Decision **PROPOSED DECISION OF ALJ KELLY** (Mailed 12/1/2015)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the California Energy Commission for Approval of Electric Program Investment Charge Proposed 2012 through 2014 Triennial Investment Plan.	Application 12-11-001 (Filed November 1, 2012)
And Related Matters.	Application 12-11-002 Application 12-11-003 Application 12-11-004

DECISION DENYING THE PETITION OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) FOR MODIFICATION OF DECISION 13-11-025 REGARDING ITS TRIENNIAL INVESTMENT PLAN FOR THE ELECTRIC PROGRAM INVESTMENT CHARGE PROGRAM FOR THE YEARS 2012 THROUGH 2014

Summary

This decision denies the January 14, 2014 petition for modification of Decision (D.) 13-11-025 filed by San Diego Gas & Electric Company (SDG&E). In that decision, we addressed the applications of the California Energy Commission, Pacific Gas and Electric Company, SDG&E and Southern California Edison Company requests for approval of their triennial investment plans for the Electric Program Investment Charge Program for the years 2012 through 2014.

The petition for modification of D.13-11-025 is denied for the reasons set forth below.

1. Background

In order to address funding and program issues related to the research, development, and demonstration (RD&D) portions of the now-expired public

goods charge (PGC) funding, the Commission instituted Rulemaking (R.) 11-10-003.[1] Phase 1 of Rulemaking (R.) 11-10-003 established the Electric Program Investment Charge (EPIC) program, to "provide public interest investments in applied research and development, technology demonstration and deployment (TD&D), market support, and market facilitation of clean energy technologies and approaches for the benefit of electric ratepayers."[2] The California Energy Commission (CEC), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) are the Administrators of the EPIC program (Administrators).

The EPIC program is funded by a surcharge beginning January 1, 2012.[3] Phase 2 of R.11-10-003 approved EPIC funding from 2012 through 2020, and established the purposes and governance structure for EPIC. Decision (D.) 12-05-037 requires the Commission to conduct public proceedings every three years to consider investment plans submitted by the Administrators, and required the Administrators to submit their EPIC plans for the period 2012 through 2014 on November 1, 2012.[4]

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[1] Funding authorized in Public Utilities (Pub. Util.) Code §399.8, which governed the system benefits charge (also known as the public goods charge or "PGC"), expired as of January 1, 2012. Public benefits provided by the expired funding are in the areas of energy efficiency, renewables, and RD&D programs.

[2] D.12-05-037 at 2.

[3] This funding was initially on an interim basis, subject to refund, until the Commission issued its final decision at the conclusion of Phase 2 of R.11-10-003.

[4] On November 1, 2012, the CEC, SDG&E, PG&E, and SCE filed Applications (A.) 12-11-001, A.12-11-002, A.12-11-003, and A.12-11-004, respectively. These applications were consolidated into a single proceeding.

As part of its EPIC Application, SDG&E submitted *SDG&E Electric Program Investment Charge First Triennial Investment Plan 2012-2014*, which set forth its EPIC Investment Plan proposals.[5] On February 4, 2013, SDG&E submitted supplemental responses to reflect changes in §§ 6.2.5 and 6.2.6 of its First Triennial Investment Plan.[6] The modifications as submitted were approved by the Commission.[7]

In D.13-11-025, which was issued on November 13, 2013, the Commission approved SDG&E's EPIC Plan for 2012-2014.[8] As a result of SDG&E's EPIC Investment Plan being approved for 2012-2014, SDG&E received a budget of $2.6 million per year for TD&D projects and $299,200 per year for program administration.[9]

SDG&E's EPIC Plan for 2012 through 2014 is composed of five distinct TD&D programs (also called "projects") that demonstrate function and utility beyond existing smart grid deployments.[10] Specifically, SDG&E's EPIC Plan consisted of the following: (1) Smart Grid Architecture Demonstrations; (2) Visualization and Situational Awareness Demonstrations; (3) Distributed Control for Smart Grids; (4) Demonstration of Grid Support Functions of Distributed

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[5] A.12-11-002, Attachment A.

[6] D.13-11-025 at 35. The changes to these sections are not relevant to the requests that SDG&E makes in this Petition.

[7] D.13-11-025 at 136.

[8] D.13-11-025 Conclusions of Law (COL) No. 9 at 117 and Ordering Paragraph (OP) No. 6 at 135.

[9] D.13-11-025 Findings of Fact (FOF) Nos. 9 and 16 at 112-113.

[10] A.12-11-002 at 3.

Energy Resources (DER); and (5) Smart Distribution Circuit Demonstrations.[11] Unlike some of the other EPIC Plans submitted for 2012 through 2014, SDG&E's EPIC Plan did not include the Plug-In Electric Vehicle Submetering Pilots (PEV Submetering Pilots). Although SDG&E chose not to include PEV Submetering Pilots into its EPIC Plan, pursuant to D.13-11-002, which concerns PEV Submetering Protocol requirements, SDG&E is authorized to establish a memorandum account in which expenses related to implementing the PEV Submetering Pilots are to be recorded.[12]

2. Procedural History of SDG&E's Petition

On January 14, 2014, SDG&E filed the instant petition for modification (Petition) seeking modification of D.13-11-025. The Commission's Office of Ratepayer Advocates (ORA) filed a response objecting to SDG&E's Petition on February 13, 2014. On February 24, 2014, SDG&E filed a reply to ORA's response. On April 8, 2014, a prehearing conference (PHC) was held. The then-presiding Administrative Law Judge (ALJ) ordered SDG&E to submit opening comments, which SDG&E submitted on April 22, 2014. ORA submitted reply comments to this filing on April 29, 2014, and SDG&E filed reply comments on May 8, 2014.

3. Nature of Relief Requested

As noted above, SDG&E's EPIC First Triennial Investment Plan for 2012-2014, which was approved in D.13-11-025, did not include the PEV Submetering Pilots. SDG&E acknowledges that pursuant to D.13-11-002 that

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[11] A.12-11-002 at 4.

[12] D.13-11-002 at 43.

expenses related to implementation of the PEV Submetering Pilots can be recovered in a memorandum account.[13] SDG&E states that if it uses EPIC funds (as it requests in its Petition) to fund its PEV Submetering Pilot, it would be required to remove those costs from its PEV Submetering Pilot memorandum account.

In its Petition, SDG&E states that if it implements the PEV Submetering Pilots using EPIC funds, it will lack sufficient funding to develop the other five approved EPIC projects that are included in its First Triennial Investment Plan for 2012-2014. SDG&E acknowledges that although it is not required to support the PEV Submetering Pilot project with EPIC funds, SDG&E agrees that the Commission encouraged it to do so in D.13-11-025.[14]

SDG&E contends that it lacks any other guaranteed source of funding and that it intends to use EPIC funds to pay for the PEV Submetering Pilots.[15] SDG&E acknowledges that it has the authority to fund the PEV Submetering Pilot with EPIC funds, but contends that it is unclear whether SDG&E has the authority to execute the PEV Submetering Pilots through EPIC.[16] SDG&E goes on to state:

> Thus, even if SDG&E uses EPIC funds to pay for the PEV Submetering Pilots, it is unclear whether the Pilots are part of SDG&E's EPIC portfolio, and are subject to the same rules, metrics and reporting requirements outlined in D.12-05-037 and D.13-11-025 as other EPIC-funded programs.[17]

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[13] Petition at 2.

[14] Petition at 3, quoting D.13-11-025 at 41.

[15] Petition at 3.

[16] Petition at 3-4.

[17] Petition at 4.

SDG&E's Petition seeks to modify D.13-11-025 to find that: (1) PEV Submetering Pilots are included within SDG&E's approved First Triennial EPIC Plan and SDG&E is authorized to use its EPIC funds from the First Triennial period to pay for the PEV Submetering Pilots; (2) the use of EPIC funds for the PEV Submetering pilot would be subject to relevant EPIC program requirements set forth in D.12-05-037 and D.13-11-025; and (3) EPIC Administrators are not required to execute all of their approved EPIC Programs.[18] Specifically, SDG&E's Petition requests that these changes be accomplished by the Commission adopting the following changes to D.13-11-025: (1) to modify OP No. 6; (2) add new OP Nos. 29 and 30; and (3) a new FOF.[19]

The requested modifications are outlined as follows:[20]

> **Modified OP 6**: Application 12-11-002 for the approval of San Diego Gas & Electric Company Electric Program Investment Charge Triennial Investment Plan for 2012 through 2014 is approved, as modified by OP 12 through ~~28~~ 30.
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> **New OP 29**: The SDG&E Investment Plan is modified to include the PEV Submetering Pilots, as approved in R.09-08-009. SDG&E may use its EPIC funding for the PEV Submetering Pilots.
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> **New OP 30**: If included in the EPIC IOU Administrators' EPIC portfolios, the PEV Submetering Pilots, as approved in R.09-08-009, shall be subject to all relevant requirements outlined in D.12-05-037 and D.13-11-025.

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[18] Petition at 6.

[19] Petition at 4-5.

[20] Proposed additions are noted by underline text and proposed deletions are noted by strikethrough text.

New FOF: It is reasonable for the EPIC Administrators to not execute an approved EPIC program because of changed circumstances, inadequate budgets or altered research needs or priorities.[21]

4. ORA Response

In its Response, ORA states, "[n]othing in the Petition substantiates the requests to modify the EPIC Plans Approval Decision to include a Pilot with SDG&E's approved 2012-2014 EPIC Plan."[22] ORA goes on to state that "… SDG&E had every opportunity to include its Pilot within its EPIC Plans but declined to do so."[23] Furthermore, ORA notes that SDG&E strongly objected when the Commission attempted to compel SDG&E to apply a portion of its EPIC funding to support a joint submetering pilot pursuant to goals outlined in R.09-08-009.[24] SDG&E clearly stated "[i]t is improper for the revised PD to include the Pilot outlined in the R.09-08-009 into SDG&E's EPIC portfolio and budget. The Pilot proposal was not included in SDG&E's Application filed November 1, 2012."[25]

5. Requirements for Revising a Commission Decision

Pub. Util. Code § 1708 provides that the Commission, after appropriate notice, may alter one of its prior decisions:[26]

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[21] Petition at 4-5.

[22] ORA Response at 2.

[23] ORA Response at 4.

[24] ORA Response at 5, referring to OP 39 at page 134 of the October 15, 2013 Revised Proposed Decision (RPD) on the Investor Owned Utilities (IOUs) EPIC Plans in A.12-11-001 et al.

[25] SDG&E's Opening Comments on RPD at 2, filed November 4, 2013 in A.12-11-001 et al.

[26] All subsequent references to statute mean the Public Utilities Code, unless otherwise specified.

> The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

A petition for modification is the procedural vehicle specifically designed to ask the Commission to revise a prior decision. Rule 16.4 of the Commission's Rules of Practice and Procedure governs such petitions.[27] We find that SDG&E's petition meets the requirements set forth in Rule 16.4(b) and (c). Therefore, we must evaluate whether or not the Petition should be granted.

6. Discussion

At the PHC, the then-assigned ALJ directed the parties to review the PHC transcript and provide the Commission with proposals to address SDG&E's Petition. During the PHC, the ALJ stated that he was looking for a simple solution and that his intent was not to interfere with the EPIC decision.[28] SDG&E filed Opening Comments addressing the ALJ's request on April 22, 2014.

SDG&E's Opening Comments sets forth a complex set of proposals, which is contrary to the intent of the then-assigned ALJ to have only "the lightest handed interference with EPIC."[29] In its Opening Comments, SDG&E requests the following: (1) authority to establish a new two-way balancing account for PEV Pilot costs; (2) authority to shift to the new balancing account costs already

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[27] All subsequent references to rules mean the Commission's Rules of Practice and Procedure, unless otherwise specified.

[28] PHC, April 8, 2014, TR. at 123, lines 15-19.

[29] PHC, April 8, 2014, TR. at 123, lines 15-19.

tracked in two accounts (the EPIC balancing account and Alternative Fuel Vehicle Memorandum Account (AFVMA); (3) file an advice letter to close the AFVMA; (4) include PEV Pilot costs in the Public Purpose Program Adjustment Mechanism (PPPAM) charge rate component of its customers' bill; and (5) requests that the PEV Pilot be subject to the same review standards as PG&E's and SCE's PEV Pilots.[30]

ORA disagreed with SDG&E's Opening Comments and filed reply comments on April 29, 2015. SDG&E filed Surreply Comments on May 8, 2014.

We disagree with SDG&E that D.13-11-025 needs to be modified. Ample formal guidance already exists for SDG&E to move forward with its 2012-2014 EPIC program and its PEV Submetering Pilot without the regulatory uncertainty described in the Petition and in a manner consistent with the EPIC and PEV submetering Pilot decisions. Energy Division staff can provide any additional guidance that SDG&E may need. We also decline to implement the changes requested in SDG&E's Opening Comments.

6.1 SDG&E has a Sufficient Source of Funding for the PEV Pilot

First, we address SDG&E's claim that it lacks a source of funding to implement the PEV Submetering Pilots and SDG&E's statement that it will subtract EPIC funding from its memorandum account. SDG&E's statements are misguided.

In D.13-11-002, the investor-owned utilities (IOUs) were granted authority to establish memorandum accounts to track costs related to the submetering pilots.[31] In Ordering Paragraph (OP) No. 7 we stated:

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[30] SDG&E Opening Comments at 3-6.

[31] D.13-11-002 at 43.

> Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company are authorized to establish a memorandum account and seek cost recovery in an appropriate ratemaking proceeding for expenses related to implementation of the submetering pilots that are above what could reasonably be recovered through the Electric Program Investment Charge (EPIC). Costs recorded in this memorandum account shall not exceed $2 million per utility in the case of co-funding from EPIC and shall not exceed $5 million per utility in the case that the EPIC program is not authorized.[32]

We also addressed this issue more recently in Resolution (Res.) E-4651,[33] issued on June 26, 2014, when we stated:

> SDG&E requests cost recovery for the Pilot expenses or authority to open a balancing account or memorandum account for pilot. The Commission modified the proposed D.13-11-002 to accept SDG&E's request for authorization for a memorandum account. Subsequently, Energy Division approved SCE and SDG&E's Submeter Memorandum Accounts.[34]
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> <u>The Commission has previously authorized SDG&E and SCE's requests to establish Memorandum Accounts for the Submetering Pilot.[35]</u> (Emphasis in original.)

SDG&E's statement that "If used by SDG&E for PEV Submetering Pilots, EPIC funding will be subtracted from the memorandum account"[36] prompts

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[32] D.13-11-002 at 49.

[33] Res. E-4651 was issued on June 26, 2014 to address the IOUs request to implement a Plug-In Electric Vehicle Submetering Pilot (PEVSP) in Compliance with D.13-11-002. This Resolution approves the utilities' Schedule Plug-In Electric Vehicle Submetering Pilot tariff.

[34] D.13-11-002, p. 42; SCE AL 2985-E effective December 11, 2013; SDG&E AL 2584-E effective March 14, 2014.

[35] Res. E-4651 at 32, June 26, 2014.

further clarification of our guidance on page 43 of D.13-11-002, where recording and recovery direction for these accounts was given:

> …provided pending authorization of EPIC and the uncertainty of total costs for the submetering pilots and in order to ensure timely implementation of the pilot program, we authorize the utilities to establish memorandum accounts to track costs related to the submetering pilots. EPIC funding for submetering pilots, if authorized, shall be subtracted from memorandum accounts. These memorandum accounts are to serve as backstop mechanisms and the utilities should not expend more on the submetering pilots than they reasonably expect to recover from EPIC. If EPIC budgets are not authorized or are otherwise not sufficient to provide recovery for IOU costs related to submetering pilots, the IOUs may seek to recover their memorandum accounts up to $2 million per utility in excess of EPIC funding or up to $5 million per utility if the EPIC program is not authorized through an appropriate ratemaking proceeding.[37]

This language served clear purposes that are demonstrated by the full record. D.13-11-002 provided memorandum accounts for tracking the costs of the pilots, while also providing that the utilities whose EPIC plans included PEV pilots would subsequently fund those costs via EPIC. It also clearly accommodated SDG&E's situation (since SDG&E's EPIC plan did not include a PEV Submetering Pilot) by allowing *$5 million* to be recovered through the memorandum accounts in the event of non-authorization under EPIC. Res. E-4651 at 52, provided this clear distinction.

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[36] Petition at 2-3.

[37] D.13-11-002 at 43.

SDG&E has existing authority and direction to recover up to $5 million in its PEV memorandum account.

We reject SDG&E's argument that it lacks a source of funding for the PEV Pilot. SDG&E already has authority to track costs related to the submetering pilots through a memorandum account. As such, SDG&E has a source of funding and sufficient procedural guidance to track and recover funding. In fact, pursuant to the clarification above and that provided in Res. E-4651 at 52, SDG&E can seek and recover up to $5 million from its PEV memorandum account since it did not include the PEV Pilot in its first EPIC application.

6.2 The Commission has Sufficiently Described the Interaction between PEV Submetering Pilots and EPIC

We now address SDG&E's request concerning whether the PEV Submetering Pilots are included within SDG&E's approved First Triennial EPIC Plan and whether SDG&E may use EPIC funds for the pilot. As noted above, SDG&E was given the opportunity to include the PEV Submetering Pilots in its First Triennial EPIC Plan, but raised objections to doing so.

SDG&E's Petition acknowledges that D.13-11-002 authorizes the use of EPIC funds for the submetering pilots. As noted in D.13-11-002: "[t]he submetering pilot serves as a demonstration of new energy technology eligible under the requirements of the EPIC program. …all or the majority of costs for the submetering pilot program can be fully recovered through EPIC program funding, …"[38] Furthermore, D.13-11-025 authorized SDG&E to fund said pilot using EPIC funds by stating "SDG&E is not required but is encouraged to

[38] D.13-11-002 at 41-42.

support this project [the PEV Submetering Pilot] with EPIC funds."[39] Therefore, this request is moot.

6.3 EPIC Program Requirements are Clear

At this point we must evaluate the issue raised by SDG&E concerning whether use of EPIC funds for the PEV Submetering pilot would be subject to relevant EPIC program requirements set forth in D.12-05-037 and D.13-11-025. We note that each of the prior EPIC decisions clearly indicate that the use of EPIC funds is subject to many requirements therein.

D.11-12-035 established the EPIC program and broadly established that the disbursement of EPIC funds is subject to Commission approval. Furthermore, D.12-05-037 established that the Administrators must submit R&D proposals to the Commission for approval and that the EPIC program is under the Commission's authority. Finally, D.13-11-025 and D.15-04-020 approved investment plans and broadly established reporting, metrics, intellectual property, coordination, and other requirements.

It is unclear why SDG&E would question whether this particular use would not be subject to EPIC program requirements. SDG&E presented no basis for questioning the applicability of these requirements. Furthermore, D.13-11-002, which allowed EPIC as a source of funding did so explicitly because the PEV pilots fell into the requirements and categorizations appropriate within the EPIC program. The Commission clearly intends for any use of EPIC funds to comply with EPIC program rules.

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[39] D.13-11-025 at 41.

6.4 Not all Authorized EPIC Projects must be Funded

We now address SDG&E's request concerning whether Administrators are required to execute all of their approved EPIC programs. This issue is now moot because the requested relief has already been granted. In D.15-04-020, we explicitly state "another issue that may need clarity: administrators have the flexibility to decide not to fund a project that is included in their authorized investment plans. Stated another way, EPIC funds may only be spent on authorized work, but not all authorized work must be funded."[40] We believe that D.15-04-020 provides the clarity that SDG&E is seeking.

6.5. SDG&E's Petition is Denied

We deny SDG&E's petition for modification of D.13-11-025 because the requested modifications are unnecessary. SDG&E did not include a PEV Submetering Pilot in its EPIC plan, objected to its inclusion therein, and was accordingly provided an alternate method of cost recovery: pursuant to D.13-11-002, SDG&E was granted authority to track costs related to the submetering pilots via a memorandum account. Additionally, D.13-11-002 authorizes the use of EPIC funds for the submetering pilots, to the extent authorized under D.13-11-025. Furthermore, the Commission made clear that the use of any EPIC funds must be in compliance with all applicable EPIC program rules. Finally, D.15-04-020 provides that the EPIC Administrators have the flexibility to decide not to fund a project that has been authorized in their approved investment plans.

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[40] D.15-04-020 at 29.

7. Comments on Proposed Decision

The proposed decision in this matter was mailed in accordance with § 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed on the proposed decision.

8. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Gerald F. Kelly is the assigned Administrative Law Judge in this proceeding.

Finding of Facts

1. SDG&E requests that D.13-11-025 be modified to find that: (1) PEV Submetering Pilots are included within SDG&E's approved First Triennial EPIC Plan and SDG&E is authorized to use its EPIC funds from the First Triennial period to pay for the PEV Submetering Pilots; (2) the use of EPIC funds for the PEV Submetering pilot would be subject to relevant EPIC program requirements set forth in D.12-05-037 and D.13-11-025; and (3) EPIC Administrators are not required to execute all of their approved EPIC Programs.
2. SDG&E's petition for modification of D.13-11-025 was filed within one year of the issuance of D.13-11-025.
3. SDG&E's petition for modification of D.13-11-025 was opposed by ORA.
4. SDG&E's proposed modifications to D.13-11-025 are not supported by the record.
5. The record demonstrates that SDG&E was given the opportunity to include the PEV Submetering Pilots in its first triennial EPIC Investment Plan.
6. The record establishes that SDG&E objected to including the PEV Submetering Pilots in its first triennial EPIC Investment Plan.

7. Pursuant to D.13-11-002, SDG&E was granted authority to track costs related to the submetering pilots via a memorandum account.

8. The use of EPIC funds for the submetering pilots is authorized by D.13-11-002.

9. The use of any EPIC funds must be in compliance with all applicable EPIC rules.

10. Pursuant to D.15-04-020, EPIC Administrators have the flexibility to decide not to fund a project that has been authorized in their approved investment plans.

Conclusions of Law

1. SDG&E's petition for modification of D.13-11-025 should be denied.
2. This order should be effective immediately.

ORDER

IT IS ORDERED that**:**

1. The January 14, 2014 petition for modification of Decision 13-11-025 filed by San Diego Gas & Electric Company is denied.
2. Application 12-11-001 et al. is closed.

This order is effective today.

Dated_____ 2016, at San Francisco, California.