

Decision PROPOSED DECISION OF ALJ HECHT (Mailed 10/30/2012)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego
Gas & Electric Company (U902E) for
Approval of its Proposals for Dynamic Pricing
and Recovery of Incremental Expenditures
Required for Implementation.

Application 10-07-009
(Filed July 6, 2010)

**DECISION ADOPTING A DYNAMIC PRICING STRUCTURE FOR
RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS AND DENYING
THE MOTION FOR APPROVAL OF A SETTLEMENT AGREEMENT**

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1. Summary

This decision adopts a limited set of time-varying electric rates to be offered to residential and small commercial customers of San Diego Gas & Electric Company (SDG&E). Time-varying rates, including time-of-day rates, are electric rates under which the amount customers pay for each unit of electricity varies over the course of a day. Such rates are intended to motivate customers to reduce their electricity use during times of peak electricity demand by more closely reflecting the higher costs of electricity at those times. SDG&E is authorized to collect up to \$92.7 million to fund the implementation of dynamic pricing and the associated activities adopted here. In addition, this decision requires SDG&E to implement specified education and outreach measures, and report on its expenditures, implementation, and education efforts.

This proceeding is closed.

2. Background

On July 6, 2010, San Diego Gas & Electric Company (SDG&E) filed Application (A.) 10-07-009 requesting approval of proposed dynamic electric rates, as well as authority to recover costs of the development and implementation of those rates from its ratepayers. According to SDG&E's application, its dynamic pricing proposal is designed to allow SDG&E customers to assess and potentially reduce their overall annual electricity costs by choosing among several dynamic rates for electricity. The proposed rates are higher during hours of peak electricity demand and lower at other times, providing an

incentive for customers to reduce their usage at peak times and shift some usage to non-peak hours.

Four parties filed protests to this Application: the Division of Ratepayer Advocates (DRA), the Utility Consumers' Action Network (UCAN), the City of San Diego (San Diego), and Disability Rights Advocates (Disability Rights). All four protesting parties raised issues related to the costs and customer impacts of the SDG&E proposals. SDG&E filed a response to these protests on August 19, 2010.

The Administrative Law Judge (ALJ) assigned to this proceeding held a prehearing conference (PHC) on August 25, 2010. Representatives of SDG&E, DRA, UCAN, Disability Rights, the Greenlining Institute (Greenlining), the Energy Users' Forum, the California Small Business Roundtable (CSBR)/California Small Business Association (CSBA), the Alliance for Retail Energy Markets (AREM), and the Department of the Navy/Federal Executive Agencies (FEA) appeared at the PHC to discuss the issues and schedule for this case. Based on discussion at the PHC, then-assigned Commissioner Nancy Ryan and assigned ALJ Jessica Hecht issued a Scoping Memo and Ruling (Scoping Memo) on September 30, 2010. That Scoping Memo found the main issues within the scope of the proceeding to be the following:

- Should the dynamic rate proposals made by SDG&E be adopted, either as proposed or with modifications?
- What are the total costs of implementation of any dynamic rate proposal adopted in this proceeding?
- Should SDG&E's rate recovery proposal be adopted, either as proposed or with modifications? Specifically, should any implementation costs approved in this proceeding be recovered from Direct Access or Community Choice Aggregator (CCA) customers, and if so, how?

- Should the proposals on outreach, education, and customer communication made in the SDG&E Application be adopted, either as proposed or with modifications?
- What, if any, customer information access, timing, and other requirements are necessary to ensure understanding and informed decision-making by customers?

Parties to this proceeding served opening and rebuttal testimony on these issues in February and March 2011.¹ At the request of the parties, the evidentiary hearings scheduled for April 2011 were postponed until late June to allow parties to continue ongoing settlement discussions, and an amended scoping memo issued on June 14, 2011 confirmed new hearing dates. SDG&E filed a motion for adoption of a settlement supported by a majority of the parties² on June 20, 2011, along with a motion to take the rescheduled hearings off the Commission's calendar, in this instance pending review of the settlement agreement. On June 21, 2011, the assigned ALJ granted via electronic mail the motion to postpone evidentiary hearings.

On July 19, 2011, EUF, AReM, and FEA (together, the Direct Access or DA Parties) filed comments objecting to the treatment of cost allocation issues under

¹ DRA, Disability Rights, Greenlining, Energy Users Forum (EUF), UCAN, and the California Farm Bureau Federation (Farm Bureau) served opening testimony on February 18, 2012, and SDG&E served rebuttal testimony on March 11, 2012.

² SDG&E, DRA, UCAN, Greenlining, Farm Bureau, CSBR/CSBA, and San Diego (collectively, the Joint Parties) signed the settlement agreement, which signing parties consider to be comprehensive. Disability Rights Advocates and SDG&E entered into a Memorandum of Understanding (MOU) submitted for approval with the settlement motion. According to the settlement motion, Disability Rights does not object to the settlement agreement, and the Joint Parties do not object to the Disability Rights MOU.

the settlement agreement, and requesting briefing on those issues. An ALJ ruling issued on October 13, 2011, scheduled an evidentiary hearing on the settlement agreement and disputed cost allocation provision. After a short hearing on October 31, 2011, parties filed opening and reply briefs in November and early December, respectively. The record was submitted upon receipt of reply briefs.

In February 2012, the ALJ issued a ruling reopening the record and requesting additional information to clarify several aspects of the proposed settlement. That ruling noted that “certain terms of the settlement are ambiguous and require clarification from the settling parties.”³ That ruling also asked for party comment on apparent conflicts between the positions advocated in the settlement and certain aspects of Decision (D.) 11-11-008, a recent Commission decision related to the implementation of time-varying rates for Pacific Gas and Electric Company (PG&E) customers. Joint Parties filed a response to this ruling on March 30, 2012, providing limited additional information in support of the settlement, and the Direct Access Parties filed a reply on April 20, 2012.

3. Summary of the Application

In A.10-07-009, SDG&E requests approval of time-varying rates for its residential, small non-residential, and agricultural customers. Time-varying rates, including time-of-day (TOD, also called “time-of-use”) rates, are electric rates under which the amount customers pay for each unit of electricity varies over the course of a day. Such rates are intended to motivate customers to

³ ALJ ruling issued February 29, 2012, at 2.

reduce their electricity use during times of peak electricity demand by more closely reflecting the higher costs of electricity at peak times of day. Specifically, SDG&E proposed a “Peak Shift at Work” (PSW) rate for its small non-residential and agricultural customers and a “Peak Shift at Home” (PSH) rate for residential customers, and requested associated funding for the implementation of these rates, as well as for its previously approved Peak Time Rebate (PTR) tariff.

According to the application, PSW would consist of a default TOD rate for qualifying customers, under which small non-residential and small agricultural customers would experience rates that vary by time of day. Under PSW as originally proposed by SDG&E, customers would be subject to higher rates during times when electric use is normally high (11:00 a.m. to 6:00 p.m. under the SDG&E proposal) and lower rates at other times. In addition, PSW customers would be subject to a critical peak pricing (CPP)⁴ component, which includes “ReduceYourUse Days,” during which customers would experience increased electric rates between 11:00 a.m. and 6:00 p.m. up to 18 times a year when energy prices are especially high. CPP rates in general, and PSW in particular, are designed to motivate customers to reduce electricity consumption when necessary to maintain the integrity of the power grid during times of extremely high electric demand or cost, or when reduced load is needed for some other reason.

⁴ Under CPP rates, generically, customers are subject to a surcharge or particularly high rates for each unit of electricity used during peak hours on event days called by their utility. Utilities call such event days when electricity prices are particularly high, or when a system emergency is declared, for example due to especially high electricity demand or unexpectedly low supply.

Under SDG&E's PSW proposal, small non-residential customers would be subject to this rate unless they specifically "opted out" by choosing a different tariff. Customers opting out of the PSW rate would be served under a different time-varying rate called the Electric Energy Commodity Cost (EECC) rate. The EECC rate is a TOD rate similar to PSW, but customers choosing this rate would see an on-peak energy demand charge during the summer months, rather than paying the Peak shift Energy Charge (increased rates) on ReduceYourUse Days.

In its application, SDG&E requested similar time-varying rates for its residential customers, with the difference that the rates for residential customers would be fully optional. The design proposed by SDG&E for these rates is complex, due to both the difficulty reconciling time varying rates with the existing 4-tier rate structure,⁵ and the need to retain statutory rate caps for low-usage customers. SDG&E's PSH proposal for these customers consisted of a TOD tariff under which customers would be charged more for electricity used during peak times of day than for non-peak times. SDG&E proposed including a CPP component in PSH, under which customers would be charged a premium over their TOD rates during "ReduceYourUse Day" events. Again, as proposed for small non-residential customers, such events could be called up to 18 times per year. Under SDG&E's proposal, the time-varying rates for residential customers would be optional, meaning that customers would need to actively choose the rate, unlike the default PSW proposal for small non-residential

⁵ Under SDG&E's existing rate structure, residential customers are charged more per unit of electricity as their usage grows, with four price "tiers" applying to different levels of usage.

customers. SDG&E also proposed a reduction in the amount of the rebate customers would receive under the PTR program adopted by the Commission in D.08-02-034, timed to coincide with the implementation of the optional PSH and TOD rates in 2013.⁶

SDG&E's application includes proposals for "shadow billing" and bill protection for all customers affected by its dynamic rate proposals. As described by SDG&E, these provisions would allow most customers to compare their new PSW or PSH bills with their bills under the otherwise applicable tariff for their first 12 months on the new rate, and would ensure that customers pay no more for electricity during that first year than they would on the otherwise applicable rate.

SDG&E estimated in its application that implementation of its proposals would cost \$118 million between 2010 and 2015. This amount included the costs of the proposed education, outreach, information technology, facilities, and operations activities associated with its dynamic rate proposals. The schedule contained in the application stated that SDG&E hoped to implement its time-varying rates starting in 2013, with the rates available to all customers during 2014. SDG&E specifies that existing customers would not be eligible for these rates until they had access to 12 months of usage data from smart meters, in an effort to ensure that customers have adequate information on how their electric usage varies by time, day, and season.

⁶ SDG&E, Exhibit 3 at 6.

4. Summary of Parties' Litigation Positions

DRA, UCAN, Greenlining, EUF, Disability Rights, and the California Farm Bureau Federation all served timely opening testimony on this application. Some parties focused on narrow aspects of the application. For example, the California Farm Bureau Federation examined the possible effects of the proposed rates on agricultural customers, and Greenlining and Disability Rights focused on the potential need for special outreach to certain groups of underserved customers before implementing dynamic rates. Other parties, such as DRA and UCAN, provided a broader analysis of SDG&E's rate proposals and implementation plan. This section contains a summary of the parties' positions:

4.1. DRA

In its opening testimony, DRA's primary recommendation was that the Commission reject and dismiss without prejudice most of SDG&E's proposals. DRA argues that the Commission should approve only the portions of SDG&E's proposal related to modifications to its previously approved PTR program. DRA suggests that SDG&E should be directed to implement the PTR program as modified, and should be allowed to file a new dynamic pricing application when it could provide additional analysis of and support for its proposals.

DRA's testimony also contains a detailed analysis of the implementation and education plans in the SDG&E proposals, along with a secondary set of recommendations for the Commission to consider if the application is not dismissed consistent with DRA's primary recommendation. In general, DRA suggests that SDG&E has overstated the costs of implementing its dynamic pricing proposal, and argues that if the activities and rates in the SDG&E application are approved, funding should be significantly reduced from the level requested. DRA also suggests that the SDG&E proposals are too complex and, if

dynamic rates are adopted through this proceeding, they should be simplified to increase their understandability by customers, for example through adoption of a simpler TOD rate.

4.2. UCAN

UCAN recommends that the Commission reject the SDG&E dynamic pricing proposal. UCAN argues that SDG&E should be required to show that its application is cost effective, and asserts that SDG&E fails to do so. In addition, UCAN claims that SDG&E's proposal does not adequately account for the importance of load control and demand response activities as an alternative to dynamic rates, and suggests that dynamic pricing for residential and small non-residential customers is not necessary and should not be required. Like DRA, UCAN also alleges that the implementation funding requested by SDG&E is overstated and should be reduced if the Commission adopts any dynamic rates and related activities.

4.3. Farm Bureau

Unlike DRA and UCAN, the Farm Bureau supports many aspects of the SDG&E application, including the proposals for shadow billing, bill protection, and other safeguards for customers switching to dynamic rates, and urges expansion of some of these safeguards from the proposal offered by SDG&E. The Farm Bureau recommends against adoption of two other aspects of the SDG&E proposal: the plan for converting certain agricultural customers to PSW and the design of the ReduceYourUse Days within PSW. Specifically, in its testimony Farm Bureau recommends that SDG&E convert agricultural customers not previously participating in a TOD rate to the simplified TOD rate for at least one year, rather than enrolling them in PSW by default upon program implementation. Farm Bureau supports the possibility of offering PSW to these

customers as an option, but argues that they should not be defaulted to the full PSW rate until they have at least one year of billing information available on a simpler TOD rate. In addition, the Farm Bureau testimony suggests that the range of possible ReduceYourUse Days each year be narrowed from the proposed range (zero to 18) to between nine and 15 days per year.

4.4. Greenlining

The testimony prepared by Greenlining focuses on the need to conduct outreach and education in order to provide customers with adequate information to ease their transition onto dynamic rates. Greenlining's testimony notes that to properly take advantage of dynamic rates and avoid incurring higher bills, customers will need to change the ways that they use electricity. Greenlining does not recommend specific changes to the rates proposed in SDG&E's application. Instead, it recommends outreach, education, and customer service strategies that Greenlining believes will assist customers in understanding the implications of dynamic rates for their electric usage and costs. Greenlining argues that SDG&E's outreach activities should target low-income and other hard-to-reach customers, and should work with CBOs trusted within those communities to educate customers about their rate options, and dynamic pricing more broadly.

4.5. Disability Rights

Like Greenlining, the testimony of Disability Rights does not recommend changes to the actual dynamic rates proposed by SDG&E, and instead focuses on recommendations for improving communications with hard-to-reach customers, specifically people with disabilities. Disability Rights provides recommendations for identifying and targeting communications to people with disabilities. Disability Rights notes that many mainstream methods of

communication may not be effective for reaching people with some disabilities, making it more difficult for these customers to receive the information they need to make informed rate choices. In addition, Disability Rights contends that certain customers with disabilities could miss important signals such as ReduceYourUse event day alerts, making it difficult for them to effectively reduce energy and avoid additional costs on ReduceYourUse days. The Disability Rights testimony recommends several strategies to increase the effectiveness of communication with these customers and ensure that they receive timely information on program options and requirements.

4.6. EUF

EUF represents the interests of medium and large energy customers. The EUF testimony does not address the specific rate design or implementation plan and schedule set forth in the application, but is generally supportive of the expansion of dynamic rate options to all classes of electricity customers. EUF focuses on the SDG&E proposal for allocating costs among different types of energy users. EUF argues that large and medium businesses should not be required to pay any of the costs for the implementation of dynamic rates for residential and small commercial customers. In testimony, EUF states that the implementation costs requested in this application should be allocated according to principles of cost causation, meaning that the customers for whom the project is being implemented (in this instance, smaller customers) should be responsible for paying the costs. EUF argues the costs associated with serving a particular customer class should be allocated to that customer class. In particular, EUF objects to the proposal to collect costs related to residential and small commercial customers from large commercial customers, stating that large and medium users are already paying the costs of implementation of dynamic rates for large

and medium businesses, and should not also be responsible for paying part of the implementation costs for the expansion of dynamic rates to smaller customers. The EUF testimony further argues that the SDG&E proposal to allocate costs to Direct Access customers is also inappropriate under the cost causation principle because Direct Access customers are not eligible for the dynamic rates that would be implemented if this application were approved.

5. Standard of Review for Settlements

Prior to adopting any settlement, the Commission must be convinced that the parties had a sound and thorough understanding of the application and of all the underlying assumptions and data included in the record. This level of understanding of the application and development of an adequate record is necessary to meet the requirements for considering any settlement. The requirements are set forth in Article 12 of the Commission's Rules, which provides in pertinent part:

- (a) Parties may...propose settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding. Settlements need not be joined by all parties; however, settlements in applications must be signed by the applicant....

The motion shall contain a statement of the factual and legal consideration adequate to advise the Commission of the scope of the settlement and of the grounds on which adoption is urged. Resolution shall be limited to the issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings...

- (b) Prior to signing any settlement, the settling parties shall convene at least one conference with notice and opportunity to participate provided to all parties for the purpose of discussing settlements in the proceeding....

- (c) Settlements should ordinarily not include deadlines for Commission approval...
- (d) The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

In short, even an unopposed settlement must comport with Rule 12.1(d), which requires a settlement be “reasonable in light of the whole record, consistent with the law, and in the public interest.” We address below whether the settlement meets these three requirements. The Commission also takes into consideration a long-standing policy favoring settlements. This policy reduces litigation expenses, conserves scarce Commission resources and allows parties to craft their own solutions reducing the risk of unacceptable outcomes if litigated.⁷

In this case, the settlement is not supported by all parties, and the Commission must make a determination based on the record on the disputed issues, even if the settlement meets the general requirements for adoption. The standard of review is applied to both the MOU between SDG&E and Disability Rights in Section 6, below, and to the Joint Parties’ settlement discussed in Section 8.

6. Memorandum of Understanding with Disability Rights

The motion for adoption of the Joint Parties’ settlement agreement contains a request for the Commission to approve an MOU between SDG&E and Disability Rights. In this MOU, SDG&E commits to providing targeted outreach

⁷ D.05-03-022 at 7-8.

and communications to ensure that customers with disabilities receive information about any dynamic pricing tariffs the Commission may adopt for SDG&E.

Specifically, the MOU requires the following:

1. SDG&E will hire a consultant “to assist in developing effective communication strategies to reach the disability community... and to provide ongoing support in... appropriate educational and communication efforts.” Under the MOU, the consultant’s work is capped at either 80 hours of work or a cost of \$20,000, whichever is reached first.
2. SDG&E will utilize targeted mailing to customers receiving the company’s medical baseline, unless otherwise recommended by the consultant.
3. SDG&E will provide written materials in a customer’s preferred format, both to customers that have expressed a preference for a format in the past or upon a customer’s request.
4. SDG&E will maintain the ability to communicate with customers via text telephone (TTY) device.

No parties object to the terms of this MOU, which essentially represents a partial, unopposed settlement of a subset of the issues within this case. The costs of the MOU appear relatively modest and can be supported appropriately by any education and outreach funding for implementation of dynamic pricing activities approved in this proceeding. The specific commitments contained in the MOU are supported in the record through the testimony of Dmitri Belser, and are in the public interest in that they assist members of the disability community in learning about and responding to new dynamic rate options adopted within this proceeding.

We find that the MOU is “reasonable in light of the whole record, consistent with the law, and in the public interest,” meeting our standard for the

approval of an unopposed settlement, and so should be adopted. The MOU between SDG&E and Disability Rights is adopted.

7. The Settlement

The Joint Parties' settlement filed on June 20, 2011, recommends that the Commission adopt the dynamic pricing proposals included in SDG&E's application, with some modifications. Under the agreement, the settling parties recommend approval of implementation and funding for some dynamic rates for SDG&E's residential, small commercial, and small agricultural customers, at a total cost not to exceed \$93 million. The following sections summarize the main provisions of the settlement, including the costs, tariff design, implementation schedule, reporting requirements, and cost allocation among different types of customers.

7.1. Total Implementation Costs

The Joint Parties' settlement provides that SDG&E may collect from its customers the costs for implementing its dynamic pricing program, not to exceed a total of \$93 million over the implementation period of 2010-2015. The \$93 million cost represents a reduction of approximately 20 percent from the original SDG&E proposal of \$118 million. Of the \$93 million budget proposed in the settlement, \$50 million would be for operation and maintenance (O&M) costs during 2010-2015, and the remaining \$43 million would be for capital costs during that period. The settlement agreement would provide SDG&E with flexibility to shift up to \$5 million between capital and O&M costs through an advice letter process, within the overall \$93 million cost cap. Under the settlement agreement, these costs would be recorded in SDG&E's Dynamic Pricing Balancing Account, with the implementation costs of the different programs (PSW, PSH, and TOD rates) tracked. The \$93 million total is intended

to cover implementation of the rates on a schedule agreed upon in the settlement, though the settlement allows SDG&E to request additional O&M funds in a future General Rate Case (GRC).⁸

7.2. Tariff Design and Implementation Schedule

The settlement provides that SDG&E will implement a variety of dynamic rates for its residential and small non-residential customers over the next several years. In general, the settlement agreement modifies the original SDG&E proposal to provide customers with optional dynamic rates before requiring any customers to default to dynamic rates, and lengthens the schedule for implementing default dynamic rates for small non-residential customers. The settlement also defers several complex rate design issues to SDG&E's Phase 2 GRC proceeding, currently underway in A.11-10-002.

7.2.1. Small Non-Residential Customers

Under the settlement agreement, SDG&E would implement two optional dynamic tariffs for its small non-residential customers. These optional tariffs would include both a TOD rate without a customer demand charge and a PSW rate with ReduceYourUse Days. Under the settlement, these optional tariffs would be available to customers starting on March 1, 2013, with the implementation of default tariffs for these customers delayed until at least March 2014. This is in contrast to the proposal in SDG&E's original application, under which small non-residential customers would have transitioned to a

⁸ Joint Party Settlement Agreement, Exhibit 1 to *SDG&E Motion for Adoption of Joint Party Settlement and Memorandum of Understanding* (Settlement), June 20, 2011, at 3.

default dynamic tariff, PSW, in 2013, with an option to instead enroll in a TOD tariff with an on-peak demand charge. Under the proposed settlement, small non-residential customers would have the option of keeping flat (non time-varying) tariffs once default PSW is implemented. The settlement agreement defers the possibility of mandatory TOD pricing, as well as the possibility of a demand charge in PSW and default PSW to SDG&E's Phase 2 GRC proceeding.

7.2.2. Residential Customers

Under the settlement agreement, SDG&E would implement two optional dynamic tariffs for its residential customers. According to the settlement, residential customers would have the option to choose either a PSH rate or a TOD rate instead of their otherwise applicable rate starting on March 1, 2013. This essentially mirrors the original SDG&E proposal for residential customers, with the modification that SDG&E's proposed reduction to the PTR amount and specific PSW and TOD rate designs would be determined in SDG&E's Phase 2 GRC proceeding, rather than through this proceeding.⁹

7.2.3. Agricultural Customers

The settlement agreement provides that both small- and medium-size agricultural customers taking service under SDG&E's Schedule PA would be eligible for commodity service under schedule EECC. The settlement further provides that dynamic pricing would be implemented at the same time for all Schedule PA customers other than those already transitioned to the Default CPP

⁹ Settlement at 2.

schedule (schedule CPP-D). Under the settlement, the details of the dynamic rates for agricultural customers and the schedule for their implementation would be deferred to SDG&E's Phase 2 GRC proceeding.

7.3. Reporting Requirements

The settlement agreement requires SDG&E to report the load reduction achieved through these rates, separately for TOD, PSW, and PSH rates. Under the settlement agreement, SDG&E would provide these reports annually, though the settlement does not specify the manner in which these reports would be made available. The settlement would allow SDG&E to request cost recovery in a future GRC for conducting these load reduction studies. In addition, under the proposed settlement agreement, SDG&E would record its expenditures in its Dynamic Pricing Balancing Account semiannually, with costs related to TOD, PSW, and PSH reported separately.¹⁰

7.4. Cost Allocation

The settlement agreement does not specify a cost allocation method for the amounts agreed upon in the settlement, and therefore would adopt the method proposed by SDG&E in its application.¹¹ Under the SDG&E proposal, the costs of implementing the SDG&E dynamic pricing proposal for the residential, small non-residential, and agricultural customers subject to the rates proposed in this application would be borne by all customers receiving distribution services from

¹⁰ Settlement at 3.

¹¹ The settlement agreement states that “[u]nless otherwise specified below, all proposals in SDG&E’s DPA and supporting testimony shall be adopted.” Settlement at 1, Section I, Provision 1.

SDG&E, including large commercial and industrial, CCA, and direct access customers. It is this aspect of the settlement that is contested by the Direct Access Parties, and the arguments related to this issue are addressed in Section 11.2, below.

7.5. Interaction with D.11-11-008

In its discussion of the schedule for implementation of SDG&E's dynamic rates, the settlement includes a reference to two then-pending Petitions for Modification (Petitions) of D.10-02-032. These Petitions proposed modifications to the implementation schedule for dynamic rates that the Commission adopted for PG&E. D.11-11-008 resolves these Petitions by modifying D.10-02-032 in several ways. The modifications most relevant to this proceeding grant "reasonable extensions of time for PG&E to implement existing Commission orders," by extending the deadline for PG&E to implement some dynamic rates for small and medium non-residential customers.¹² Specifically, D.11-11-008 allows PG&E to implement default TOD rates¹³ for small and medium agricultural customers not later than March 1, 2013, and for small and medium commercial and industrial customers by November 1, 2012. In addition, small and medium commercial customers would be transitioned to default Peak-Day Pricing (a CPP component similar to the SDG&E ReduceYourUse provision) by November 1, 2014. These new rates would apply to customers that have access

¹² D.11-11-018 at 1.

¹³ PG&E uses the phrase "time-of-use" rates rather than "time-of-day" or "TOD" rates.

to at least 12 months of interval billing data before the transition is made.¹⁴ Once defaulted onto these rates, customers would no longer have access to flat rates.

The Joint Parties' settlement contains a provision stating that if the Commission issues a decision on these Petitions before December 31, 2011, "parties may submit briefs for consideration by the Commission to determine the impact, if any, the resolution of the PTMs should have on the timeline, rate structure, metrics, and costs associated with implementing the new rate structure enumerated in this settlement agreement."¹⁵ Similarly, the settlement states that parties may also "brief the issue of whether and when to implement mandatory Time Of Day pricing."¹⁶ The settlement agreement leaves several aspects of this proposed briefing unclear, including whether the Joint Parties are requesting that the record of this proceeding be left open to accommodate the submission of the contemplated briefs, and the process for modifying the settlement (or the Commission's decision, had it been issued before a decision issued on the Petitions) based on those briefs.

7.6. Additional Provisions of the Settlement

In addition to specifying the rate structures and implementation schedules discussed above, the settlement contains several provisions intended to assist consumers with the transition to dynamic rates. These provisions include:

1. A guarantee of bill protection compared to the customer's previously applicable rate for the first 12 months on the

¹⁴ D.11-11-018 Ordering Paragraphs 1.a. and 1.b.

¹⁵ Settlement at 3.

¹⁶ Settlement at 2.

dynamic tariffs described in the settlement. This includes bill protection of up to 24 months for non-residential customers, including up to 12 months after transition to TOD rates and another 12 months after transition to any rate that includes a ReduceYourUse component.

2. A “snap credit” for customers on rates that include a ReduceYourUse component, enabling these customers to defer an unusually high summer bill for payment over three to six months. The settlement does not provide details about the design, operation, or customer education associated with this “snap credit.”
3. A variety of outreach and education activities, along with quarterly meetings with interested parties and Commission staff to work with parties on its outreach strategy. Outreach and consumer education would include the development of shadow billing in English and Spanish, and tracking of the number and type of call center requests for in-language assistance.
4. Development of criteria by which SDG&E will exempt certain small non-residential customers that provide health and safety functions from defaulting to dynamic rates.

In addition, the Joint Parties agree not to oppose the MOU between SDG&E and Disability Rights Advocates, discussed above, which was submitted along with the motion for adoption of the settlement.

7.7. Issues Deferred to SDG&E’s Phase 2 GRC proceeding

The Settlement agreement defers the resolution of several ratemaking issues raised in the original SDG&E application to SDG&E’s 2012 Test Year GRC Phase 2 proceeding. These issues include the following:

1. PTR levels for residential customers.
2. The time-periods and rate differentials between periods under TOD rates.

3. The rates and timeframe for transitioning agricultural customers to dynamic rates.
4. Issues related to a customer demand charge in TOD rates.

In addition, the settlement specifies that the cost allocation agreed upon by parties here may be re-examined in that case.

8. Several Provisions of the Settlement Agreement Do Not Meet the Standards for Adoption

The settlement proposed by the parties includes basic terms for dynamic pricing tariffs, and other provisions as discussed in Section 7, above. Unfortunately, the settlement is vague in its descriptions of both rates and implementation activities. For example, the settlement states that “SDG&E will provide clear materials to residential customers opting into PSH and TOD rates,”¹⁷ but does not define what is meant by “clear,” or how success in meeting this requirement would be measured. Similarly, neither the settlement nor any of the supporting materials specify intervals and specific standards for reporting on educational activities. The settlement appears to leave many such determinations for parties to make after a decision is adopted in this proceeding, and does not provide specific procedures or deadlines for parties to complete most of those activities, or standards by which to determine whether the provisions have been honored. The vagueness and ambiguity of various settlement provisions makes it difficult to establish whether those provisions, or the settlement as a whole, are in the public interest.

¹⁷ Settlement at 4.

In general, the settlement appears to be under-developed, as though parties agreed on general principles and deferred most details of rate design and implementation to future proceedings or to future informal activities by parties. Similarly, parties did not adequately show how the settlement positions are supported in the record, an approach that does not allow a straightforward evaluation of whether the settlement is consistent with the proceeding record. Upon review, it appears that some aspects of the settlement are not consistent with the record. For example, the last bullet point on page 5 of the settlement states that “[p]arties agree that defaulting some types of small non-residential customers to a PSW rate would be contrary to public health and safety.”¹⁸ Based on this conclusion, the settlement provides that “SDG&E will develop reasonable criteria and procedures for exempting such small non-residential customers from defaulting to the PSW rate” through a workshop process involving interested parties.¹⁹ As noted in the ALJ ruling issued on February 29, 2012, this provision is unclear. The settlement does not establish a specific process or timeframe by which SDG&E would develop and present such criteria, once developed, to the Commission for approval.

The Joint Parties’ filing in response to that ruling explains that this provision does not refer to criteria that would relate to the optional default PSW rates (or any other rates) contemplated in the settlement. Instead, this provision represents a commitment by SDG&E to work with stakeholders to develop

¹⁸ Settlement at 5.

¹⁹ *Id.*

exemption criteria that would then be proposed as part of a future SDG&E proceeding, to be considered along with a mandatory PSW proposal.

This provision is not consistent with the record of this proceeding and therefore should not be adopted. The record of this proceeding does not contain a specific proposal for exempting customers from PSW rates for public health and safety reasons, and no record exists within this proceeding on which to evaluate the appropriateness of such an exemption. The conclusion underlying this provision – that some non-residential customers should not be defaulted to time-varying rates – is not supported (or indeed analyzed) in the record of this proceeding. In the absence of a proposal or any analysis within the record on the need to exempt or desirability of exempting certain customers from a mandatory tariff, this settlement provision is not consistent with the record of the proceeding. In addition, the Commission recently rejected a similar exemption provision proposal for PG&E in D.11-11-008.²⁰

SDG&E is free to work with stakeholders to develop such a proposal and present it, with sufficient supporting information, in a future Commission proceeding. However, requesting that the Commission approve the parties' conclusion that this is appropriate goes beyond the scope of this proceeding, in violation of Article 12 of the Commission's rules, which state that settlements "shall be limited to the issues in [the] proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings."

²⁰ D.11-11-008 at 39, 42-43.

In addition, the settlement contains provisions, such as those allowing parties to brief several issues after the resolution of the Petitions on D.10-02-032, which are now moot, as acknowledged by the Joint parties in their response to the ALJ's ruling issued in February 2012.²¹

In comments on the proposed decision, SDG&E asserts that rejection of the proposed settlement constitutes legal and factual error, stating that the parties "settled all issues between all participating parties in this proceeding who represented a broad, comprehensive spectrum of customer interests," and "represented the overwhelming majority of customer classes and interests and raised comprehensive customer and program implementation issues."²² SDG&E states that the resolution of each issue within the settlement, "including cost allocation, represents a well-considered result of the Settling Parties' extensive discussions and compromises," and argues that, for these reasons, the settlement should be adopted as a balanced whole.

These arguments appear to imply that the Commission should defer to the judgment of parties about whether a settlement is consistent with the law and the record of the proceeding, as well as whether the settlement is in the public interest, as long as the settlement is supported by a broad spectrum of customer interests. In fact, as stated in Article 12 of the Commission's Rules, "[t]he

²¹ The Joint Parties state that "procedural questions regarding the Section I.3.B.3 are moot" because each party "has independently reached the decision not to request briefing" under this provision. *Settling Parties' Joint Statement in Response to the Administrative Law Judge's Request for Additional Information*, March 30, 2012 at 7.

²² SDG&E Opening Comments at 3.

Commission will not approve settlements, *whether contested or uncontested*, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest” (emphasis added). In this case, as SDG&E acknowledges, the direct access parties oppose the settlement provisions related to cost allocation. As described in detail in Section 11.2, below, we are persuaded that the cost recovery provisions contained in the proposed settlement and opposed by several parties to this proceeding should not be adopted. This determination is supported by the record, and is in addition to our concerns about the vagueness and ambiguity of some settlement provisions and the lack of record support for others. For all of these reasons, adoption of these settlement provisions is not reasonable in light of the record, consistent with the law, and in the public interest.

The settlement includes an indivisibility term, which states that No individual term of [the Settlement] Agreement is assented to by any of the Parties, except in consideration of the other Joint Parties’ assents to all other terms. Thus, the Agreement is indivisible and each part is interdependent on each and all other parts. Any party may withdraw from this Agreement if the Commission modifies, deletes from, or adds to the disposition of the matters stipulated herein.²³

Given that the settlement contains this indivisibility clause and that several of the settlement terms discussed in this section do not meet the standards for adoption of a settlement agreement, the motion for adoption of the settlement agreement is denied.

²³ Settlement Agreement at 6.

Given the existing complete evidentiary record in this proceeding on both the original proposal and the settlement, we adopt changes to the proposed dynamic pricing program based on the proceeding record.²⁴

9. Provisions of a Dynamic Pricing Structure for SDG&E

As discussed in Section 3, above, SDG&E originally requested voluntary dynamic rates for its residential customers and similar tariffs for non-residential customers, with the difference that non-residential customers would ultimately be required to transition to some form of time-varying rates. SDG&E's main proposal in this application was a TOD tariff, under which customers would be charged more for electricity used during peak times of day than for non-peak times. To this rate structure, SDG&E proposed adding its PSW CPP component. Dynamic rates in general, and CPP rates such as PSW in particular, are intended to motivate customers to reduce their electricity use during peak times by more closely reflecting the higher costs of electricity at peak times of day and on days of especially high usage. SDG&E calls this combination of rates for non-residential and residential customers PSW and PSH, respectively. The settlement proposed by the Joint Parties recommends the adoption of a modified version of the proposed rates, under which non-residential customers would

²⁴ In its comments on the proposed decision, SDG&E objects to "replacing the *settled* dynamic pricing program in this case with a program similar to the *litigated* outcome in D.11-11-008, for [PG&E]." (emphasis in original), SDG&E Opening Comments at 1. As discussed in detail below, the dynamic pricing program adopted in this decision is based on the proceeding record, and references D.11-11-008 and other Commission decisions provide appropriate policy direction and enhance consistency in implementation of similar tariffs offered by the state's investor-owned utilities.

continue to have access to flat (non-time-varying rates). The settlement also contemplates a longer implementation schedule than originally suggested by SDG&E. This decision adopts a dynamic pricing implementation plan similar in structure to the one originally proposed by SDG&E, with modifications that include adoption of many of the consumer protection provisions recommended in the proposed settlement.

9.1. Dynamic Rates and Implementation Timeframes for Small and Medium Commercial Customers

9.1.1. Discussion of Party and Settlement Positions

In the PSW rates proposed in SDG&E's application, small (under 20 kW) non-residential customers would default to a PSW tariff, including the TOD rates and the additional PSW component, beginning in 2013. Under SDG&E's proposal, small non-residential customers defaulted to PSW would no longer be eligible for service under a flat (non time-varying) tariff. PSW customers would be subject to a TOD rate specified in the application, along with a relatively small additional cost of \$0.20 per kilowatt hour (kWh) for electricity used during ReduceYourUse Day events. SDG&E acknowledged that this ReduceYourUse event day adder is not cost-based and would not increase revenue to cover all utility peak electricity costs. During 2013, customers would have the ability to opt out of PSW and into either the existing CPP-D rate (a CPP tariff currently applicable to medium and large non-residential customers) or a different TOD rate without the PSW component.

UCAN objects to several aspects of the PSW rate design, including but not limited to the level of the PSW adder, and recommends that changes that are not central to the development of dynamic pricing should be considered in SDG&E's Phase 2 GRC rather than in this proceeding.²⁵ As noted by DRA, SDG&E's PSW proposal would have transitioned customers abruptly to a complex set of new dynamic rates. DRA and UCAN both argue in testimony that SDG&E's rate proposal would be difficult for customers to understand, and could create confusion and (potentially) rate shock. At the same time, no party proposed a specific and well-developed alternative dynamic rate proposal. The testimony of both UCAN and DRA focuses on critiques of the SDG&E proposal, rather than on an independent rate design proposal. In fact, DRA's primary argument in its testimony is that SDG&E's proposal should be rejected. DRA and other parties argue that implementation of the complex PSW rate in 2013 is premature, and that the Commission should not set a firm date to default small-non-residential customers to such a rate. The settlement agreement proposed by parties contemplates the implementation of an optional TOD and PSW rate on March 1, 2013, for small non-residential customers. Still, the settlement agreement does not specify the details of these rates, beyond that it will not include a demand charge. In addition, the settlement states that SDG&E will implement default TOD rates on March 1, 2014, but sets no date for implementation of default PSW and appears to allow customers to continue to opt out of the default TOD to flat rates.

²⁵ UCAN Exhibit 202 at 13.

We are persuaded that SDG&E's original rate design proposal is likely to create confusion among customers. The original proposal, which would make TOD rates mandatory and default customers to PSW in 2013, does not ensure that customers would have sufficient information to make an educated choice about their rate options. The rate structure proposed in the settlement is less complex, but it has several other flaws. First, because SDG&E originally proposed a TOD rate with a demand charge, and the settlement agreement proposes a TOD rate to be determined later, no actual rates that the Commission could adopt are specified in the settlement; rate design issues would be deferred to SDG&E's GRC Phase 2 proceeding A.11-10-002. In addition, the settlement does not provide for the implementation of mandatory TOD rates, instead allowing customers to opt out to flat rates. This result is inconsistent with recent Commission policy in favor of transitioning customers to dynamic rates and/or TOD.²⁶ For these reasons, this decision adopts a plan and schedule for implementation of TOD and PSW rates but, out of necessity, defers the development of the specifics of those rates to A.11-10-002, as discussed below.

9.1.2. Dynamic Rates and Implementation Schedule

The record of this proceeding does not include a viable rate design proposal for a TOU rate structure, with or without a PSW component. We require SDG&E to implement optional TOD and PSW rates for its small non-residential customers starting on November 1, 2013, with mandatory TOD rates for these customers beginning on November 1, 2014. After implementation

²⁶ See, for example, D.07-05-045, D.10-02-032, and D.11-11-008.

of default TOD, small non-residential customers will not be able to opt out to a flat rate. Also on November 1, 2014, small non-residential customers not on agricultural tariffs will be subject to default PSW rates, but will retain the ability to opt out to TOD rates without a CPP component. By setting a date for the implementation of mandatory TOU rates for small non-residential customers, this schedule is more aggressive than the schedule proposed in the settlement, and more consistent with both Commission policy and SDG&E's original application. The specific rate design for these tariffs will be adopted in A.11-10-002, as contemplated in the settlement.

Though the November 2013 implementation date for TOD rates adopted here is not consistent with the schedule for PG&E's implementation of dynamic pricing,²⁷ this schedule is reasonable for SDG&E. It is unlikely that a decision providing detailed dynamic rates will be issued in A.11-10-002 before spring 2013. A November 2013 implementation date for optional TOD and PSW rates will allow SDG&E an opportunity to complete any required pre-implementation activities and begin education and outreach before customers may choose the new rates. Also, we prefer not to implement new time-varying rates during the summer season. Depending on how TOD rates are designed and on customers' usage patterns, the new rates may have a significant effect on some customers' bills, so it is reasonable to implement such rates after the high-demand summer season is over.

²⁷ D.11-11-008 sets implementation dates of November 1, 2012 for small and medium commercial and industrial customers and March 1, 2013 for small and medium agricultural customers. See D.11-11-008 Ordering Paragraphs 1.a. and 1.b.

In comments on the proposed decision, SDG&E and several other parties recommend that if the Commission adopts default time-varying rates, their implementation should be delayed until November 2014, with optional (voluntary) TOD rates available between November 2013 and 2014. Parties argue that these modifications would ease customers' transition to the new rate structures and allow additional time for SDG&E to conduct education and outreach activities before they are fully implemented. SDG&E further recommends that if the settlement agreement is not adopted, small non-residential customers should be transitioned to both TOD rates and PSW at the same time, in November 2014, rather than defaulting to TOD rates in 2013 and to PSW in 2015; DRA and CSBRT oppose this latter recommendation.

We adopt the SDG&E recommendation to implement mandatory TOD rates and default PSW rates at the same time. This will delay the implementation of mandatory TOD rates by one year, allowing more time to educate affected customers about dynamic rates. In addition, it will allow small commercial and agricultural customers an opportunity to enroll in TOD voluntarily between November 2013 and 2014. Simultaneous implementation of mandatory TOD and default PSW rates is consistent with SDG&E's original proposal, which would have implemented such tariffs in 2013.

Greenlining argues that the Commission should retain a flat rate tariff for small non-residential customers, asserting that it would be "unreasonable and short-sighted to lock customers into a mandatory TOD rate in perpetuity," when

specific TOD rates are likely to change over time.²⁸ It is not reasonable to assume that one aspect of the design of a rate (mandatory TOD) would be “locked in” while other aspects (rate levels or differentials) are likely to change. The Commission generally adopts or modifies the design of specific rates in the context of proceedings that allow parties to propose alternative rate structures and analyze the potential effects of different rate options. At this time, given the information available, we are not persuaded that it is necessary to retain a flat-rate alternative tariff for small non-residential customers beyond November 2014, and doing so would not be consistent with the original SDG&E application or the rates recently adopted by this Commission for PG&E. In the future, if a new rate structure with a greater differential between on- and off-peak rates is proposed, Greenlining or another party is free to make a case that alternative tariff options or other changes would be more appropriate at that time.

In addition, we make two substantive modifications to the rate structure and implementation timeframe adopted here, based on parties’ the comments on the proposed decision. First, several parties suggest that the settlement agreement retained the application’s proposal to implement time-varying rates on a rolling basis for small non-residential customers, and urge the Commission to adopt that provision in this decision. No parties object to this recommendation. SDG&E argues that rolling implementation will allow the company to better manage the transition of customers to the new rates. Though it is not clear how transitioning customers to new rates over several months

²⁸ Greelining Opening Comments on the Proposed Decision, November 19, 2012 at 4.

could facilitate education and outreach activities, as SDG&E suggests, it seems possible that rolling implementation could assist SDG&E's operations in other ways. As a result, we will allow SDG&E to implement the tariffs adopted in this decision for small non-residential customers on a rolling basis over a period not to exceed six months, beginning on the dates adopted in this decision.

In addition, we are persuaded by CFBF that it is not necessary to set a date at this time for transitioning small and medium agricultural customers to default PSW. Consistent with the rate structure adopted for PG&E's small and medium agricultural customers, SDG&E's small and medium agricultural customers (those with demand under 200 kW) will not be required to default to PSW in 2015, though they may still choose to enroll in PSW voluntarily.

9.2. Dynamic Rates and Implementation Timeframes for Residential Customers

In the PSH rates proposed in SDG&E's application, residential customers could voluntarily enroll in a TOD rate with an additional CPP component. As discussed in Section 3, above, the design of the original PSH TOD rate was extremely complex. The rate design originally proposed by SDG&E effectively contains three rate tiers, in addition to the on and off-peak costs and the CPP adder that would apply during ReduceYourUse Days. In contrast to the CPP adder of \$0.20 per kWh that SDG&E proposes for small non-residential customers, SDG&E recommends a CPP adder of \$ 0.91 per kWh for residential customers.

DRA supports SDG&E's request to modify a previously adopted PTR rate, but does not support the general PSH rate as described in the application. Specifically, DRA suggests that if the SDG&E proposal is adopted, the CPP adder should be reduced to \$0.50 per kWh.²⁹ In contrast, UCAN claims that the rates proposed by SDG&E could interfere with rather than support customer conservation incentives. As an example, UCAN notes that for customers using electricity in the current Tier 4 rate, the proposed summer on-peak PSH rate proposed by SDG&E would be lower than what the customer currently experiences during summer evenings.³⁰ As in the case of SDG&E's proposed PSW rates, UCAN also argues that SDG&E has not minimized the differences between its existing rates and its proposed PSH rates: current rates and the proposed TOD rates are different in every time period.³¹ In contrast, the parties' proposed settlement would adopt voluntary TOD rates for residential customers starting in 2013, but (as in the case of non-residential customers) defers the development of specific rates into the SDG&E GRC Phase 2 proceeding.

We agree with parties that SDG&E's original PSH proposal is overly complex. In fact, any proposal that attempts to combine TOD rates with a rate structure tiered by usage level, as is currently required for residential customers, is likely to be complex and confusing for customers, and should be designed and implemented with great care. Because other parties to this proceeding do not

²⁹ DRA Exhibit 100, chapter 2 at 7.

³⁰ UCAN Exhibit 202 at 12.

³¹ UCAN Exhibit 202 at 12-14.

propose fully-developed dynamic rate proposals, and the settlement would defer rate design issues to A.11-10-002, the record of this proceeding does not contain a viable rate design that we can adopt through this proceeding. For these reasons, we adopt a voluntary TOD and PSH rate structure for residential customers, but as in the case of small non-residential customers, a specific rate design will be adopted in A.11-10-002.

9.2.1. Dynamic Pricing Implementation Schedule for Residential Customers

SDG&E's initial application requests implementation of voluntary PSH for its residential customers in 2013. DRA and other parties argue that implementation of the complex PSH rate in 2013, as originally proposed by SDG&E, is premature, and that the Commission should instead focus on implementation of SDG&E's PTR tariff.³²

The settlement agreement specifies that an as-yet-undeveloped voluntary TOD rate for residential customers would be implemented in March 2013. Because we are deferring the design of voluntary residential TOD and PSH rates to A.11-10-002, it is reasonable to consider the schedule for that proceeding in setting the associated implementation dates. As noted above, A.11-10-002 is unlikely to result in a Commission decision before the first quarter of 2013; for this reason, it is unlikely that a decision providing detailed TOD and PSH rates will be issued in A.11-10-002 before spring 2013. Given that we prefer not to implement new time-varying rates during the summer season, we find that

³² DRA Exhibit 100 Chapter 2 at 5.

unless otherwise established in the SDG&E Phase 2 GRC proceeding, SDG&E shall implement optional TOD and PSH rates for residential customers in November 2013. This schedule is consistent with the schedule for implementation of optional dynamic pricing for SDG&E's non-residential customers, as provided in this decision.

9.3. Customer Protection Provisions

In its application, SDG&E proposes several provisions intended to protect customers in their first year after enrollment in its PSH or PSW proposals.

Specifically, SDG&E proposes the following:

1. Customers would be transitioned onto dynamic tariffs over time, with different customers moving to the new tariff in different months. This is intended to ensure that SDG&E would not experience high volumes of inquiries related to the transition at one time, and would better enable SDG&E to respond to customer inquiries.
2. Customers would not be moved to the proposed tariffs during the summer months. This is intended to help customers avoid rate shock in the months in which electricity is more expensive, and in which ReduceYourUse Days are most likely to be called.
3. Customers moving to dynamic tariffs would receive "shadow bills" in addition to bills under their new tariffs. These "shadow bills" would show customers what their bill would be on their "otherwise applicable tariff," the rate schedule the party would have been on if not on their current rate. This provision is intended to allow customers to identify the effect each tariff would have on their bills.
4. In their first 12 months on the new dynamic tariff customers would have "bill protection," ensuring that no customer would pay a higher rate for electricity than they would have had they not enrolled in the dynamic tariff. This bill protection provision, along with shadow billing, is intended to protect customers from rate shock and educate them about their usage patterns.

Most parties support these customer protection provisions, and a few recommend additional measures, such as extended bill protection for more than 12 months. The settlement contains several of the additional customer protection provisions suggested by other parties, including the following:

5. Customers enrolling in (or defaulting to) a PSW CPP component would receive extended bill protection. This would allow customers to receive up to 24 months of bill protection, further reducing the likelihood of customer rate shock and allowing customers time to adjust their electric usage patterns to avoid high charges under the PSW tariff.
6. Customers would have access to new “snap credits,” under which portions of particularly high summer bills incurred due to new dynamic rates could be deferred to be repaid over three to six months.

The consumer protection provisions described in SDG&E’s application, along with some provisions recommended in party testimony, most of which also appear in the settlement, appear sufficient to protect customers from experiencing rate shock as they transition onto dynamic rates. We find the customer protection recommendations for bill protection, shadow billing, snap credits, and call center tracking are reasonable and should be adopted, with some modifications discussed in this decision. We adopt bill protection for customers during their first 12 months enrolled in the dynamic PSW or PSH tariffs, as proposed in the initial application. At this time, we do not see a need to adopt bill protection for the TOD rates currently under consideration in the SDG&E Phase 2 GRC proceeding.

SDG&E shall implement bill protection, shadow billing, snap credits, and call center tracking. Also consistent with the settlement recommendations, the evidentiary record, and Commission policy, we have set implementation dates for new rates consistent with the principle of avoiding new dynamic rates in the

summer months, unless otherwise provided in a future Commission proceeding. As discussed in Section 9.1.2, above, this decision adopts the rolling implementation proposed by SDG&E. The consumer protections adopted here shall be implemented along with SDG&E's dynamic tariffs described in this decision.

10. Education and Outreach Requirements

10.1. Party and Settlement Positions on Education and Outreach Requirements

Customer acceptance of time-varying rates depends in large part on customers' awareness of the characteristics of these new tariffs, as well as customers' ability to adjust their usage to reduce their peak electric load. SDG&E proposes general outreach and education requirements in its original application, referring to "new customer campaigns... to ensure the customer fully understands the program for which they (sic) are eligible."³³ SDG&E specifically suggests that a key part of its education effort must be a program to assist customers in understanding how they currently use energy, along with suggestions for ways to change energy usage patterns to reduce costs under dynamic rates.³⁴ Overall, however, SDG&E's original application provided few details on outreach and education activities. SDG&E has not provided information on how such efforts related to dynamic pricing will be coordinated with similar outreach efforts approved through other proceedings, such as demand response, energy efficiency, and other demand-side management and

³³ Exhibit 5 at 7.

³⁴ Exhibit 10 at 5.

related services. SDG&E's application also proposes that some of the funding requested in this proceeding be used to support its education and outreach efforts, but does not specify the amount of funding SDG&E expects will be used for those purposes.

DRA, UCAN, Disability Rights, and Greenlining suggest changes and additions to the education efforts proposed by SDG&E. For example, DRA characterizes the education and outreach proposals included in the SDG&E testimony as "deficient," arguing that the lack of detailed information "shows that [SDG&E] has not yet performed the research and analysis to determine the best and most cost effective methods of educating customers about the proposed rates."³⁵ Because of this lack of detail, DRA argues that it is premature to approve the education proposal and budget suggested by SDG&E. UCAN echoes the arguments made by DRA, and further suggests several approaches, such as development of a logo and use of an iterative education campaign that builds on earlier messages, to improve SDG&E's outreach proposal.³⁶

Greenlining recommends that SDG&E target outreach and education specifically towards low-income and other hard-to-reach customers. For example, Greenlining suggests that SDG&E should work with CBOs trusted within hard-to-reach communities to educate customers about their specific dynamic rate options, and about dynamic pricing more broadly.³⁷ Similarly, the

³⁵ Exhibit 100 Chapter 5 at 7.

³⁶ UCAN Exhibit 201 at 3-4.

³⁷ Greenlining Exhibit 300 Kang at 8-9.

testimony of Disability Rights focuses on outreach aimed at people with disabilities, which it suggests should be provided in formats appropriate for and accessible to those customers.³⁸

The proposed settlement provides some detail beyond that included in the original SDG&E testimony, specifically by incorporating the list of education and outreach “metrics” currently in use for PG&E, which are intended to guide and assist the utilities in measuring the success of education efforts.³⁹ In the settlement, SDG&E also commits to working with parties and other stakeholders to develop and communicate messages appropriate to different communities. The settlement focuses primarily on communities represented by parties to this proceeding, for example, CSBA/CSBR for the small business community, and the Farm Bureau for agricultural customers.⁴⁰ Within the settlement and the MOU with Disability Rights, SDG&E also agrees to implement many of the specific outreach activities Disability Rights recommends to improve communication with customers with disabilities.

The settlement also specifies some follow-up activities to facilitate evaluation of SDG&E’s outreach and education efforts. For example, the settling parties provide general language stating that SDG&E is committed to developing an integrated marketing plan that incorporates energy efficiency, demand

³⁸ Disability Rights Advocates Exhibit 400 at 4-5.

³⁹ The metrics in the appendix to the settlement are based on the metrics developed by PG&E and submitted to the Commission along with PG&E’s Advice Letter 3693-E, which contained PG&E dynamic pricing education and outreach campaign plan, in compliance with D.10-02-032 and D.11-11-008.

⁴⁰ Settlement at 5.

response, and energy management solutions, and coordinating that plan with existing outreach funded through SDG&E's energy efficiency and other demand-side management programs.⁴¹ SDG&E agrees that any funding for education and outreach adopted in this proceeding would be incremental to the outreach budgets in other demand-side management programs, and activities funded through this proceeding would not duplicate efforts funded by those other programs. Language in the settlement also requires tracking of the education and outreach efforts and budgets, as well as the success of those efforts.

Under the settlement, success would be measured via a survey of a "statistically representative sample of customers... to measure the... metrics" attached to the settlement.⁴² Towards this end, the settling parties agree to a process of quarterly and (later) semi-annual briefings with Commission staff and stakeholders to present progress and receive feedback on its plans. In addition, the settlement requires SDG&E to collaborate with parties and Commission staff to determine the appropriate levels for the proposed metrics. The settlement states that SDG&E will present its outreach plan and work on levels for the metrics at its first quarterly meeting with staff and stakeholders after a decision in this proceeding is adopted. The settlement does not include specific written reporting requirements, however.

⁴¹ Settlement at 4.

⁴² Settlement at 5.

10.2. Education and Outreach Activities

Neither SDG&E's original proposal nor the settlement provide sufficient detail to allow an examination of SDG&E's strategies and activities for educating customers about new dynamic pricing tariffs. In addition, the settling parties do not fully describe the process for establishing target levels for the metrics intended to gauge the impact of education and outreach efforts.

This decision adopts education and outreach requirements and related metrics that build on the metrics previously adopted for PG&E (and recommended in the proposed settlement), but provides more detailed direction on development of an appropriate education and outreach plan.⁴³

We require SDG&E, like PG&E, to develop an education and outreach plan. Development of an education and outreach plan will assist SDG&E in meeting the needs to educate its customers related to the activities adopted in this decision. We agree with Disability Rights, Greenlining, and others that certain customer groups, including low-income households and people with disabilities, are best reached through methods designed and targeted to meet the needs of those groups. As suggested in the settlement agreement and MOU with Disability Rights, SDG&E shall include in its plan activities that target hard-to-reach customers, including those with disabilities, and the plan will include translation of education and outreach materials into multiple languages. Also as recommended in the proposed settlement, we require SDG&E to hold

⁴³ As noted above, the settlement in turn bases its recommendations for education and outreach on PG&E's dynamic rates implementation plan, developed in compliance with D.10-02-032 and D.11-11-008.

quarterly meetings with interested parties and Commission staff to develop and refine its outreach strategy. SDG&E's education program will include the development of shadow billing in English and Spanish, and tracking of the number and type of call center requests for in-language assistance.

SDG&E shall provide its draft outreach and education plan to parties on the service list for this proceeding within 45 days after the issuance of this decision, and will schedule its first quarterly meeting with parties to take place within 30 days after the draft plan is served, to enable parties to review the plan before the meeting is held. We expect that providing parties with sufficient time to review the plan in advance of the meeting, and an adequate opportunity to develop and offer feedback, will result in a more thorough and effective plan. This plan must include descriptions of and timelines for education and outreach activities and media strategies. We encourage SDG&E to use PG&E's January 2012 Peak Day Pricing education and outreach plan as a model in developing its plan. SDG&E will modify its draft outreach and education plan consistent with feedback from parties and Commission staff on its draft plan, including discussion at its first quarterly meeting.

SDG&E shall file a Tier 2 advice letter with its final outreach and education plan after its first quarterly meeting but within 90 days after the issuance of this decision. SDG&E may begin its outreach efforts before distributing its final plan via advice letter, but the company shall ensure that all education and outreach activities undertaken after that advice letter is filed are consistent with the provisions of its final plan. SDG&E may make minor modifications to its education and outreach plan via Tier 1 advice letter, if necessary.

SDG&E's initial quarterly meeting will also include discussion of target levels for the metrics contained in Appendix 2 to this decision, and those target

levels shall be included in the final education plan. After consultation with parties and Commission staff, SDG&E may make minor adjustments to the metrics established through this decision or to the target levels established in its education plan, to ensure that the metrics and levels are appropriate for evaluating SDG&E's dynamic pricing activities. SDG&E may also recommend the addition of new metrics, if appropriate. Any changes or additions to the metrics shall constitute a modification to the outreach plan, and so shall be filed via a Tier 1 advice letter. Reporting on the outreach and education metrics shall take place as described in Section 13, below.

11. Project Costs and Cost Recovery

11.1. Appropriate Budget

SDG&E initially requested \$118 million to support the dynamic pricing proposal made in its application. Two parties, DRA and UCAN, provided some analysis of the SDG&E funding request in their testimony. Neither party provides a comprehensive review of SDG&E's estimated project costs, but both argue that SDG&E's requested funding is excessive. With few exceptions (e.g., a small disallowance recommended by DRA in the capital costs for facilities)⁴⁴ parties do not provide suggestions for specific budget reductions. UCAN specifically states that it "chose not to conduct an itemized review of SDG&E's spending proposal because of the extreme divergence between our respective visions."⁴⁵ Both DRA and UCAN suggest specific areas in which SDG&E's cost

⁴⁴ DRA Exhibit 100 at 6-9.

⁴⁵ UCAN Exhibit 200 at 8.

estimates may be overstated, however. These areas include customer education, customer service, office costs, and information technology costs.⁴⁶

Specifically, DRA recommends a disallowance of \$2.3 million for facilities costs, including \$1.2 million for reduced staff and housing needs and \$1.1 million for leasing cost, stating that the leasing rates used by SDG&E do not reflect current costs, and that SDG&E overestimates the amount of office space it will need to house staff related to its dynamic pricing project.

UCAN similarly argues for an even larger reduction in facilities costs, based on its analysis of the average price per square foot of office space near the SDG&E company offices and the amount of space they estimate will be needed for associated staff. UCAN also asserts that SDG&E's IT, outreach and education, and customer service cost estimates are significantly higher than necessary to support new dynamic rates. UCAN suggests that the \$32 million budget estimate for an "online presentment tool," including \$13 million for work on SDG&E's "My Account" Web portal, is significantly overstated. UCAN asserts that SDG&E's approach to the Web portal is fundamentally flawed.⁴⁷ UCAN also states that SDG&E's outreach and education costs may be duplicative of costs for similar activities approved through the SDG&E GRC.⁴⁸ UCAN questions the need for \$10 million in incremental customer service costs.⁴⁹

⁴⁶ UCAN Exhibit 200 at 8 through 13.

⁴⁷ UCAN Exhibit 200 at 9.

⁴⁸ UCAN Exhibit 200 at 13-14.

⁴⁹ UCAN Exhibit 200 at 14-15.

We are persuaded by the analysis provided by DRA and UCAN that SDG&E's cost estimates related to facilities, IT costs, outreach and education activities, and customer service are overstated and should be reduced. Specifically, we accept the recommendation of DRA that SDG&E's facilities budget be reduced by \$2.3 million, to reflect lower costs of and need for space related for this project. In addition, we believe that SDG&E's estimated cost for development of a Web portal is higher than necessary, and should be reduced, along with other IT costs. As a result, we find that SDG&E's proposed budget should be reduced by an additional \$12 million.

We also reduce the proposed outreach and education and customer service budgets from the levels proposed by SDG&E. SDG&E has not provided adequate assurance that the activities funded through this proceeding will be incremental and will not duplicate activities funded through its GRC or demand response proceedings. In addition, we believe that these budgets, and especially the budget for outreach to residential customers, can be scaled back, in recognition that the tariffs likely to be adopted are expected to be less complex than those originally proposed by SDG&E and will be implemented later than expected. For these reasons, we believe that less outreach will be needed to communicate the new tariffs to customers, and less additional customer service will be needed to support the new tariffs in the period covered within this application. In addition, we find that the budget originally proposed by SDG&E for outreach and education to residential customers was higher than necessary. Given the voluntary nature of dynamic tariffs for residential customers, we believe that these customers need not be the focus of as much outreach as non-residential customers; SDG&E originally proposed approximately equal

budgets for these customer classes. For these reasons, we reduce the customer service and outreach and education budgets by a total of \$11 million.

Applying these total reductions of \$25.3 million to the \$118 million budget proposed by SDG&E, we approve a budget of \$92.7 million. This amount is close to the amount recommended in the settlement; for the reasons discussed above, we expect that \$92.7 million will be sufficient for implementation of the activities adopted here. Given that detailed dynamic tariffs have not yet been developed and that we are significantly reducing the budget from what was originally requested, SDG&E shall propose what proportion of this total budget should be used for capital and O&M expenditures, and how the budget will be distributed among activities. SDG&E will provide this proposed detailed budget as part of the advice letter process outlined in Section 12, below. Funding for operational costs beyond 2015 may be requested in a future SDG&E GRC or similar application proceeding.

11.2. Cost Recovery

The details of the cost recovery mechanism for SDG&E dynamic rate funding were the most controversial issue within this proceeding. The adoption of the cost recovery proposal contained in SDG&E's application, which would recover program costs from all SDG&E customers, including those served by Electric Service Providers (ESPs) and other Load Serving Entities (LSEs), was the only provision of the settlement actively opposed by any parties to the proceeding. Specifically, EUF provided testimony in opposition to the original SDG&E cost recovery proposal, arguing that large customers should not pay the costs of implementation for residential and small non-residential customers. In addition, EUF, AReM, and the FEA filed comments in opposition to the cost recovery determination recommended within the settlement. Those comments

do not advance the argument originally made by EUF that large customers should not pay for the implementation costs of small customers, but instead focus on the appropriateness of collecting the costs adopted in this proceeding from direct access customers and customers served by other LSEs. Parties were given an opportunity to explore the settlement's cost recovery provision at the evidentiary hearing held on October 31, 2011, and filed opening and reply briefs addressing these issues.

SDG&E also argues that all customers can take advantage of the dynamic rates funded here if they choose to take bundled service from SDG&E. SDG&E also notes that all customers will have access to educational materials and other resources (such as web pages) related to dynamic pricing and supported by funding associated with the product. In addition, SDG&E asserts that all customers, including customers of other LSEs such as CCAs and ESPs, will experience system benefits (e.g., increased system reliability and lower energy costs due to lower electricity demand) caused by the implementation of dynamic pricing.⁵⁰ SDG&E and the settling parties also state that the cost allocation method supported in the proposed settlement is consistent with the allocation adopted in D.10-02-032 (the PG&E Peak Day Pricing proceeding)⁵¹ and in the settlement agreement adopted in D.07-09-004 (on PG&E revenue allocation and rate design).

⁵⁰ SDG&E Reply Brief on Cost Allocation Issues, December 22, 2011 at 5.

⁵¹ SDG&E Reply Brief at 6.

Similarly, the settling parties assert that their revenue allocation method is consistent with cost causation principles, which require that the customers responsible for incurring a cost pay that cost. These parties argue that, because customers that receive some service from alternative LSEs will have access to certain tools implemented as part of the roll-out of dynamic pricing and (according to the setting parties) will receive benefits from the implementation of dynamic pricing, they should therefore share in associated costs.

EUf, AReM, and FEA, in contrast, note that customers can only enroll in dynamic rates if they receive bundled service from SDG&E, and not if they receive commodity service from an alternative LSE such as an ESP. According to these parties' explanation, the principle of cost causation requires that customers be charged for costs that are actually incurred in providing their service, and not for any cost that may benefit them in some way. In other words, these parties argue that customers that do not take commodity service from SDG&E do not cause the costs spent on implementing dynamic pricing, and do not directly benefit from associated activities in any meaningful way, because these tariffs are only available to customers receiving bundled service. EUf, FEA, and AReM argue that customers of alternative LSEs should not be responsible for paying these costs – even if some services supported by those costs may be (under certain circumstances) available to them. The Direct Access Parties also dispute SDG&E's claims that customers can easily or frequently move from bundled service to service by an alternative LSE and back.

In addition, these parties assert that the system benefits alluded to by SDG&E will lead to only minor, arguably negligible benefits for individual customers, and are not a significant enough benefit to warrant charging customers for the services that could create those benefits. These parties point to

D.02-11-022 in support of this latter point; that decision states that assigning charges related to DWR contracts to direct access customers “based solely on indirect societal benefits would be arbitrary... speculative ... [and] unfairly discriminatory.”⁵²

11.2.1. Adopted Cost Recovery Mechanism

The Commission decisions cited by the settling parties in support of allocating costs to all customers include adopted settlements negotiated by parties, which are not considered precedential, or were adopted in decisions that expressly stated that this is an interim methodology that should be reconsidered at a later time. Because we are not adopting the settlement in this case, approving in this proceeding the cost allocation methodology applied in those earlier decisions would appear to be an endorsement of the cost allocation method. While we could, as the settling parties suggest, adopt this pre-existing methodology and explicitly state that its appropriateness may be reviewed in a future ratesetting proceeding, there is no reason to do so. The record on cost allocation in this proceeding allows us to make an informed decision on this issue.

We are persuaded by the arguments of the Direct Access Parties that requiring the customers of CCAs and ESPs, who cannot enroll in SDG&E’s dynamic pricing tariffs, to pay the costs of implementing those tariffs, is not consistent with cost causation principles, and would not be reasonable. Though

⁵² Quote from D.02-11-022 in *Opening Brief of FEA, AReM, and EUF* November 18, 2011, at 9.

customers may be able to move from alternative LSEs to bundled service and back, there is no evidence in the record supporting the assertion that this can be done frequently or easily. Further, even if customers could move easily back and forth between different service providers, a customer is not able to take advantage of SDG&E's dynamic pricing while taking commodity service from any provider other than SDG&E. As a result, charging customers of other LSEs to implement these tariffs, or even charging them for the incremental costs of implementing or maintaining tools supporting these tariffs (such Web sites or additional customer service), would be charging them for costs that they do not incur and that do not significantly benefit them.

When or if customers choose to move back to SDG&E bundled service, they would bear their share of the costs adopted in this proceeding under their bundled rates. The possibility that customers of other LSEs could use Web-based tools supported by dynamic pricing implementation funds in their decision-making, or could switch to bundled service and dynamic rates in the future, is not sufficient to convince us that the costs of developing and implementing these tools should be collected from those customers. This conclusion is similar to the Commission's conclusion in D.02-11-022. For these reasons, we require that the costs of SDG&E's dynamic pricing decision be recovered from all bundled customers through generation rather than distribution rates.

In comments on the proposed decision, SDG&E and DRA argue that the decision to collect dynamic pricing costs in distribution rates constitutes factual error and conflicts with recent Commission decisions adopted since D.02-11-022.

SDG&E states that “the dynamic pricing implementation costs being proposed for recovery [in this proceeding] are distribution costs... [and] are appropriately recovered in distribution rates.”⁵³ In contrast, in its reply comments DRA disputes SDG&E’s conclusion that dynamic pricing implementation costs are distribution costs. DRA explains its position that dynamic pricing costs should be collected through distribution costs because they will provide system benefits to all customers,⁵⁴ but argue that these costs “should be allocated, at least in large part, by generation allocation factors... to reflect the role of generation in dynamic pricing cost causation.”⁵⁵ DRA and SDG&E both argue that collection of these costs through generation rates conflict with D.10-02-032, which requires collection of PG&E’s dynamic pricing implementation costs through distribution rates. In addition, DRA claims that the Commission has consistently rejected the argument that dynamic pricing costs should be collected through generation costs, citing D.12-04-045 as a recent example.

In fact, DRA and SDG&E do not accurately represent the cost allocation determinations made in these recent decisions. As noted by AReM, EUF, and FEA in their reply comments, D.10-02-032 specifically allows dynamic pricing costs to be recovered through distribution rates on a temporary basis, while deferring a final decision on the appropriate means for recovering these costs to a

⁵³ SDG&E Opening Comments on the Proposed Decision, November 19, 2012, at 7.

⁵⁴ DRA Reply Comments on the Proposed Decision, November 26, 2012, at 3.

⁵⁵ DRA Reply Comments on the Proposed Decision, November 26, 2012, at 4.

future proceeding.⁵⁶ Similarly, D.12-04-045, which addresses the costs of demand response programs rather than of dynamic rates, declines to alter the previous method for allocating and collecting the costs of demand response programs through distribution rates that was approved in D.10-02-032 and other decisions, stating that “changing the current cost recovery and rate design process for DR [was] not ripe for discussion.”⁵⁷ On this basis, D.12-04-045 defers a final determination on cost recovery for demand response programs to a future proceeding.⁵⁸ D.11-12-053, another Commission decision cited by SDG&E in support of its argument to collect these costs through distribution rates, adopts its cost recovery mechanism as part of a settlement in PG&E’s Rate Design proceeding, which is not precedential. Parties have not established that the finding in this decision that dynamic pricing implementation costs should be collected through generation rates constitutes legal or factual error, and we decline to modify that determination in this final decision.

Parties did not provide briefing on the question of whether large customers should bear a share of the costs of the activities adopted in this proceeding, which focuses on residential and small non-residential customers, and we decline to make an exception to exempt large customers that receive all service through SDG&E from these costs.

⁵⁷ Joint Parties’ Reply Comments on Proposed Decision on November 26, 2012, at 3.

⁵⁷ D.12-04-045 at 204.

⁵⁸ *Id.*

SDG&E requests permission to collect “ongoing post 2015 O&M costs related to PSW and PSH in the Demand Response Programs and Budgets program cycle filing or as determined by the Commission.”⁵⁹ No parties objected to this request. Consistent with this request, we require SDG&E to recover post-2015 costs related to the dynamic rates adopted in this decision in its future Demand Response Program and Budget cycle applications. This treatment will allow a review of any ongoing costs, including education and outreach costs related to dynamic pricing, in the context of an examination of similar activities. We believe that this will best ensure that SDG&E coordinates its future education and outreach efforts for energy efficiency, demand response, and dynamic pricing tariffs, and should assist in avoiding duplicative activities and expenditures.

12. Implementation

This section discusses the next steps SDG&E shall take in implementing its new dynamic pricing tariffs and associated cost recovery mechanisms. Implementation activities related to outreach and education, including the development of an education and outreach plan and ongoing meetings with stakeholders, are described in Section 10.2, above.

12.1. Implementation of New Dynamic Pricing Tariffs

This decision adopts a structure and many terms and conditions for SDG&E’s future dynamic pricing tariffs, but does not adopt the specific levels of

⁵⁹ Exhibit 7 at 4.

dynamic rates for residential and small commercial customers under those tariffs. Because this decision defers the development of specific rate levels to SDG&E's ongoing Phase 2 GRC, the dynamic rates adopted in concept in this decision will not be finalized until a decision is issued in that proceeding. For this reason, we do not require SDG&E to submit an advice letter implementing the rates adopted here at this time. Instead, unless otherwise required in the decision in A.11-10-002 setting rate levels for the tariffs adopted here, SDG&E shall file a Tier 2 advice letter implementing the dynamic rate schedules adopted in principle here and finalized in that proceeding within 15 days of the issuance of a decision in that proceeding. Unless otherwise directed in the decision in A.11-10-002, the rate schedules included in that advice letter shall include all tariff terms approved here, including but not limited to the shadow billing, bill protection, and snap credit provisions, as well as the specific rate levels and any additional terms of these dynamic rates adopted in that decision. To the extent possible based on the timing of a decision in its Phase 2 GRC, SDG&E shall implement the rate structures discussed in this decision on the schedule adopted in this proceeding.

12.2. Implementation of Cost Recovery Provisions and the Dynamic Pricing Balancing Account

SDG&E has been recording incremental implementation costs associated with dynamic pricing for residential and small non-residential customers in its Dynamic Pricing Memorandum Account (DPMA) since the issuance of Resolution E-4378 on February 25, 2011. That resolution authorized SDG&E to track implementation costs related to the rates requested in this proceeding, including CPP and other possible dynamic rate schedules, in its DPMA. That resolution also required SDG&E to record such implementation costs separately

for residential and small-nonresidential customers. That resolution did not provide SDG&E with the authority to recover the recorded costs, and deferred both the amount to be recovered and the cost recovery mechanism for approved costs to be decided in this proceeding. In addition, Resolution E-4378 caps the costs to be recorded in that account at \$118.08 million, the amount originally requested by SDG&E in this proceeding.

In this application, SDG&E asked for approval to create a Dynamic Pricing Balancing Account, and to recover all implementation costs related to dynamic pricing, including amounts recorded in the DPMA and implementation costs through 2015, through that account. As discussed in Section 11, above, we approve a budget of up to \$92.7 million to cover the implementation costs for dynamic pricing, reduced from the \$118 million originally requested by SDG&E. As requested, we authorize SDG&E to create a Dynamic Pricing Balancing Account to track and recover these costs. SDG&E may transfer the balance in its DPMA to the new DPBA for collection. Consistent with our discussion in Section 12, above, however, we require that SDG&E collect these costs through generation rather than distribution rates, to ensure that these costs are not collected from CCA and Direct Access customers.

Within 15 days of the issuance of this decision, SDG&E shall submit an advice letter to the Commission's Energy Division creating its DPBA consistent with the requirements of this decision, and transferring the costs previously recorded in the DPMA to the new DPBA. As described above, that advice letter will specify the amounts SDG&E expects to devote to capital and O&M costs, as well as the amounts to be used for different categories of implementation activities, including information technology and customer service. The amount recorded in this balancing account and collected from customers shall not exceed

\$92.7 million. SDG&E shall track capital costs and O&M costs separately within its balancing account. SDG&E will also separately track and report the amounts spent on outreach and education activities, and will continue to track costs for residential and small non-residential customers separately.

13. Reporting Requirements

Neither the original application nor the proposed settlement of the parties establishes specific reporting requirements on the activities and expenditures associated with the implementation of dynamic pricing. For example, SDG&E states that dynamic pricing education and outreach activities, and their associated budgets, will be incremental to other education and outreach budgets, but does not describe any internal controls or reporting requirements to ensure that funding approved in this decision is used only for costs that are not otherwise funded. It is unclear from the record whether SDG&E will be able to use some of its demand response budget towards marketing of dynamic rates, or how these and other demand-side management efforts will be coordinated to ensure that funding is used appropriately. In order to ensure that education, outreach, IT, or other expenditures approved in this proceeding are not used to support activities already funded in other proceedings,⁶⁰ we require SDG&E to track and report the information described in this section.

SDG&E shall prepare and submit to the Commission's Energy Division two quarterly expenditure reports, one containing information on all

⁶⁰ For example, overlap is possible with activities required in D.12-04-045, which adopted Demand Response programs and budgets for 2012 through 2014, and approved nearly \$1 million for integrated demand side management marketing.

expenditures, and the other focused on education and outreach expenditures. The primary expenditure report will include the total amounts spent for various types of activities during that quarter, broken down by capital and O&M costs. The report shall also include the cumulative total amount spent as of the end of the quarter covered by the report, broken down by category, and the amount of capital and O&M funding remaining under the budget approved in this decision. These reports will also note any fund-shifting between capital and O&M budgets that takes place consistent with the ability to shift up to \$5 million between those categories.

In its education and outreach expenditure report, SDG&E shall provide a more detailed breakdown of expenditures on those activities. This will facilitate tracking of outreach and education costs, and will assist in avoiding duplication of similar expenditures on demand response and other related activities.

These reporting requirements are similar to those adopted for PG&E's dynamic pricing activities, though the reporting will be quarterly rather than monthly, as is the case for PG&E. Based on our experience with PG&E, we believe that quarterly reports are sufficient to track SDG&E's expenditures, while allowing frequent enough oversight to respond quickly to any concerns about expenditures and activities, if necessary.

SDG&E shall work with staff in the Commission's Energy Division to develop a specific format for these reports. Energy Division may require SDG&E to report additional expenditure information within the quarterly report structure established here. In addition, Energy Division may work with SDG&E to modify the initially agreed-upon reporting format, as necessary to ensure that the Commission receives complete information in an understandable format.

The first quarterly reports are due on April 30, 2013, covering the time period through March 31, 2013.

In addition to these requirements, and as recommended in the proposed settlement, SDG&E will conduct annual surveys of a statistically representative sample of customers to measure the education metrics adopted with this decision as Attachment A, and data on these metrics will be made accessible to the public. SDG&E will report on the results of these surveys to the Commission with the first quarterly expenditure report submitted in 2014, and with the first quarterly report of each calendar year thereafter. These reports will also be posted on SDG&E's Web site to ensure that they are publically available, and copies of all reports shall be sent to parties on the service list for this proceeding.

14. Comments on Proposed Decision

The proposed decision of ALJ Jessica T. Hecht in this matter was mailed to the parties in accordance with § 311 of the Public Utilities Code and comments are allowed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening comments were filed by SDG&E,⁶¹ CFBF, Greenlining, and AReM, EUF and FEA (jointly) on November 19, 2012. Reply comments were filed by SDG&E, CSBRT/CSBA (CSBRT), DRA and UCAN (jointly) and AReM, EUF, and FEA (jointly) on November 26, 2012.

SDG&E, CFBF, Greenlining, DRA, and CSBRT/CSBA all express their continuing support for the settlement submitted in 2011, and urge the

⁶¹ Disability Rights joined SDG&E's comments to the extent that they support the proposed decision's adoption of the MOU, but took no position on the other issues discussed in SDG&E's comments.

Commission to adopt that settlement as originally proposed. These parties argue that the proposed decision's failure to adopt the settlement constitutes legal and factual error "by misapplication of the legal standard and misapprehension of the factual record."⁶² In addition, SDG&E asserts that the proposed decision errs because it does not recognize "the Settling Parties' comprehensive understanding and expertise in the issues, and the vigorous nature of [the] settlement negotiations."⁶³

Should the Commission reject the settlement, SDG&E, Greenlining, and CFBF recommend several modifications to the proposed decision. Specifically, as discussed above, these three parties recommend that the implementation of default time-varying rates for small commercial and small agricultural customers be delayed to provide SDG&E more time to conduct education and outreach to affected. CFBF suggests that SDG&E's small agricultural customers have not had access to time-varying rates in the past,⁶⁴ and should be allowed to enroll in time-of-use rates voluntarily for at least one year before such rates are made mandatory.⁶⁵ CFBF also argues that agricultural customers should not default to a CPP rate,⁶⁶ and expresses concern about the level and types of energy efficiency

⁶² Joint Comments of SDG&E and Disability Rights Advocates in the Proposed Decision (SDG&E Comments), November 19, 2012, at 3.

⁶³ SDG&E Opening Comments, at 4.

⁶⁴ CFBF Opening Comments on the Proposed Decision, November 19, 2012 at 2.

⁶⁵ CFBF Opening Comments at 7.

⁶⁶ CFBF Opening Comments at 6.

services available to agricultural customers, a concern that they assert was mitigated by provisions of the settlement.⁶⁷

SDG&E recommends several changes to the proposed decision, including changes to the implementation schedule for time-varying rates, such as initiation of voluntary (rather than mandatory) time-of-use rates for one year beginning in November of 2013, a one-year delay (to November 2014) in the implementation of default time-varying rates, a six-month rolling implementation period for new dynamic rates, and changes to the cost recovery determination to make it consistent with SDG&E's original proposal.⁶⁸ In addition, SDG&E suggests that the proposed decision should be revised to default customers to TOD and CPP rates on the same date, rather than in November 2013 and 2015, respectively.⁶⁹ Greenlining supports the adoption of a six-month rolling implementation period for default rates, and argues for retention of a flat rate option for small non-residential customers even after the date on which they default to a TOD rate.

In reply comments, both DRA and CSBRT express their support for the settlement agreement, but object to SDG&E's alternative proposal, made in its opening comments and consistent with its original proposal, that the Commission implement both default TOD and default CPP rates simultaneously if the settlement agreement is rejected. Both parties express concerns that the

⁶⁷ CFBF Opening Comments at 6.

⁶⁸ SDG&E Opening Comments at 6-9.

⁶⁹ SDG&E Opening Comments at 7.

sudden implementation of TOD and CPP rates simultaneously would pose a shock for non-residential customers,⁷⁰ and CSBRT adds that it believes that customers would find it confusing to default to both tariffs at once, which could complicate the utility's outreach and education efforts and possibly lead to a customer backlash.⁷¹ DRA also disagrees with the SDG&E assertion that the implementation costs for dynamic pricing should be considered to be distribution costs, arguing instead that these costs should be recovered through distribution costs, but allocated among customer classes primarily using generation allocation factors.⁷² The comments of AReM, EUF, and FEA focus on the cost allocation determination in the proposed decision, which those parties support.

Several substantive changes have been made to this decision in response to these comments. The decision has been modified to adopt a six-month rolling implementation period for default tariffs, and to exempt small agricultural customers from the requirement that other small non-residential customers default to CPP tariffs in 2014. We have also changed the implementation dates for dynamic tariffs applicable to small non-residential customers to allow for voluntary TOD rates beginning in November 2013, delaying the implementation of mandatory TOD rates until November 2014. These changes are discussed more fully in Section 9.1.2, above. Additional explanations, along with minor

⁷⁰ DRA Reply Comments, November 26, 2012, at 4-5, and CSBRT Reply Comments at 2.

⁷¹ CSBRT Reply Comments at 2.

⁷² DRA Reply Comments, November 26, 2012, at 4.

technical changes and clarifications, have been made throughout the decision in response to comments, as appropriate.

15. Confirmation of ALJ and Assigned Commissioner Rulings

All rulings made by the ALJ and assigned Commissioner during the conduct of this proceeding are confirmed. Any outstanding motions not previously ruled upon or resolved through this decision are denied.

16. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Jessica T. Hecht is the assigned ALJ and presiding officer in this proceeding.

Findings of Fact

1. Time-varying rates, including TOD rates, are electric rates under which the amount customers pay for each unit of electricity varies over the course of a day.
2. Time-varying rates are intended to motivate customers to reduce their electricity use during times of peak electricity demand by more closely reflecting the higher costs of electricity at peak times of day.
3. CPP rates in general, and PSW in particular, are designed to motivate customers to reduce electricity consumption when necessary to maintain the integrity of the power grid or to reduce costs during times of extremely high electric demand or cost, or when reduced load is needed for some other reason.
4. Commission policy favors making dynamic rates available to all classes of electricity customers.
5. SDG&E's PSW proposal would have transitioned small non-residential customers abruptly to a complex set of new dynamic rates.
6. SDG&E's original PSH proposal is complex and likely to confuse residential customers.

7. SDG&E, DRA, UCAN, Greenlining, Farm Bureau, CSBR/CSBA, and the City of San Diego filed a motion for adoption of a settlement agreement on June 20, 2012. This motion also included a motion for adoption of an MOU between SDG&E, and Disability Rights.

8. EUF, AReM, and the FEA oppose the proposed settlement agreement.

9. The proposed settlement is vague in its descriptions of both rates and implementation activities.

10. Aspects of the proposed settlement are not consistent with the proceeding record or with Commission policy to move expeditiously to time-variant rates.

11. The MOU between SDG&E and Disability Rights essentially represents a partial, unopposed settlement of a subset of the issues within this case.

12. The MOU commits SDG&E to providing targeted outreach and communications to inform customers with disabilities about new dynamic rate options.

13. Customer acceptance of time-varying rates depends in large part on customers' awareness of the characteristics of these new tariffs, as well as customers' ability to adjust their usage to reduce their peak electric load.

14. Certain customer groups, including low-income households and people with disabilities, are best informed of rate options through materials designed for and targeted to meet the needs of those groups.

15. The record of this proceeding does not contain a specific proposal for exempting customers from PSW rates for public health and safety reasons, and no record exists within this proceeding on which to evaluate the appropriateness of this settlement provision.

16. The settlement contains a provision that would authorize SDG&E to develop criteria for exempting certain small non-residential customers from TOD and other dynamic rates.

17. In D.11-11-008, the Commission rejected a proposed provision that would have authorized PG&E to develop criteria for exempting certain small non-residential customers from TOD and other dynamic rates.

18. The settlement contains provisions, such as those allowing parties to brief several issues after the resolution of the Petitions on D.10-02-032, which are now moot.

19. Lack of mandatory TOD for small non-residential customers in the proposed settlement is inconsistent with recent Commission policy in favor of transitioning customers to time-varying and/or dynamic rates.

20. It is consistent with Commission policy to maintain optional CPP rates for small and medium agricultural customers at this time.

21. No party proposed a specific and well-developed alternative in this proceeding to SDG&E's dynamic rate proposal, and no actual rates that the Commission could adopt are specified in the settlement.

22. It is unlikely that a decision providing detailed dynamic rates will be issued in A.11-10-002 before spring 2013.

23. Shadow billing for a new dynamic rate, in which customers receive bills that show their electricity usage, rates, and costs under both new rates and otherwise applicable rates, will allow customers to compare their costs under different possible electric rates.

24. Bill protection under a new dynamic rate ensures that a customer pays no more for electricity during the period after implementation of the new rate than they would have paid under their previously applicable rate.

25. The snap-credit provision contained in the settlement agreement will protect customers from unusually high bills after the implementation of dynamic pricing.

26. Rolling implementation over a period not to exceed six months may assist SDG&E in managing its customers' transition to time-varying rates.

27. In the proposed settlement, parties agreed that \$93 million would be sufficient to implement dynamic rates and associated activities, including education and outreach.

28. SDG&E's estimated costs for IT, education and outreach, customer service and facilities are overstated and should be reduced.

29. Development of an outreach and education plan will assist SDG&E in meeting the education and outreach needs of its customers related to the activities adopted in this decision.

30. Customers are not able to take advantage of SDG&E dynamic pricing tariffs while taking commodity service from any provider other than SDG&E.

31. Collection of the costs authorized in this proceeding through generation rates will ensure that customers that are not eligible for dynamic rates are not charged for activities associated with those rates.

32. Recovery of post-2015 costs related to the activities adopted in this decision within SDG&E's future Demand Response Program and Budget cycle applications or a similar ratesetting proceeding will allow a review of any ongoing costs, including education and outreach costs, in the context of similar activities.

33. The Commission approved a DPMA for SDG&E in Resolution E-4378 on February 25, 2011, and authorized SDG&E to record costs of dynamic pricing and related activities in that account, up to a maximum of \$118 million.

34. Creation of a Dynamic Pricing Balancing Account and the transfer to that account of costs recorded in the DPMA will enable SDG&E to track and recover costs related to the implementation of dynamic rates.

35. Tracking and reporting of SDG&E implementation costs by customer segment and budget activity (e.g., capital costs, education and outreach, IT) will allow for Commission oversight of the implementation of dynamic pricing.

36. Quarterly meetings with Commission staff and interested parties on education and outreach activities will allow for oversight of and, if appropriate, modifications to the outreach and education activities contained in the SDG&E final education and outreach plan.

37. The Commission has approved an education and outreach plan for PG&E that included associated metrics related to customer awareness similar to those in Attachment 2.

38. Development and modification of reporting requirements and formats in consultation with Commission staff will facilitate the review of progress on implementation of the activities adopted in the proceeding, and will ensure that parties and the Commission receive useful information on those activities.

39. Annual surveys of a statistically representative sample of customers will allow measurement of the education metrics adopted with this decision as Attachment 2, and will facilitate understanding of the effect of education and outreach measures.

Conclusions of Law

1. Rule 12.1(d) provides that the Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

2. The settlement agreement proposed by the Joint Parties is not reasonable in light of the whole record, consistent with the law, and in the public interest, and does not meet the standard for adoption by this Commission.

3. The MOU between SDG&E and Disability Rights is reasonable in light of the whole record, consistent with the law, and in the public interest, and meets our standard for the approval of an unopposed settlement, and therefore should be adopted.

4. Adoption of optional dynamic rates for residential customers and mandatory TOD rates for small non-residential customers is consistent with Commission policy and recent Commission decisions.

5. It is reasonable to consider the schedule for the SDG&E GRC Phase 2 proceeding, A.11-10-002, in setting an initial implementation date for the rate options adopted in this decision.

6. It is reasonable to require SDG&E to submit an outreach and education plan to guide its efforts to educate customers about the characteristics of dynamic pricing.

7. It is reasonable for SDG&E and Energy Division staff to make minor modifications to the metrics established through this decision or to the target levels established in SDG&E's education and outreach plan.

8. It is reasonable to authorize a budget of \$92.7 million for SDG&E to implement the activities adopted in this proceeding.

9. It is reasonable for SDG&E to include in its outreach and education plan activities that target hard-to-reach customers, including those with disabilities, as well as translation of education and outreach materials into multiple languages.

10. It is reasonable to allow Energy Division to require SDG&E to report additional expenditure information within the quarterly report structure

established here, if appropriate. In addition, Energy Division may work with SDG&E to modify the initially agreed-upon reporting format, as necessary to ensure that the Commission receives complete information in an understandable format.

11. It is not reasonable to require customers that take commodity service from providers other than SDG&E to pay the costs of implementing dynamic tariffs for which they are not eligible.

O R D E R

IT IS ORDERED that:

1. The joint motion of San Diego Gas & Electric Company, the Division of Ratepayer Advocates, the Utility Consumers Action Network, the Greenlining Institute, the California Farm Bureau Federation, the California Small Business Roundtable/California Small Business Association, and the City of San Diego to approve Joint Parties Settlement Agreement is denied.

2. The Memorandum of Understanding between San Diego Gas & Electric Company and Disability Rights Advocates filed on June 20, 2012, and included as Attachment 1 to this decision, is adopted.

3. San Diego Gas & Electric Company shall implement optional time-of-day and critical peak pricing rates for small non-residential customers on November 1, 2013.

4. San Diego Gas & Electric Company shall implement mandatory time-of-day rates along with default critical peak pricing rates for small non-residential customers in November 2014. After this date, small non-residential customers will be able to opt out of the critical peak pricing tariff into time-of-day rates. Small and medium agricultural customers will not be

required to default to critical peak pricing rates, which will remain optional for those customers. Flat rates will no longer be available to small non-residential customers after November 2014.

5. San Diego Gas & Electric Company shall implement optional time-of-day and critical peak pricing rates for residential customers on November 1, 2013.

6. The specific rate design for both the residential and non-residential dynamic rate structures adopted in this decision will be determined in A.11-10-002.

7. San Diego Gas & Electric Company shall incorporate into and implement within its dynamic rates the consumer protections described in this decision, including 12 months of bill protection for Peak Shift at Work and Peak Shift at Home customers, shadow billing, snap credits, and tracking of customer calls, and may implement the rates adopted in this decision to their customers on a rolling basis over a six-month period.

8. San Diego Gas & Electric Company shall hold quarterly meetings with interested parties and the Commission's staff to develop, refine, and report progress related to its outreach and education activities. This plan shall include descriptions of and timelines for education and outreach activities and media strategies.

9. San Diego Gas & Electric Company shall provide its draft education and outreach plan to parties on the service list for this proceeding within 45 days after the issuance of this decision.

10. San Diego Gas & Electric Company shall schedule its first quarterly meeting with parties to take place within 30 days after its draft education and outreach plan is served.

11. San Diego Gas & Electric Company shall file a Tier 2 advice letter containing its final outreach and education plan after its first quarterly meeting but within 90 days after the issuance of this decision. San Diego Gas & Electric Company may begin its outreach efforts before filing its final plan via advice letter, but the company shall ensure that all education and outreach activities undertaken after its final plan is filed are consistent with the provisions of its plan.

12. Once the final outreach and education plan is approved, San Diego Gas & Electric Company may make minor modifications to its education and outreach plan via Tier 1 advice letter, if necessary.

13. San Diego Gas & Electric Company may recover costs, not to exceed \$92.7 million, for implementation of the dynamic pricing structure and associated activities approved in this proceeding.

14. When filing its outreach and education plan, San Diego Gas & Electric Company shall specify what portion of the total budget will be used for education for its residential and non-residential customer classes.

15. San Diego Gas & Electric Company may request funding for operational costs related to dynamic pricing after 2015 in a future General Rate Case, Demand Response Program and Budget cycle application, or another appropriate proceeding as directed by this Commission.

16. Within 15 days of this decision, San Diego Gas & Electric Company shall file a Tier 2 advice letter establishing its Dynamic Pricing Balancing Account, and transferring the balance in its existing Dynamic Pricing Memorandum Account to its new Dynamic Pricing Balancing Account. Costs related to this decision, not to exceed the total approved budget of \$92.7 million, shall be recorded in this account. In this advice letter, SDG&E shall propose the proportion of this total

budget that should be used for capital and O&M expenditures, and how the budget will be distributed among activities.

17. Costs related to this decision, not to exceed \$92.7 million, shall be collected from San Diego Gas & Electric Company customers through generation rates, to ensure that these costs are not collected from community choice aggregator and direct access customers.

18. San Diego Gas & Electric Company shall prepare and submit to the Commission's Energy Division on a quarterly basis two expenditure reports, one containing information on all expenditures, and the other focused on education and outreach expenditures. The information in these reports shall include the information described in Section 13, above, and may include additional information or detail, as appropriate. San Diego Gas & Electric Company shall cooperate with Energy Division in the development of these reports, including the information to be provided and the reporting formats. The first quarterly reports shall be filed no later than April 30, 2013, and will cover activities through March 31, 2013.

19. The outreach and education metrics in Attachment 2 are adopted for use by San Diego Gas & Electric Company. After consultation with parties and Commission staff, the company may make minor adjustments to the metrics established through this decision or to the target levels established in its education plan, to ensure that the metrics and levels are appropriate for evaluating its dynamic pricing activities. San Diego Gas & Electric Company shall use the metrics to measure the success of its outreach and education activities. San Diego Gas & Electric Company shall conduct annual surveys of a statistically representative sample of customers to measure these metrics. San Diego Gas & Electric Company shall report to the Commission on the results of

these surveys with its first quarterly expenditure reports submitted in 2014, and with the first quarterly report of each calendar year thereafter.

20. All reports required in this decision will be posted on San Diego Gas & Electric Company's web site, and copies shall be sent to parties on the service list for this proceeding.

21. Application 10-07-009 is closed.

This order is effective today.

Dated _____, at San Francisco, California.