

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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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)

REPLY BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. RESIDENTIAL RATE DESIGN ISSUES 1

 A. INTRODUCTION 1

 B. SDG&E’S PROPOSAL TO INTRODUCE A RESIDENTIAL BASIC SERVICE FEE (“BSF”) SHOULD BE REJECTED ON LEGAL AND POLICY GROUNDS..... 1

 C. SDG&E’S PROPOSAL TO COMBINE TIER 3 AND TIER 4 RATES TOCREATE A NEW TIER 3 RATE SHOULD BE REJECTED 6

 D. A CAP ON CARE TIER 3 RATES SHOULD BE MAINTAINED 7

III. CARE ALLOCATION 9

 A. THE LAW REQUIRES THAT CARE COSTS BE ALLOCATED BASED ON EQUAL CENTS PER KILOWATTHOUR (KWH) TO ALL CUSTOMER CLASSES 9

IV. PREPAY PROGRAM..... 11

 A. SDG&E’S PREPAY IS NOT SUPPORTED BY LAW AND IS NOT IN THE PUBLIC INTEREST 11

V. CONCLUSION 12

I. INTRODUCTION

Pursuant to the Rule 13.11 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA") submits this reply brief on the application of San Diego Gas & Electric Company ("SDG&E") seeking approval of rate design changes in its 2012 General Rate Case Phase II, A.11-10-002. DRA replies to SDG&E's Opening Brief on the contested issues of the proposed changes to SDG&E's residential rate design, proposed changes to SDG&E's California Alternate Rates for Energy ("CARE") allocation, and on SDG&E's proposed prepay program. In addition, and for the sake of efficiency, DRA incorporates by reference arguments made by The Utility Reform Network ("TURN") and San Diego Consumers' Action Network ("SDCAN").

II. RESIDENTIAL RATE DESIGN ISSUES

A. Introduction

DRA replies to SDG&E's Opening Brief (OB) on the three disputed residential rate design issues in this proceeding. SDG&E proposes to: 1) Introduce a residential basic service fee ("BSF") or customer charge; 2) Move to a three-tier residential rate design; and 3) Eliminate its freeze on CARE Tier 3 rates. DRA opposes all three of SDG&E's proposals. With regard to SDG&E's proposal to eliminate the current rate freeze on Tier 3 rates, DRA recommends the adoption of a cap of 18 cents per kWh on CARE Tier 3 rates. This would allow some increase in the CARE Tier 3 rate without the risk of overly burdensome CARE Tier 3 rate increases between rate design proceedings.

B. SDG&E's proposal to introduce a residential basic service fee ("BSF") should be rejected on legal and policy grounds

SDG&E's OB largely repeats policy arguments SDG&E made in its testimony regarding its proposal for a residential BSF (or customer charge), and provides little legal support for its proposal. SDG&E's legal defense of its proposal is discussed on pages 18 and 19 of its OB.

On page 18, SDG&E states: "But Section 739.9(a) refers to rates applied to the identified customer groups as a whole, not individual customer bills." To rebut this

sentence it is necessary to compare SDG&E's interpretation with the language of this Code Section.

Section 739.9(a) provides:

The commission may, subject to the limitation in Subdivision (b), increase the rates charged residential customers for electricity usage up to 130 percent of the baseline quantities, as defined in Section 739, by the annual percentage change in the Consumer Price Index from the prior year plus 1 percent, but not less than 3 percent and not more than 5 percent per year. For purposes of this subdivision, the annual percentage change in the Consumer Price Index shall be calculated using the same formula that was used to determine the annual Social Security Cost of Living Adjustment on January 1, 2008. This subdivision shall become inoperative on January 1, 2019, unless a later enacted statute deletes or extends the date.

Section 739.9 (a) describes allowable rate increases for usage up to 130 percent of the baseline quantities. It does not discuss "identified customer groups as a whole" as SDG&E implies. This section allows for limited rate increases to non-CARE Tier 1 and Tier 2 of 3% to 5% per year, and thus partially lifted a rate freeze on these same rates that existed under AB 1X. The legislature took action to remove the rate freeze on rates for usage up to 130 percent of baseline quantities, but did so in a manner to avoid dramatic rate increases in these rates. The legislature intended to limit rate increases to a narrow range when it modified the rate protections in AB 1X. DRA's OB on pages 6 to 7 discussed the legislative intent of SB695 as it was examined in D.11-05-047. Section 739.9 (a) clearly limits rate increases for usage up to 130 percent of baseline quantities to 3% to 5% per year.

Limiting the rate increases in tiers 1 and 2 to 3% to 5% per year obviously would be meaningless if bills for customers consuming less than 130% of baseline could increase by more than these amounts by virtue of establishing or increasing a customer charge. Yet, SDG&E's proposal results in bill increases for some customers that are far

greater than the rate increases allowed under Section 739.9 (a); thus SDG&E's proposal is contrary to State Law.

On pages 18 and 19 of its OB, SDG&E cites two sentences from D.11-05-047.

The complete paragraph from this Decision states:

We find no statutory restrictions categorically prohibiting a fixed residential customer charge. Indeed, we acknowledge that SCE currently applies such a residential customer charge. The key legal question here, however, is whether the imposition of a fixed customer charge is included within the Sec. 739.1 (b) (2) and 739.9 (a) annual rate limitations applicable to electric usage up to 130 percent of baseline. Based on our analysis of the statutory provisions as discussed below, **we do interpret Sec.739.1 (b) (2) and 739.9 (a) as including fixed customer charges within the limitations on allowable percentage increases in “rates for usage.” Thus, we are prohibited by law from approving PG&E’s customer charge to the extent the total bill impacts exceed these statutory limitations on baseline rate increases.** (D.11-05-047, p. 24.) (Emphasis added)

The Commission did note that SCE already had a residential customer charge that existed before SB 695 was implemented. But, when examining PG&E's proposal for a new customer charge, the Commission stated that the law prohibits approving a customer charge to the extent the total bill impacts exceed the statutory limitations on baseline rate increases. In DRA's OB¹ and testimony, DRA showed that SDG&E's proposal in this case would result in bill increases greater than 3% to 5% for customers with usage below baseline quantities.

On page 19 of its OB, SDG&E discusses PU Code 739.9 (b), and an Advice Letter implementing SB695 rate increases for Tier 1 and Tier 2 rates for 2011. Most of this discussion is irrelevant or misleading as it pertains to the examination of SDG&E's proposal for a residential customer charge. PU Code Section 739.9 contains two separate rate protections; and both rate protections must be met. Section 739.9 (a) limits non-

¹ See DRA OB, pp. 4-5.

CARE residential Tier 1 and Tier 2 rate increases to 3% to 5% per year. Section 739.9 (b) is an additional condition or cap that must be satisfied:

The rates charged residential customers for electricity usage up to the baseline quantities, including any customer charge revenues, shall not exceed 90 percent of the system average rate prior to January 1, 2019, and may not exceed 92.5 percent after that date.

In order to compare the customer charge revenues to a system average rate expressed in \$/kWh, they must be divided by tier 1 sales to derive a volumetric rate. The sum of that volumetric rate and the tier 1 energy rate cannot exceed 90 percent of the system average rate at this time.

Section 739.9 (a) is the primary rate protection, and Section 739.9 (b) is an additional rate protection that governs non-CARE residential rates. For example, Section 739.9 (b) has been used to limit rate increases for non-CARE residential Tier 1 rates for SCE². Both rate protections need to be met, thus, compliance with Section 739.9 (b) alone is insufficient. SDG&E's proposal is not legal as it does not comply with the statutory limitations on baseline rate increases contained in Section 739.9 (a).

SDG&E's proposal, like that of PG&E, effectively would deprive residential customers of these rate protections. SDG&E's proposal, like PG&E's, is contrary to law and should be rejected.

SDG&E continues to ignore the fact that the rate protections from Sections 739.9(a) and 739.1(b) (2) apply to *all* residential customers with usage up to 130% of baseline usage, including customers who use less than the baseline allowance. The Section 739.1(a) and 739.9(a) rate protections include fixed customer charges within the allowable percentage increases for usage up to 130% of baseline usage for all residential customers. If SDG&E's residential rate design proposals are adopted, residential non-

² When SCE proposed implementation of SB695 rate increases for January 2011, SCE could not implement the full 3% increase to its Tier 1 rates as this would have resulted in a Tier 1 rate with customer charge revenues that would have exceeded 90% of the system average rate. SCE was permitted to increase its Tier 1 rate by 0.97% in June 2011, which satisfied the Section 739.9 (b) cap that the Tier 1 rate including customer charge revenues remain below 90% of the system average rate.

CARE customers with usage below the baseline usage level would receive bill increases as high as 21.7%. CARE customers with usage below the baseline usage level would receive bill increases as high as 24.5%.³ During Hearings, SDG&E's witness Cynthia Fang admitted that some customers using less than 130% of baseline would experience bill increases greater than the three to five percent range permitted in SB695.⁴

As proposed, SDG&E's rate increases clearly exceed the allowable increases of 3% to 5% per year for non-CARE residential customers and the current cap of zero for CARE customers⁵. Furthermore, these bill impacts do not take into account the annual request to increase Tier 1 and Tier 2 rates that SDG&E and the other electric Investor Owned Utilities ("IOUs") have made each year since SB695 was passed. For example, the bill impacts cited above do not take into account the 5% increases to Tier 1 and Tier 2 rates that SDG&E implemented on January 1, 2012⁶, or additional requests for Tier 1 and Tier 2 rate increases for January 1, 2013⁷.

Consequently, as in previous cases, and most recently in D.11-05-047, the Commission has thoroughly reviewed the law and the legislative intent applicable to residential customer charges. Just as the Commission rejected PG&E's proposed residential customer charge in D.11-05-047, so too should it reject SDG&E's proposal in this case.

³ See DRA OB, pp.4-5.

⁴ RT Vol 4 (October 9) p.213:19—p.214:26.

⁵ Ex. DRA-1, p.5-8. CARE rate increases for usage up to 130% of baseline quantities, is tied to the CalWorks program escalator. Because of state budget difficulties in the last few years, there have been no increases to the CalWorks escalator.

⁶ Ex. DRA-1, p.5-8. The 5% Tier 1 and Tier 2 rate increases were implemented via Advice Letter 2303-E.

⁷ SDG&E filed Advice Letter 2422-E on November 15, 2012 requesting a 3% increase to non-CARE residential Tier 1 and 2 rates in January 2013.

C. SDG&E’s Proposal to Combine Tier 3 and Tier 4 rates to create a new Tier 3 rate should be rejected

SDG&E’s OB discusses its proposal to combine its Tier 3 and Tier 4 rates to create a new Tier 3 rate on pages 21 to 23. DRA responds to several assertions made by SDG&E.

On page 22, SDG&E’s description of PG&E’s residential rate design is erroneous. Witness Fang conceded while testifying that she did not know for sure what PG&E proposed in its last GRC Phase II.⁸ PG&E went from 5 tiers of non-CARE residential rates to 4 tiers as part of a settlement to its 2010 Summer Rate Relief Application that was adopted in D.10- 05-051⁹. Subsequently, PG&E proposed in its GRC Phase II Application to move from a 4 tier to 3 tier non-CARE residential rate design. In D.11-05-047, the Commission denied this proposal and PG&E continues to maintain a 4 tier non-CARE residential rate design¹⁰. Thus, SDG&E’s assertion in the first bullet on page 22 that the two cases are completely different is inaccurate. Both IOUs proposed going from 4 to 3 tiers of non-CARE residential rates in their respective GRC Phase II Applications. The precedent from PG&E should be followed for SDG&E.

In its second bullet on page 22, SDG&E misunderstands DRA’s position on the relation between AMI capabilities and rate design. DRA did not state that changing the rate design as SDG&E proposes would have an effect on SDG&E’s AMI roll out. DRA’s position is that the AMI meters and improved communication and outreach capabilities have the potential to better inform residential customers about tiered rates and provide information that might lead to more conservation when customers are consuming in the upper tiers. DRA believes it would be preferable to leave the current rate design in place and to observe how the four tier rate design functions with the improved customer usage information.

⁸ RT Vol 4 (October 9, 2012), p.234:23-28.

⁹ See D.10-05-051, p.9. “Tiers 4 and 5 will be consolidated into a single Tier...”

¹⁰ See D.11-05-047, p47. “We decline to adopt PG&E’s proposal to consolidate Tiers 3 and 4.”

In its fourth bullet on page 22, SDG&E discusses rates for medical baseline customers. SDG&E's analysis here is short sighted and insufficient. SDG&E's GRC Phase II is revenue neutral in that SDG&E is not seeking increases in revenue requirements in this proceeding. This Phase II proceeding is connected however, to SDG&E's GRC Phase I proceeding and other proceedings¹¹, where SDG&E is seeking substantial revenue requirements increases. It is not known when a GRC Phase I decision will be issued, but typically GRC Phase I decisions are issued before Phase II decisions, and revenue requirements changes from Phase I will impact the illustrative rates SDG&E is proposing in this proceeding. Thus, the medical baseline rates SDG&E discusses in the fourth bullet 4 of page 22 does not represent a forecast of medical baseline rates based on likely outcomes in GRC Phase I. All other things being equal, SDG&E's proposal to combine Tiers 3 and 4 will lead to a greater Tier 3 rate which in turn will impact medical baseline customers.

In its first bullet on page 23, SDG&E discusses CARE Tier 3 rates. Similarly, the CARE Tier 3 rates SDG&E discusses are not accurate as they fail to include requested revenue increases.

SDG&E's position is based on an erroneous claim and a misunderstanding of PG&E's GRC Phase II proceeding, and on incomplete and inaccurate rate forecasts. Therefore, they are not credible. DRA recommends that, while the Commission considers other changes to residential rate design in the residential rate design OIR, the Commission maintain 4 tiers of residential rates for SDG&E. The Commission recently examined a similar proposal by PG&E, in its GRC Phase II proceeding, to combine residential Tier 3 and Tier 4 rates, and rejected PG&E's proposal.

D. A Cap on CARE Tier 3 rates should be maintained

On pages 23 and 24 of SDG&E's OB, SDG&E discusses its proposal to remove the cap on CARE residential Tier 3 rates on a going-forward basis. On page 24, SDG&E

¹¹ See for example, SDG&E's request to increase its transmission rates at the Federal Energy Regulatory Commission, Docket ER12-2454-000, where SDG&E is seeking an increase in excess of 100%.

states that its proposals would result in decreases to CARE Tier 3 rates. Again SDG&E's proposed rates do not include revenue requirements increases from other proceedings such as SDG&E's GRC Phase I proceeding, or for SDG&E's request for Transmission revenue requirements increases at the FERC. Including these revenue requirement increases will almost certainly lead to increases to the CARE Tier 3 rate if SDG&E's proposal to eliminate the CARE Tier 3 rate cap is removed. It is unclear why SDG&E is making its proposal to remove the cap. If SDG&E seriously believes that the CARE Tier 3 will decrease and will not immediately increase above the current CARE Tier 3 rate level, why would it make its proposal? Obviously SDG&E knows that there is upward pressure on CARE Tier 3 rates when revenue requirement increases are approved.

Also on page 24, SDG&E states:

In addition, DRA implies that SDG&E will be allowed to implement unlimited non-litigated increases to CARE rates, stating that "(a) cap on CARE tier 3 rates is a better policy than allowing unlimited non-litigated increases to CARE rates. DRA's implication is untrue and unwarranted. All rate changes, including changes that result from changes in revenue requirements, require Commission approval.

SDG&E's statement makes little sense and distorts DRA's concerns. SDG&E's defense of its proposal is based primarily on its proposed CARE Tier 3 rates in this proceeding, where there are no proposed revenue requirements increases. DRA maintains that it makes more sense to take into account the fact that there likely will be revenue requirement increases from SDG&E's GRC Phase I proceeding, SDG&E's Transmission Application at FERC, and from other proceedings. The exact amount of revenue requirements increases from these proceedings may be unknown, but in all likelihood, rates will increase. SDG&E is correct that changes to revenue requirements in these proceedings require Commission approval; however, rates are not typically litigated or examined in these proceedings.

DRA continues to believe that it makes better sense to set a policy on CARE rates in this rate design proceeding. The potential for CARE rate increases over the next three years should be considered when setting CARE rate policy, and certainly before the cap

on CARE Tier 3 rates is removed. A cap on CARE Tier 3 rates is a better policy than allowing unlimited non-litigated increases to CARE rates from other proceedings where rates are not as thoroughly examined.

III. CARE ALLOCATION

A. The Law Requires that CARE Costs be Allocated Based on Equal Cents per Kilowatthour (kWh) to all Customer Classes

On page 25 of SDG&E's OB, SDG&E continues to support its position based on a Commission decision from 2005, before state law was changed by SB 695¹², and on the implementation of Advice Letter 1756-E, which did not examine the CARE allocation. The CARE allocation needs to be updated in this case in order for it to conform to State law. The law on the CARE allocation was clarified in 2009, and thus is more important and relevant than what was permissible in 2005. SDG&E's continued reliance on Advice letter 1756-E-A shows the weakness of its CARE allocation position. Advice Letter 1756-E focused on the rate increases for non-CARE Tier 1 and Tier 2 rates that are permitted under P.U. Code Section 739.9 (a). SDG&E has failed to show how this Advice Letter is relevant to the discussion on the CARE allocation. Moreover, SDG&E has admitted exactly this:

[T]he Commission did not approve reallocations of all CARE subsidies to all customers in D.09-12-048, which implemented rate adjustments allowed under SB695.¹³

When SB 695 added PU Code Section 327 (a) (7), it provided a clear method on how to allocate CARE costs.

PU Code 327 (a) (7) states:

For electrical corporations and for public utilities that are both electrical corporations and gas corporations, *allocate the costs*

¹² This change added PU Code Section 327(a)(7).

¹³ SDG&E OB, p.26.

of the CARE program on an equal cents per kilowatthour or equal cents per therm basis to all classes of customers that were subject to the surcharge that funded the program on January 1, 2008. (emphasis added)

In its OB on page 26, SDG&E attempts to change the meaning of this code section and makes an absurd claim that this code section only applies to home weatherization service programs for low income customers. In other areas of Section 327, home weatherization services are discussed, but Section 327 (a) (7) is crystal clear: CARE costs must be allocated based on equal cents per kWh to all customer classes. In addition, when interpreting a statute the law is equally clear. Under California law, the following rules of statutory interpretation apply:

“Of primary importance 'the court should ascertain the intent of the legislature so as to effectuate the purpose of the law.' " *San Diego Union v. City Council*, 146 Cal. App. 3d 947, 953-954, 196 Cal. Rptr. 45 (1983) (quoting *Select Base Materials, Inc. v. Bd. of Equalization*, 51 Cal.2d 640, 645, 335 P.2d 672 (1959)). "The provision under scrutiny must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, which, upon application, will result in wise policy rather than mischief or absurdity." *Id.* at 954(citations omitted). "The court should take into account matters such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy, and contemporaneous construction." *Id.* (quoting *Cossack v. City of Los Angeles*, 11 Cal.3d 726, 733, 114 Cal. Rptr. 460, 523 P.2d 260 (1974)).¹⁴

In order to avoid “mischief or absurdity”, the Commission must read the language of section 327(a) as requiring that all CARE costs be allocated by equal cents per kWh. Cost allocation methods are routinely revised in each GRC phase 2 proceeding. This proceeding is the first rate design proceeding for SDG&E since the passage of SB695, and hence it is the appropriate venue in which CARE cost allocation going forward should be examined. Furthermore, there was no need for the Commission to focus on how CARE costs were allocated in D.09-12-048¹⁵. The Commission was primarily

¹⁴ *S.D. Myers, Inc. v. City & County of San Francisco*, (2003) 336 F.3d 1174, 1179

¹⁵ Or, in A.09-10-013, A.09-10-014, A.09-10-015, Applications by the three IOUs to implement PU Code 739.9.

addressing the IOUs' proposals regarding how to implement PU code 739.9, which sets guidelines for Tiers 1 & 2 annual rate changes.¹⁶ In any event, P.U. Code Section 327 (a) (7) provides no exception to the principle that all CARE costs should be allocated on an equal cents per kWh basis to all non-exempted customer classes. SDG&E's method clearly violates the law, and should be rejected now.

IV. PREPAY PROGRAM

A. SDG&E's Prepay is not Supported by Law and is not in the Public Interest

SDG&E argued that the Commission should allow a fully informed customer to voluntarily forgo its statutory prior notice requirements in order to obtain the benefits of the proposed Prepay option¹⁷.

SDG&E relied on D.06-07-027, which held that individual customers can waive the protections afforded by provision of AB1X¹⁸. D.06-07-027 addressed the Critical Peak Pricing ("CPP") Program proposed by PG&E. The CPP is a rate option that contains a high critical peak surcharge during event days coupled with offsetting credits on non-event days. Therefore, a customer that chooses CPP could see a bill increase if s/he does not reduce his/her energy usage during those critical peak days. Conversely, s/he may see a bill decrease if s/he is able to reduce energy usage on those days. Additionally, there is a one-year bill protection period where customers would not see bill increases in the first year they are on CPP.

As TURN thoroughly explained the facts presented in D.06-07-027 were different from those in this Prepay case. Under CPP, customers may face some financial burden to the extent their bills might increase. However, customers who take actions to reduce their consumption may actually see bill decreases rather than bill increases. Therefore, the

¹⁶ D.09-12-048, mimeo, p.1 and discussions throughout the decision.

¹⁷ SDG&E OB, p.36.

¹⁸ Id., p.35.

increases would not impact all customers who choose to opt into CPP. And, they would not incur bill increases in the first year. In contrast, the Prepay customers as a class could suffer the duress of more frequent service disruptions that may endanger their personal health and safety. Moreover, there is a large gap between losing energy services and the possibility of an energy bill increase.

In addition, SDG&E's proposal assumes that a participating customer would be 'fully informed'. As TURN noted, a Prepay customer might not actually receive notice of an impending disconnection because the notification relies on technologies (cell phone, landline, or internet) that provide no guarantee of service reliability¹⁹. The low-income customers may not be informed of methods and programs that can assist them in avoiding service disconnections²⁰ before being disconnected. It took decades for the Commission to establish programs to mitigate service disconnections. SDG&E's Prepay Program would undermine such prior efforts. TURN also stated that SDG&E has not provided any sample tariffs or program agreements to show how SDG&E intends to educate their customers. Thus, customers may not know the risks of prepay and the rights that they will be waiving.

The objectives that SDG&E wants to accomplish through Prepay can be accomplished by other means. As DRA explained in its testimony and OB, the AMI-enabled budget management tools can serve to accomplish the same goals of consumers of tracking their energy consumption, conserving usage, and reducing their bills. The Commission should reject SDG&E's Prepay Program as it violates state law and jeopardizes the Commission's long standing policy to minimize service disconnections.

V. CONCLUSION

For the foregoing reasons, DRA recommends that the Commission reject SDG&E's proposal to institute a residential customer charge on legal and policy grounds

¹⁹ TURN OB, p. 8.

²⁰ Id., pp.9-10.

and reject SDG&E's proposal for a three-tier residential rate design. DRA recommends that the Commission adopt a cap of 18 cents per kWh for CARE Tier 3 rates. All CARE costs should be allocated on an equal cents per kWh basis. SDG&E's Prepay program, which would remove substantial customer protections from disconnections, also should be rejected.

Respectfully submitted

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