. Code § 739.9(a)-(b).
[5] *See* Evid. Hearing Transcript, Vol. 4, pp. 249:18 – 250:1 (Fang).

design that would sacrifice affordability for vulnerable customers who constrain their usage to essential Tier 1 levels.

b. The Basic Service Fee significantly raises bills on the most vulnerable customers, in contravention to Commission policy.

SDG&E attempts to craft its Basic Service Fee proposal so that it conforms to Commission rules regarding the affordability of essential supplies of electricity, by pairing the introduction of the monthly charge with a reduction in the Tier 1 rate; however, SDG&E does not succeed in this attempt. SDG&E claims that the Basic Service Fee is crafted to "minimiz[e] potential bill impacts to low use customers."[6] However, as demonstrated below, this claim does not stand up to scrutiny, as all the negative bill impacts are focused on those customers with the lowest use. In fact, many Tier 1 customers would see significant bill increases resulting from the Basic Service Fee.

The impact on the customers with the lowest usage also runs counter to Commission precedent. In the residential rate design phase of the most recent Pacific Gas & Electric Company (PG&E) general rate case, the Commission rejected a proposed $3.00 customer charge on both legal and policy grounds.[7] In considering the policy implication of the proposed customer charge, the Commission discussed the bill increase on customers (both CARE and non-CARE) with usage equal to the Tier 1 limit and concluded:

> Given the potential for the fixed customer charge to produce rate increases of up to 10 percent for those customers with the lowest usage and that are least able to afford it, we conclude that the customer charge proposal should also be denied on policy grounds.[8]

Thus, the Commission found an independent basis to reject a customer charge based on significant bill increases on the customers with the lowest usage, "that are least able to afford it."

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[6] *See* Exh. SDG&E-1: Revised Prepared Direct Testimony of Chris Yunker, Chaper 1, on Behalf of SDG&E ("SDG&E-1"), p. 5:12-13.
[7] *See* D.11-05-047, issued in A.10-03-014, at p. 86 (Ordering Paragraph 4).
[8] D.11-05-047, p. 34.

Similar to PG&E's proposed customer charge, SDG&E's Basic Service Fee would also raise bills on customers with the lowest usage who are least able to afford a bill increase. In fact, the largest percentage bill increase occurs on customers with the lowest usage.

Overall, 125,724 SDG&E customers who confine their usage within Tier 1 will experience at least a 5% bill increase as a result of the Basic Service Fee proposal.[9] This is significant, representing 11.5% of SDG&E's residential customers. SDG&E cannot appropriately describe its proposal as "minimizing bill impacts," when more than 10% of its customers experience at bill increase of 5% or more. SDG&E may argue that the bill impacts described above do not meet the threshold for improper bill impacts disallowed by the Commission in D.11-05-047. However, a significant number of SDG&E customers actually exceed the 10% threshold set forth in the PG&E decision, as 23,927 customers who conserve energy and keep their usage well within the lowest tier, would be rewarded with a bill increase of 20% or more.[10]

The reasoning of the Commission still holds true against SDG&E's Basic Service Fee: that the customers with the lowest usage "that are least able to afford it," are precisely those customers with the most significant bill increase.

c. While the greatest portion of customers will be indifferent to the Basic Service Fee, a great many will experience significant bill increases, while the benefit is focused on a few customers with high usage.

In attempting to design a Basic Service Fee that, in SDG&E's view, conforms to the requirements of Cal. Public Util. Code Section 739.9, SDG&E has managed to make many customers who use between 100% and 200% of baseline largely economically indifferent to the proposal, as this greatest proportion of SDG&E's customers would see annual bill impacts – negative or positive – of less

[9] *See* Exh. Greenlining-1: Prepared Testimony of Enrique Gallardo In San Diego Gas & Electric Company General Rate Case, Phase II, A.11-10-002, On Behalf of the Greenlining Institute ("Greenlining-1"), served June 12, 2012, p. 5, n.12, citing SDG&E's Responses to Greenlining's DR-1 and Greenlining DR-2. This figure excludes customers receiving Medical Baseline.
[10] *See* Greenlining-1, p. 5, n.13. Medical Baseline customers are excluded from this total.

than 1% as a result of the proposal.[11] In contrast, the only customers who derive any meaningful benefit from the proposal are those with the highest level of usage, with some of these customers receiving an annual bill decrease of hundreds of dollars.

However, in crafting a Basic Service Fee that will be unnoticed by the largest class of customers, SDG&E has placed practically *all* of the adverse impact of the proposal on those customers who confine their usage within Tier 1. These are customers who conserve energy much more than any other customers and manage to keep their bills as small as possible. However, the less energy a customer uses, the greater the percentage of bill impacts will result from the Basic Service Fee proposal. Thus, the Commission in D.11-05-047 found that these customers were least able to afford bill increases. To exemplify this, we can look more closely at bill impacts in for specific classes of SDG&E customers.

For Tier 1 customers, a $3.00 increase in their bills (or a $2.40 increase for CARE customers) is quite significant. For example, 32% of non-CARE Basic Service customers (representing 134,428 customers) in SDG&E's largest climate zone (Coastal Zone) have annual usage that averages below Tier 1 levels, and 129,180 of these customers (96.1%) will experience an adverse bill impact.[12] For customers who attempt to conserve energy even more, the impact will be even more significant. For 89.0% (52,089 of 58,514) of non-CARE Coastal Basic Service customers who average less than 55% of Tier 1 usage, the impact from the proposal will be a bill increase of more than a 5%, ranging from a $14.63 annual increase in bills, to a $30.72 annual increase (an incredible 42.9% increase) in bills.[13] Thus, for almost all non-CARE customers who conserve energy the most – and who are least able to absorb bill increases – the proposal will cause significant increases.

Because a higher portion of CARE customers compared to non-CARE customers confine their usage to Tier 1, CARE customers in particular will experience harmful bill impacts, especially those

[11] *See* Greenlining-1, p. 4, n.7, citing SDG&E's Responses to Greenlining's DR-1 and Greenlining DR-2.
[12] *See* Greenlining-1, p. 4, n.8, citing SDG&E's Responses to Greenlining's DR-1 and Greenlining DR-2.
[13] *See* Greenlining-1, p. 4, n.9, citing SDG&E's Responses to Greenlining's DR-1 and Greenlining DR-2.

with low energy use. For example, 45.6% (compared to 32% of similarly situated non-CARE customers) of CARE Basic Service customers, representing 39,841 customers, in the Coastal Zone have annual usage that averages below Tier 1 levels. Of these customers, 95.4% (representing 38,042 customers) will experience an adverse bill impact.[14] For customers who attempt to conserve energy the most, the impact will be even larger. For 15,899 of 16,144 CARE Coastal zone Basic Service customers (or 98.5%) who average less than 61% of Tier 1 usage, the bill impact from the proposal will be more than 5%, ranging up to a $24.62 annual increase (an incredible 49.5% increase) in bills.[15]

Thus, almost all Basic Service Tier 1 customers in the Coastal Zone will experience significant bill increases, and the increases become especially pronounced for those customers with the most conservationist usage. This pattern of bill impacts is similar for all Tier 1 customers throughout SDG&E's service territory, for Basic and All Electric customers, and for CARE and non-CARE customers. The Commission should not approve a Basic Service Fee that focuses bill increases on the most conservationist, vulnerable customers, in order to provide a benefit to a small group of customers with the highest usage.

d. The Basic Service Fee is an unavoidable charge that removes conservation incentive for higher usage customers.

SDG&E argues that the Basic Service Fee helps "create clear and accurate price signals."[16] SDG&E claims that:

> Taking a measured step towards recovery of fixed costs through fixed charges clearly supports both rates based on marginal costs and cost causation, both of which are necessary to encourage economically efficient decision making.[17]

SDG&E does not fully explain how the existence of a fixed customer charge, which a customer cannot avoid or control with any decision or action, might lead to "economically efficient decision making."

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[14] *See* Greenlining-1, p. 5, n.10, citing SDG&E's Responses to Greenlining's DR-1 and Greenlining DR-2.
[15] *See* Greenlining-1, p. 5, n.11, citing SDG&E's Responses to Greenlining's DR-1 and Greenlining DR-2.
[16] *See* SDG&E-10: Prepared Rebuttal Testimony of Chris Yunker, Chapter 1 ("SDG&E-10"), p. 6:4-5.
[17] *See* SDG&E-10, p. 6:13-15.

Moreover, SDG&E's view that the Basic Service Fee creates a clear and accurate price signal is contrary to Commission guidance regarding fixed charges. As the Commission stated in rejecting a proposed customer charge in PG&E's last general rate case, "[b]ecause a fixed customer charge cannot be avoided by a customer's reducing usage or being more energy efficient, the customer charge offers no conservation price signal."[18]

Despite SDG&E's claims that it has been crafted to "minimize bill impacts," the Basic Service Fee is essentially a fixed customer charge. As described above, the customer charge only harms low usage customers; because the charge is completely unavoidable, it provides no incentive to conserve. In any case, these low usage customers are not likely to be able to conserve even more energy, as their usage is already very low, restricted to "essential uses." Thus, the proposal runs counter to the principle of customer control over their bills.

On the other hand, for practically all customers with usage above 200% of baseline, the proposal will bring bill decreases.[19] The largest benefit will go the small group of customers with the most extreme usage. These customers' annual bills will be reduced by hundreds of dollars each, substantially reducing any price signal or financial incentive for these customers to conserve. Thus, the only customers who significantly benefit from the Basic Service Fee are customers with excessive discretionary usage. These are customers who should be targeted with incentives to conserve energy. However, the Basic Service Fee does the opposite, removing the incentive to conserve energy.

The Basic Service Fee proposal should be rejected by the Commission, as it contravenes precedent regarding impact on the customers least able to afford bill increases, as well as precedent regarding customer control over their bills by changing their usage.

[18] D.11-05-047, p. 33.
[19] *See* Greenlining-1, p. 6, n.14, citing SDG&E's Responses to Greenlining's DR-1 and Greenlining DR-2.

2. Tier 3/4 Consolidation Proposal

SDG&E's proposal to consolidate all usage above 130% of baseline into one Tier 3 rate is not well supported and should be rejected. SDG&E provides no evidence affirmatively demonstrating the need for this change. Rather, the utility provides only tangential justifications for its tier consolidation proposal.

SDG&E argues that tier consolidation would "provide customers greater simplification which will become increasingly important as we move to more commodity options to provide customers with price signals related to time of use."[20] This is not a good reason for the requested change. If and when SDG&E moves to time-of-use rates, appropriate rate structures may be designed. Changes in the current default rate structure may not even be necessary.

SDG&E recognizes that the Commission recently rejected PG&E's similar proposal to consolidate its Tiers 3 and 4. However, SDG&E argues that its circumstances are different, in that the rate differential between PG&E's tiers was much larger.[21] Moreover, SDG&E states that PG&E had recently consolidated Tiers 4 and 5, and was seeking a further consolidation into only three Tiers.[22] While these differences do exist between SDG&E and PG&E's rates and their tier history, this information does nothing to recommend a tier consolidation in SDG&E's circumstances.

Rather, the same reasons for rejecting PG&E's tier consolidation exist here as well. As the Commission stated in the decision on PG&E's tier consolidation, "[i]f Tier 4 were entirely eliminated, there would be no rate incentive to conserve for usage beyond 200 percent of

[20] *See* SDG&E-2: Revised Prepared Direct Testimony of Cynthia Fang, Chapter 2, on Behalf of SDG&E ("Fang Testimony"), p. 24:13-15.
[21] *See* SDG&E-11: Prepared Rebuttal Testimony of Cynthia S. Fang, Chapter 2, p. 9:8-10.
[22] *See* SDG&E-11:6-8.

baseline."[23] Although, the tier differential between SDG&E's Tiers 3 and 4 is not as great as PG&E's tiers, the rationale still applies. Moreover, the tier differential may change in the future.

Additionally, as with the Basic Service Fee, SDG&E's tier consolidation proposal would lower bills for customers using the most energy, above 200% of the baseline, thus providing the greatest amount of relief to the highest-end users. This is on top of the significant bill reductions the same customers would receive if the Basic Service Fee were adopted. Thus, much of the financial incentive for the customers who use the most energy to conserve would be removed, making this proposal counter to Commission and California goals of energy conservation.

The proposed change would also result in a number of significant adverse impacts. These impacts will disproportionately affect customers who use energy moderately (above 130% of baseline but below 200% of baseline – the current Tier 3 usage). The effect of SDG&E's proposal would be to raise the non-CARE residential rate for Tier 3 usage, thus raising the bills for customers with moderate energy usage. This outcome would necessarily result, because the consolidated Tier 3 rate would be set somewhere between the existing Tier 3 rate and the existing Tier 4 rate. Customers with usage at the Tier 4 level would see their bills reduced, because their highest level of usage would be charged at a lower rate, offsetting the increased rate on consumption at current Tier 3 levels. Those customers whose consumption does not reach Tier 4, in contrast, will pay the new, higher Tier 3 rate with no offsetting reduction.

In addition to the immediate bill increases faced by customers with consumption at Tier 3, but not Tier 4 levels, SDG&E's proposal is likely to lead to additional increases in future non-CARE Tier 3 rates, as this tier would need to absorb the great majority of any future increased revenue requirements. Again, such increases would have the most dramatic effect on those

[23] D.11-05-047, p. 48.

customers whose consumption is between 130% and 200% of averages. Because of the numerous negative impacts on these groups, this proposal should not be adopted.

3. Removal of CARE Tier 3 Rate Cap

SDG&E proposes to remove the existing cap on its CARE Tier 3 rate, which was adopted in a Settlement from its 2009 Rate Design Window.[24] Besides merely stating that this proposal would "eliminate a false price signal resulting from legacy settlements,"[25] SDG&E does not provide any justification for elimination of the recently negotiated and approved Settlement. While it is true that SDG&E proposes only small initial increases in its CARE Tier 3 rate, lifting the cap would allow the CARE Tier 3 rate to rise rapidly and indeterminately in the future, especially if the proposal to consolidate Tiers 3 and 4 were adopted. Thus, removal of the CARE Tier 3 rate cap has the potential to lead to significant rate increases on CARE customers.

As discussed above, if approved, the tier consolidation proposal would raise the non-CARE Tier 3 residential rate. If the cap on CARE Tier 3 were also to be removed, the CARE Tier 3 could also be raised, as the top statutory limit to that rate is tied to the non-CARE Tier 3 rate.[26] Thus, the tier consolidation proposal, which would lead to escalating non-CARE Tier 3 rates in the ensuing years, would allow a similar escalation for CARE customers with moderate energy usage. The tier consolidation proposal thus may lead to significantly higher bills in the future for CARE customers with moderate usage.

However, even if the tier consolidation proposal were not adopted, a decision to remove the CARE Tier 3 cap would still allow CARE rates to rise sharply in the future. For example, if SDG&E's revenue requirement increased greatly, the impact would be felt by the CARE Tier 3 customers. These

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[24] *See* SDG&E-2, pp. 24:20-25:2.
[25] *See* SDG&E-2, pp. 24:20-25:2.
[26] The CARE Tier 3 rate cannot be more than 80% of the non-CARE Tier 3 rate, excluding a number of charges. *See* Cal. Pub. Util. Code 739.1(b)(5).

increases would not be litigated and thus could not be checked by the Commission until the next General Rate Case.

CforAT/Greenlining urges the Commission to retain the rate cap on CARE Tier 3 rates. Alternatively, we urge adoption of DRA's proposal to establish a new rate cap of 18 cents per kWh. While this rate cap would allow for the limited rate increases proposed by SDG&E, it would protect against future increases that would strain affordability for CARE customers.

4. CARE Cost Allocation

CforAT/Greenlining does not make comments in this section, but we reserve the opportunity to respond to other parties' comments.

b. Prepay

CforAT/Greenlining joins in a separately-filed brief in conjunction with the National Consumer Law Center and The Utility Reform Network urging rejection of SDG&E's proposed Prepay Program.

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Conclusion

In this brief related to residential rate design, CforAT/Greenlining urges the Commission to reject the Basic Service Fee proposal, the proposed tier consolidation and the removal of the Tier 3 rate cap. SDG&E provides no hard evidence demonstrating the need for its proposed changes. Instead, it makes vague statements about how such changes are needed to advance "fairness and equity" and to "create clear and accurate price signals."[27] However, the proposals do not promote either objective. Moreover, the proposals contravene state law and Commission precedent in a number of ways. The Commission should reject these rate design proposals.

Respectfully submitted, Dated: November 16, 2012

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[27] *See* SDG&E-1, pp. 5:9, 8:8-15.