

**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 Approval of its 2017 Electric
Procurement Revenue Requirement Forecasts and GHG-
Related Forecasts

A.16-04-018
(Filed April 15, 2016)

**OPENING BRIEF OF THE ALLIANCE FOR RETAIL ENERGY MARKETS AND
DIRECT ACCESS CUSTOMER COALITION REGARDING POWER
CHARGE INDIFFERENCE AMOUNT VINTAGING ISSUES**

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The Alliance for Retail Energy Markets (“AReM”)¹ and the Direct Access Customer Coalition (“DACC”)² submit this opening brief regarding power charge indifference amount vintaging issues. On September 15, 2016, San Diego Gas & Electric Company (“SDG&E”) filed its Motion of San Diego Gas & Electric Company (U 902-E) to Modify Proceeding Schedule. By email on September 18, 2016, assigned Administrative Law Judge Gerald F. Kelly granted the motion, approving the schedule change to allow opening briefs on this issue to be filed and served on October 3, 2016, and reply briefs on October 14, 2016.

As noted in the SDG&E Motion, AReM and DACC have raised the same issue regarding the PCIA calculation in the 2017 ERRA Forecast Application of Southern California Edison Company (“SCE”). This modification to the dates in this proceeding will allow the briefing schedules in the two proceedings to coincide so that opening and reply briefs will be filed concurrently in the two utilities’ respective 2017 ERRA Forecast proceedings.

¹ AReM is a California mutual benefit corporation formed by Electric Service Providers (“ESPs”) that are active in California’s Direct Access retail electric supply market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

² DACC is a regulatory advocacy group comprised of educational, governmental, commercial and industrial customers that utilize direct access for all or a portion of their electrical energy requirements. In the aggregate, DACC member companies represent over 1,900 MW of demand that is met by both direct access and bundled utility service and about 11,500 GWH of statewide annual usage.

I. STATEMENT OF ISSUE

The issue in dispute here is very narrow. Put very simply, it is as follows:

Should the Power Charge Indifference Amount (“PCIA”) be applicable to DA customers with the pre-2009 Vintage?

AReM/DACC believes this issue was resolved by Commission Decision (“D.”) 07-05-005, which clearly stated that the indifference requirement for so-called “non-continuous” direct access (“DA”) customers (meaning those customers with the pre-2009 Vintage PCIA³) should expire with the last Department of Water Resources (“DWR”) contract.⁴ In its application, however, SDG&E proposes to continue the PCIA for this vintage. AReM/DACC address herein the issues underlying this dispute and the rationale behind our conclusion that pre-2009 PCIA vintage direct access customers should not be subject to the PCIA.

II. BACKGROUND TO THE ISSUE

The history of the fees paid by DA customers for the right to take or remain on DA service is long and convoluted. Beyond the Competition Transition Charge (“CTC”), which arose from Assembly Bill 1890⁵ and the original industry restructuring, the policy of maintaining bundled customer indifference arose out of the 2001 energy crisis.⁶ The following is a list of the decisions that are pivotal in the issue of the payment of the PCIA by pre-2009 vintage DA customers. While this list is far from exhaustive with respect to post-energy crisis DA policy, it

³ “Non-continuous” DA customers are those who entered in to contracts with ESPs for DA service prior to September 20, 2001, but who were not on DA service continuously throughout the 2000-2001 California energy crisis. For clarity’s sake, these are referred to herein as “Pre-2009” vintage customers.

⁴ These DWR Contracts were entered into by the state agency during the California Energy Crisis of 2000-2001 when the creditworthiness of the California investor-owned utilities (“IOUs”) was under serious stress. Pacific Gas and Electric (“PG&E”) went into bankruptcy while Southern California Edison (“SCE”) teetered on the edge of it. San Diego Gas & Electric (“SDG&E”) also suffered significant financial distress during this period.

⁵ Stats 1996, Ch. 854.

⁶ See, for example, D.02-11-022.

highlights the ones that illuminate the issue of whether pre-2009 DA customers should be subject to the PCIA.

D.04-12-048 – Prior to the formal establishment of the PCIA, the three IOUs were granted the authority to begin procuring new resources on behalf of the bundled customers in the 2004 long-term procurement proceeding. At that time, the Commission established in principle the current “Vintaging” protocol. This protocol called for a share of any above-market costs associated with newly-acquired generating assets or contracts to be paid for by those DA customers (and other classes of departed load) “on whose behalf” the asset or contract was entered into—i.e., in the case where those assets or contracts were approved prior to the customer’s departure from bundled service. Even though the DA market was closed, this vintaging was necessary to address the limited situation where DA customers would return to bundled service for a time and then subsequently return to DA service after their host IOU had procured new resources while the customers were on bundled service. However, this did not become a more significant issue until 2010, when the DA market was opened up to new customers pursuant to Senate Bill 695.⁷

D.06-07-030 - In July of 2006, the Commission issued D.06-07-030, which first authorized the PCIA.⁸ The decision adopted the now-familiar “Total Portfolio Indifference” calculation methodology. Consideration had been given to an alternative to the Total Portfolio Indifference method, in which only the above-market costs of the DWR contracts were calculated. However, the Commission found that below-market IOU-owned “old-world”

⁷ Stats 2009, Ch. 337.

⁸ Immediately prior to that time, the fee for stranded-cost recovery was referred to as the Cost Responsibility Surcharge and was simply set at 2.7¢/kWh, which was additional to the CTC, the Department of Water Resources (“DWR”) Bond Charge, Historic Procurement Charge (SCE), and EPC (PG&E).

generation should also be included in the accounting and thus it based bundled ratepayer indifference on the Total Portfolio of IOU resources.

Effectively, DA customers subject to the PCIA are divided into two categories: (1) the Pre-2009 Vintage customers, who are subject to the PCIA established in D.06-07-030 to collect above-market DWR Contract costs: and (2) 2009 and later Vintage (“Post-2009”) customers subject to the vintaging established via D.04-12-048 to collect above-market costs of new IOU procurement. Two other relevant decisions are especially worthy of note:

D.07-05-005 - D.07-05-005 responded to a Petition to Modify D.06-07-030. This decision addressed certain specific issues concerning obligations of municipal departing load customers to pay the Cost Responsibility Surcharge (“CRS”) and issues concerning the treatment of negative indifference amounts. As is discussed later in this opening brief, this decision includes clear statements that with the expiration of the DWR Contracts, “the applicability of the indifference requirement would also expire.”⁹

D.08-09-012 – This decision finalized the post-2009 Vintage calculations called for in D.04-12-048, stating that the Total Portfolio Indifference calculation would apply to new contracts or assets. Again, parties (notably PG&E) argued that the above-market costs of the new assets or contracts should be calculated in isolation. The decision described this as a question of “whether the D.04-12-048 NBC should be determined in isolation (separate charge approach) or in conjunction with other resources and other related CRS obligations (total portfolio approach).”¹⁰ The Commission disagreed with PG&E, and retained the Total Portfolio Indifference supported by SCE, San Diego Gas & Electric (“SDG&E”) and AReM.¹¹

⁹ D.07-05-005, at p. 27.

¹⁰ D.08-09-012, at p. 39.

¹¹ Id at p. 58.

III. WITH THE EXPIRATION OF ALL DWR CONTRACTS, PRE-2009 DIRECT ACCESS CUSTOMERS SHOULD NO LONGER BE SUBJECT TO THE PCIA

Up until last year, any differentiation between Pre-2009 and Post-2009 PCIA was immaterial. And, while PG&E alone explained this issue in its ERRA testimonies, the actual calculation methodology for the PCIA for both the Pre-2009 and Post-2009 Vintage DA customers was always the same. PG&E has always made the distinction in its ERRA Forecast Applications, while SDG&E and SCE have not. For example, in testimony supporting PG&E's 2015 ERRA forecast Application (A.14-05-024), PG&E presented separate PCIA's for "Decision 06-07-030 Total Portfolio Indifference Calculation" (i.e., pre-2009 Vintage) and "Decision 04-12-048 Total Portfolio Indifference Calculation" (i.e., post-2009 Vintage).¹² This differentiation was implicitly approved in Decision 14-05-024, which clearly stated that, "PG&E followed adopted PCIA and CAM methodologies..."¹³

However, given the expiration of the last of the DWR Power Contracts, the situation is now markedly different. D.07-05-005 clearly states that the PCIA for Pre-2009 Vintage DA customers was established for the recovery of the DWR contract costs and, with the expiration of the last DWR Contract, the PCIA obligation for those pre-2009 vintage customers also expired. The Decision states clearly, three times, that the "indifference requirement" of these DA customers expires with the expiration of the DWR contracts. First on page 19, the decision states,

[T]he requirement to maintain bundled customer indifference did not end on June 30, 2006 merely because PG&E's CRS undercollection at that point was deemed to be zero. The indifference requirements continue until the DWR contracts expire. (p. 20, emphasis added)

¹² See, A.14-05-024, PG&E 2015 Energy Resource Recovery Account and Generation Non-Bypassable Charges Forecast, Prepared Testimony of Donna L. Barry, pp. 9-8 and 9-9. May 30, 2014.

¹³ D.14-05-024, at p 12 and p. 13

And,

At the expiration of the DWR contract term, the applicability of the indifference requirement would also expire. In the event that there is any net cumulative negative indifference balance at the time the DWR contracts expire, that balance will not be credited to DA/DL customers. It will simply expire. (pp. 20-21, emphasis added)

And most importantly, Finding of Fact 14 states:

At the expiration of the DWR contract term, the applicability of the indifference requirement would also expire. (p. 27, emphasis added)

AReM and DACC are not aware of any other Commission decision that explicitly overturns or contradicts these prior determinations by the Commission. There are, of course, statements in various decisions that reaffirm the indifference policy, but none that explicitly reverse D.07-05-005 or explicitly states that the PCIA of these DA customers with a pre-2009 Vintage should continue past the expiration of the DWR Contracts.

Furthermore, consistent with the directives in D.07-05-005, in its 2016 Forecast Application (A.15-06-001) PG&E did not include a pre-2009 Vintage PCIA for DA customers. In fact, an issue litigated in that proceeding was the treatment of remaining negative indifference amounts associated with pre-2009 DA customers,¹⁴ an issue that arose solely because PG&E was terminating the PCIA for pre-2009 Vintage DA customers. If those DA customers were to continue to pay the PCIA, then the negative indifference amount would have simply been applied to their 2016 PCIA and disposition of the negative indifference amount would not have been an issue. But since PG&E was not proposing a pre-2009 Vintage PCIA for DA customers and a negative indifference amount associated with those pre-2009 DA customers was outstanding, its disposition was thus an issue. No party to A.15-06-001 opposed PG&E's ending

¹⁴ See, D.15-12-022 at p. 8.

the PCIA for pre-2009 Vintage DA customers. The only opposition by parties was to the treatment of the unused negative indifference amounts associated with those pre-2009 Vintage DA customers.

Having thus been informed about and considered the issue, the Commission observed that “Because PG&E *followed adopted PCIA and CAM methodologies*, we adopt PG&E’s proposed PCIA and CAM”¹⁵ and simply instructed PG&E to include a proposal for the disposition of the outstanding negative indifference amounts in its 2017 ERRRA forecast.¹⁶ Significantly, the Commission did not reject PG&E’s or challenge elimination of the PCIA for pre-2009 Vintage DA customers. Rather, it simply deferred action on the negative indifference amounts, thereby accepting PG&E’s termination of the pre-2009 Vintage PCIA for DA customers.

IV. DISCOVERY POSED BY AREM AND DACC TO SDG&E SPECIFICALLY ADDRESSED THIS ISSUE

AREM and DACC posed discovery to SDG&E on July 26, 2016, asking the following question:

Please see attached Decision 07-05-005, the highlighted sections on page 20:

“The indifference requirements [of pre-2009 DA customers] continues until the DWR contracts expire.”

And

“At the expiration of the DWR contract term, the applicability of the indifference requirement would also expire.”

Given this explicit language concerning the PCIA obligation of pre-2009 vintage DA customers, what is SDG&E’s rationale for continuing to impose a PCIA on pre-2009 vintage DA customers?

¹⁵ Id at p. 13 (emphasis added).

¹⁶ Id at p. 14. See also, Ordering Paragraph 5 at 23.

Following an objection that the data request required a legal conclusion, SDG&E responded as follows:

The PCIA for pre-2009 vintage DA customers is calculated using the total portfolio methodology which includes CTC resources, a DWR power charge credit, and SONGS regulatory asset and nuclear fuel costs. The indifference amount for pre-2009 vintage DA customers is positive in SDG&E's 2017 application due to the SONGS regulatory asset and nuclear fuel costs which are recoverable per the SONGS OII Settlement approved in Decision (D.) 14-11-040 and in accordance with the DA Customer Ratemaking Consensus Protocol for SONGS Outages and Retirement ("Consensus Protocol") approved in D.14-05-022.¹⁷

None of these citations directly contradict D.07-05-005. The reference to CTC resources is immaterial as AReM and DACC do not dispute that the pre-2009 vintage DA customers must continue paying the CTC.

Second, the DWR power charge credit is irrelevant as the DWR power contracts allocated for the benefit of SDG&E have expired.

Third, SDG&E also cited the SONGS OII Settlement approved in D.14-11-040 and the DA Customer Ratemaking Consensus Protocol for SONGS Outages and Retirement ("Consensus Protocol") approved in D.14-05-022. However, neither the SONGS OII Settlement decision nor the Consensus Protocol explicitly address this issue of the PCIA obligations of pre-2009 DA customers. When seen through the lens of D.07-05-005, the 2014 SONGS decisions apply only to the post-2009 PCIA Vintage customers because the Commission had already made the decision that the PCIA should expire for pre-2009 Vintage customers once the DWR contracts expired. Nothing in the Consensus Protocol addressed, overruled or changed that. Thus, the Consensus Protocol applies solely to Post-2009 PCIA Vintage DA customers.

¹⁷ See August 1, 2016, SDG&E discovery response, attached hereto.

V. **CONCLUSION**

Based on the foregoing analysis, AReM and DACC believe it to be clear that the PCIA is not applicable to pre-2009 Vintage customers. None of the decisions cited by SCE in its discovery response change the fact that the Commission has only on one occasion explicitly addressed the issue of the applicability of the PCIA to these customers. In that decision, D.07-05-005, the Commission clearly stated that “At the expiration of the DWR contract term, the applicability of the indifference requirement would also expire.”¹⁸ The Commission should reiterate that conclusion at this time in this proceeding, consistent with what it has already done in D.15-12-022, the PG&E’s 2016 ERRR forecast proceeding.

Respectfully submitted,



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October 3, 2016

¹⁸ D.07-05-005, at p. 27.

AReM DATA REQUEST
AReM-SDG&E DR-02, REQUEST 1
SDG&E WEMA PROCEEDING - A.16-04-018
SDG&E RESPONSE
DATE RECEIVED: JULY 26, 2016
DATE RESPONDED: AUGUST 1, 2016

I. GENERAL OBJECTIONS

1. SDG&E objects generally to each request to the extent that it seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or evidentiary doctrine. No information protected by such privileges will be knowingly disclosed.
2. SDG&E objects generally to each request that is overly broad and unduly burdensome. As part of this objection, SDG&E objects to discovery requests that seek “all documents” or “each and every document” and similarly worded requests on the grounds that such requests are unreasonably cumulative and duplicative, fail to identify with specificity the information or material sought, and create an unreasonable burden compared to the likelihood of such requests leading to the discovery of admissible evidence. Notwithstanding this objection, SDG&E will produce all relevant, non-privileged information not otherwise objected to that it is able to locate after reasonable inquiry.
3. SDG&E objects generally to each request to the extent that the request is vague, unintelligible, or fails to identify with sufficient particularity the information or documents requested and, thus, is not susceptible to response at this time.
4. SDG&E objects generally to each request that: (1) asks for a legal conclusion to be drawn or legal research to be conducted on the grounds that such requests are not designed to elicit facts and, thus, violate the principles underlying discovery; (2) requires SDG&E to do legal research or perform additional analyses to respond to the request; or (3) seeks access to counsel’s legal research, analyses or theories.
5. SDG&E objects generally to each request to the extent it seeks information or documents that are not reasonably calculated to lead to the discovery of admissible evidence.
6. SDG&E objects generally to each request to the extent that it is unreasonably duplicative or cumulative of other requests.
7. SDG&E objects generally to each request to the extent that it would require SDG&E to search its files for matters of public record such as filings, testimony, transcripts, decisions, orders, reports or other information, whether available in the public domain or through FERC or CPUC sources.
8. SDG&E objects generally to each request to the extent that it seeks information or documents that are not in the possession, custody or control of SDG&E.
9. SDG&E objects generally to each request to the extent that the request would impose an undue burden on SDG&E by requiring it to perform studies, analyses or calculations or to create documents that do not currently exist.

AReM DATA REQUEST
AReM-SDG&E DR-02, REQUEST 1
SDG&E WEMA PROCEEDING - A.16-04-018
SDG&E RESPONSE
DATE RECEIVED: JULY 26, 2016
DATE RESPONDED: AUGUST 1, 2016

10. SDG&E objects generally to each request that calls for information that contains trade secrets, is privileged or otherwise entitled to confidential protection by reference to statutory protection. SDG&E objects to providing such information absent an appropriate protective order.

II. EXPRESS RESERVATIONS

1. No response, objection, limitation or lack thereof, set forth in these responses and objections shall be deemed an admission or representation by SDG&E as to the existence or nonexistence of the requested information or that any such information is relevant or admissible.
2. SDG&E reserves the right to modify or supplement its responses and objections to each request, and the provision of any information pursuant to any request is not a waiver of that right.
3. SDG&E reserves the right to rely, at any time, upon subsequently discovered information.
4. These responses are made solely for the purpose of this proceeding (A.16-04-018) and for no other purpose.

**AReM DATA REQUEST
AReM-SDG&E DR-02, REQUEST 1
SDG&E WEMA PROCEEDING - A.16-04-018
SDG&E RESPONSE
DATE RECEIVED: JULY 26, 2016
DATE RESPONDED: AUGUST 1, 2016**

III. RESPONSES TO REQUESTS

Request 1: Please see attached Decision 07-05-005, the highlighted sections on page 20:

“The indifference requirements [of pre-2009 DA customers] continues until the DWR contracts expire.”

And

“At the expiration of the DWR contract term, the applicability of the indifference requirement would also expire.”

Given this explicit language concerning the PCIA obligation of pre-2009 vintage DA customers, what is SDG&E’s rationale for continuing to impose a PCIA on pre-2009 vintage DA customers?

Objection: SDG&E objects to this request on the grounds set forth in General Objection 4. Subject to the foregoing objection, SDG&E responds as follows.

Response: The PCIA for pre-2009 vintage DA customers is calculated using the total portfolio methodology which includes CTC resources, a DWR power charge credit, and SONGS regulatory asset and nuclear fuel costs. The indifference amount for pre-2009 vintage DA customers is positive in SDG&E’s 2017 application due to the SONGS regulatory asset and nuclear fuel costs which are recoverable per the SONGS OII Settlement approved in Decision (D.) 14-11-040 and in accordance with the DA Customer Ratemaking Consensus Protocol for SONGS Outages and Retirement (“Consensus Protocol”) approved in D.14-05-022.