Date of Issuance: January 12, 2018

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-4908**
January 11, 2018

R E S O L U T I O N

Resolution E-4908. San Diego Gas & Electric requests approval to offer Line Item Billing Service for a Home Protection Plan Service, on a non-tariffed basis.

PROPOSED OUTCOME:

- This Resolution denies San Diego Gas & Electric Company's (SDG&E's) Advice Letter 2990-E/2525-G, which proposes to offer Line Item Billing Service to its electric and gas customers, for an optional Home Protection Plan Service provided directly by a third-party home protection plan company ("Vendor") on a non-tariffed basis.

SAFETY CONSIDERATIONS:

- None, given denial of proposed service.

ESTIMATED COST:

- None, given denial of proposed service.

By SDG&E Advice Letter 2990-E/2525-G, filed on October 27, 2016.

SUMMARY

In Advice Letter (AL) 2990-E/2525-G ("Line Item Billing AL"), San Diego Gas & Electric Company (SDG&E) requests approval to offer Line Item Billing Service on the utility bills of its electric and gas customers for an optional Home Protection Plan Service provided directly by a third-party home protection plan company ("Vendor Service" and "Vendor" respectively), on a non-tariffed basis. The Vendor currently offers the following Home Protection Plan Services in SDG&E's service territory: Gas Line Repair, Interior Electric Repair, Exterior Electric Repair, Water Heater Repair/Replace, and Cooling System Repair.

This Resolution denies SDG&E's request. SDG&E may file a new AL. The new AL must meet the conditions specified in this Resolution including proposals to mitigate consumer protection issues. We encourage SDG&E to work with Energy Division to ensure that the new AL complies with this Resolution so that it can be reviewed as expeditiously as possible.

The conditions in this Resolution are designed primarily to protect utility ratepayers from cross-subsidizing this service and to ensure they have no exposure to any liability resulting from the provision of this service. Some conditions are similar to ones created for a non-tariffed service pursued by Southern California Gas Company (SoCal Gas) and SDG&E in Resolution G-3456, issued on October 10, 2011.

Specifically, if SDG&E resubmits a request for this service offering, the AL shall include the following conditions:

1. SDG&E must address how it will protect its ratepayers to ensure the validity of the customer enrollments of the Vendor Service and guard against customers' being billed for a service they did not request.

2. SDG&E must include all costs associated with its efforts to ensure billing accuracy in its calculation of the net revenues from the Line Item Billing Service.

3. Any utility net cost or loss resulting from the Line Item Billing Service shall be borne by SDG&E's shareholders.
4. All liability for the Line Item Billing Service shall be borne by the Vendor. Ratepayers shall have no liability as a result of the Line Item Billing Service and Vendor Service.
5. The script followed by the Customer Contact Center (CCC) representatives, as well as the script and the marketing material(s) used by the Vendor, must make it clear that the Line Item Billing Service and the Vendor Service are unrelated to the utility's business with the customer and that the customer does not have to entertain the offerings of the Vendor Service. In addition, customers shall have the right to opt out of the Line Item Billing at any time and pay

for the Vendor service directly rather than through their utility bills, even if the contract with the Vendor remains in effect.

6. The script(s) to be used by the CCC Representatives and the Vendor as well as the Vendor's marketing materials shall be reviewed and approved by the Energy Division before the Line Item Service is offered. Further, SDG&E shall inform Energy Division, in writing, within seven business days of any changes made in either script or the Vendor's marketing materials.
7. Energy Division shall review and approve the language on SDG&E customer bills for the Home Protection Plan Service before the service is offered.
8. SDG&E shall comply with all requirements for the non-tariffed products and services including reporting to ED and complaint procedures and remedies as outlined in the Affiliate Transaction Rules (ATR) adopted in D.06-12-029. In accordance with the ATR, sections VII.D.3 and VII.H.3, SDG&E shall include pertinent information related to the Line Item Billing Service in its semi-annual reports (i.e., January 1 and July 1 of every year) on Non-Tariffed Products and Services. SDG&E shall include, in addition to the revenues and costs, the information that SDG&E uses to ensure the required level of the Home Protection Plan Service.[1] SDG&E should also provide the following information: 1) the total number of active policies for the Vendor service, 2) the total number and types of customer complaints to the Vendor and SDG&E, 3) total number of customer complaints on billing issues including mis-billing, 4) SDG&E's efforts and costs for detecting and resolving the mis-billing issues, and 5) the total number of claims and denied claims for the Vendor service.

[1] For example, monthly performance reporting from the Vendor, SDG&E's regular business reviews, and the verified results from customer satisfaction surveys completed by the Vendor (The Line Item Billing AL at 3).

BACKGROUND

The Affiliate Transaction Rules (ATRs) are designed to prevent cross-subsidization of utilities' affiliate activities by utility ratepayers and to minimize harm to the competitive marketplace from the utility's monopoly status and market power.

The Commission passed the ATRs Applicable to Large California Energy Utilities in Decision (D.)97-12-088. Subsequent Decisions (D.98-08-035, D.98-11-027, D.98-12-075, D.99-04-069, D.99-09-033, and most recently D.06-12-029) modified these Rules. According to the ATR, Section II.C.1., no holding company or utility affiliate shall knowingly "direct or cause a utility to violate or circumvent these Rules, including but not limited to the prohibitions against the utility providing preferential treatment, unfair competitive advantages or non-public information to its affiliates."

Pursuant to the ATRs, Section VII.E.1, prior to offering a new category of non-tariffed products or services, a utility is required to file an advice letter which:

a. demonstrates compliance with the affiliate transaction rules;
b. addresses the amount of utility assets dedicated to the non-utility venture, in order to ensure that a given product or service does not threaten the provision of utility service, and show that the new product or service will not result in a degradation of cost, quality, or reliability of tariffed goods and services;
c. addresses the potential impact of the new product or service on competition in the relevant market, including but not limited to the degree in which the relevant market is already competitive in nature and the degree to which the new category of products or services is projected to affect that market; and
d. is served on the service list of Rulemaking 97-04-011/Investigation 97-04-012, as well as on any other party appropriately designated by the rules governing the Commission's advice letter process.

SDG&E's AL requesting authorization to offer a Line Item Billing Service on a non-tariffed basis has addressed several concerns raised in Resolution E-4709, which rejected SDG&E's AL 2644-E/2321-G.

In AL 2644-E/2321-G, SDG&E requested authorization to offer Line Item Billing Service for non-tariffed products and services provided by non-utility providers. Resolution E-4709 denied AL 2644-E/2321-G because SDG&E's proposed Line Item Billing Service for non-tariffed products and services was too broad and too vague. Resolution E-4709 found, "(w)ith no limits in place on the type of products or services to be offered, approving this advice letter would provide no safeguards to limit the categories that could be placed on a line item basis on the customer bill. We are concerned that there would be a deluge of products and services appearing on customers' utility bills."[2]

SDG&E filed the Line Item Billing AL proposing to offer its electric and gas customers an option to pay via their monthly SDG&E bill specifically for the Home Protection Plan Service, provided by a third-party Vendor and approved by SDG&E. Currently, SDG&E does not have Commission approval of such a category. Therefore, this AL has addressed one of the main concerns set forth in Resolution 4709-E.

NOTICE

Notice of the Line Item Billing AL was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

SDG&E's Line Item Billing AL was timely protested by the Office of Ratepayer Advocates (ORA) on November 16, 2016.

The following is a summary of the major issues raised in ORA's protest:

[2] Resolution E-4709 at 6.

1. SDG&E's proposal may cost ratepayers up to $200,000/year in unnecessary and unreasonable administrative costs, which should be borne by SDG&E's shareholders.
2. SDG&E did not demonstrate how its customers will benefit from this non-tariffed service.
3. Based on SDG&E's analysis, the anti-competitive effects of the proposed non-tariffed service remain uncertain.

SDG&E replied to the ORA protest on November 22, 2016. The following is a summary of SDG&E's reply:

1. SDG&E's proposed cost and revenue allocation is appropriate and consistent with similar Commission-approved programs.
2. The Line Item Billing AL sufficiently described the expected customer benefits.
3. The Line Item Billing AL sufficiently assuages anti-competitive concerns.

SDG&E provided additional details of the proposed Service that addressed ORA's concerns:

1. Any disputes between the Vendor and a participating SDG&E customer will likely be governed by the contract between the Vendor and the customer, to which SDG&E will not be the party. SDG&E will provide support as necessary and appropriate. Furthermore, non-payment of Vendor charges will not be cause for shut-off of utility electric or gas services to any SDG&E customer.[3]
2. SDG&E will ensure that the Vendor provides the required level of service to customers as outlined in the Line Item Billing AL.[4]
3. SDG&E will have final review of the Vendor's marketing materials.

[3] SDG&E's Reply to ORA protest at 6.

[4] The Line Item Billing AL at 2.

DISCUSSION

Energy Division reviewed and analyzed the Line Item Billing AL, ORA's protest, and SDG&E's reply to the protest. Energy Division issued data requests to SDG&E seeking further information regarding SDG&E's proposal and associated cost and revenue estimates. SDG&E timely responded to all of ED's data requests. In addition, Energy Division issued data requests to SDG&E's sister utility Southern California Gas Company (SoCal Gas) seeking information on SoCal Gas' existing line item billing service for a similar Vendor service.

The proposed Line Item Billing Service may result in cross-subsidization of the non-tariffed product and service from SDG&E's ratepayers. SDG&E ratepayers should not have any liability from the provision of this service.

As discussed above, the Commission's ATRs are designed to prevent cross-subsidization of utilities' affiliate activities by utility ratepayers. According to SDG&E, the Vendor will pay a fee for the Line Item Billing Service which will generate approximately $300,000/year of miscellaneous revenues. These revenues will offset the $200,000/year of program management costs and associated taxes. SDG&E estimates that this service would result in annual net revenue of $100,000. SDG&E also estimates an upfront billing deployment cost of $100,000, which is expected to be reimbursed by the Vendor.

ORA's protest argues that the service has estimated annual costs of $200,000 and may result in unnecessary costs to the ratepayers. We agree with SDG&E's reply that ORA's assertion did not reflect the offsetting revenues from the Line Item Billing Service fees. We recognize that the net revenue is based on SDG&E's forecast of customer participation rates over a five-year period which is only an estimate. To prevent cross-subsidization from its ratepayers, SDG&E in its reply to ORA's protest agreed that, "in the extremely unlikely situation where the costs of providing the non-tariffed service exceed the associated revenues, any resulting loss should not be borne by ratepayers and should instead be borne by shareholders."[5] SDG&E's position is consistent with the ATRs, Section VII.C.4.

[5] SDG&E's Reply to ORA's Protest dated on November 22, 2016 at 5-6.

Based on SDG&E's agreement that when the costs of providing the non-tariffed service exceed the associated revenues, any resulting loss will be borne by shareholders. In Draft Resolution E-4853 considered in the August 24, 2017 Commission Meeting we initially concluded that the service would not result in any net cost to ratepayers. However, new information available to us subsequently caused significant concerns about potential cross-subsidization.

In the August 24, 2017 Commission Meeting, we discussed our concerns with consumer protection related to SDG&E's proposed Lined Item Billing Service. In particular, we were concerned that Draft Resolution E-4853 did not sufficiently address the potential risk of customer being billed for services that they didn't sign up for or unjust Vendor denials of service claims. Draft Resolution E-4853 was held.

In response to our concerns, Energy Division looked to the experience of SDG&E's sister utility, SoCal Gas' existing Line Item Billing Service for a similar Vendor Service called "Home Emergency Insurance Solutions" or HEIS.[6] On September 13, 2017, SoCal Gas informed Energy Division that it recently found 444 customers who were mistakenly billed for the Vendor service from December 2012 to August 2017, over almost a five-year period. These customers had never enrolled in the Vendor services. The total billing errors are $95,000.

In its responses to Energy Division's data request, SoCal Gas explained that the billing errors (mis-billing) were discovered during its reviews of customer complaints in January 2017. SoCal Gas further investigated and followed up with the Vendor. SoCal Gas employed a contractor to build a system to compare its billing database with the Vendor's enrollment data base. In July and August 2017, SoCal Gas and the Vendor reviewed all mismatches and determined the total number of mis-billed customers and amounts. SoCal Gas explained that the billing errors were caused by its ineffective verification automation that was designed in 2010. SoCal Gas stated that it has since fixed the problem starting September 15, 2017 and the Vendor was in the process of refunding these customers.

[6] SoCal Gas started offering the Line Item Billing Service in February 2011.

Given the new information, Energy Division also sent a data request to SDG&E regarding its enrollment/billing verification process and control measures against mis-billing. SDG&E responded that it not only intends to use additional authentication for the Line Item Billing Service, but also it will work with the vendor to develop a robust enrollment process and billing interface to minimize enrollment of Vendor Service and billing errors.

Draft Resolution E-4853 was withdrawn from the Commission Meeting Agenda to allow Energy Division staff to respond to the Commission's questions on the item and review additional data from SDG&E. In this new Resolution E-4908, we reviewed SDG&E's proposal in light of the new information. We determined that SDG&E's estimated program management costs did not account for the consumer protection efforts described above. SDG&E's estimated annual program management costs are for only 25% of a full-time position for marketing and billing program support. Its estimated net annual revenues of $100,000 are insufficient to cover SDG&E's described consumer protection costs. While no system is error proof, SoCal Gas' billing errors went undetected for five years. We are concerned with the risk of customers being mistakenly billed for the costs of Vendor Service that they did not request. Billing errors such as these can increase ratepayer costs, which are a form of cross-subsidization. Therefore, under these circumstances, we are concerned that SDG&E's proposed Line Item Billing Service will result in cross-subsidization by ratepayers, violating the requirements set forth in the ATRs, Section VII.D.1.

The proposed Line Item Billing Service for the Vendor's Home Protection Plan Service, if approved, can provide additional home safety benefits for SDG&E's customers.

ORA argued in its protest that the Line Item Billing AL has not provided evidence that "the safety benefits derived from the utility providing the proposed Line Item Billing Service," a remedy required by Resolution E-4709.[7]

[7] Resolution E-4709-E at 7.

SDG&E states that its proposed Line Item Billing for the Vendor Service provides safety benefits to customers because it provides customers with 24/7 access to the trained and licensed repair professionals who can address home safety issues related to the electrical and gas appliances and systems. The convenience of the Line Item Billing Service can make it easier for customers to sign up for the Vendor Service, which will have safety benefits.

We agree with SDG&E that making it easier for customers to sign up for the service can have the benefit of safety issues being addressed more promptly by professional contractors through the Vendor Service. As SDG&E explains, the service provided by the Vendor can promote customer safety because "armed with this insurance, customers will likely engage the Vendor Service's trained and licensed repair and replacement professionals to fix potentially dangerous problems (i.e., electrical wiring hazards, the loss of gas due to piking leaks) as they arise, rather than attempting do-it-yourself repairs, or avoiding repair altogether because of lack of funds." However, because this Resolution denies SDG&E's proposal, the denial neither improves nor reduces safety at SDG&E.

SDG&E's proposed Line Item Billing service in this advice letter will not have an adverse impact on the competitive market.

The ATRs, Section VII.E.1.c, require the utility to address the impact of a non-tariffed product or service on the relevant market. ORA states in its protest that SDG&E has provided insufficient analysis demonstrating that its proposal is not anticompetitive. SDG&E responded that the advice letter has identified that two relevant markets for the home protection services are already competitive and its proposal would not affective either market: home protection services and the local contractors and repairmen. SDG&E explained that the home protection services market is estimated to be a $2 billion national industry annually, with a 4% growth per year.

We agree with SDG&E that its service territory is composed of several established, national firms. The Vendor would not be unfairly commercially advantaged through its partnership with SDG&E because SDG&E will not provide the Vendor with SDG&E customer specific information. In addition, SDG&E describes that the Vendor's direct marketing materials will clearly convey that "participation in the Service is optional and that the Service is provided directly by the Vendor and not by SDG&E." In addition, the Vendor was selected through SDG&E's competitive solicitation process. SDG&E received bids from other home protection services providers in SDG&E's service territory.

Based on the above, we find that SDG&E's provision of line item billing service will not result in any adverse competitive impacts in the relevant market.

SDG&E's bill language, CCC call script, and the Vendor's marketing materials must make it clear that the Home Protection Plan Service is unrelated to SDG&E's regular business with the customer and that the customer does not have to entertain the offerings of the Vendor service and SDG&E's Line Item Billing Service.

Consumer protection is important to the Commission. SDG&E's and the Vendor's communications to the customers should be very clear that the Vendor service and the Line Item Billing Service are optional. Customers should also be able to opt out of the Line Item Billing at any time, i.e. pay for the Vendor service directly with the vendor rather than through their utility bills. The Vendor service will be administered in accordance with the agreement between the Vendor and the customer.

SDG&E indicated in its response to ED's data request that its customers will be solicited for the Vendor Service by the Vendor direct mail and will not be offered the service by its Customer Contact Center (CCC) representatives. However, should any SDG&E customers call its CCC, the representative will be trained to direct the inquiring customers to the Vendor. It is important that SDG&E's script for the CCC representative contains certain safeguards and that the Vendor marketing material is consistent with the CCC script. It is also important that the language on SDG&E's customer bills is clear.

To ensure these conditions are met we require the script(s) used by SDG&E's CCC and the Vendor to be reviewed by ED before the Service is offered. SDG&E shall inform ED, in writing and within seven business days, after any changes are made in either script. ED will review and approve the language on SDG&E's customer bills for the Home Protection Plan Service before the service is offered. These requirements are consistent with Resolution G-3456 which approved SoCal Gas & SDG&E's Mover Service Program as a non-tariffed product and service with Line Item Billing Service.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, the Draft Resolution was mailed to parties for comments on December 6, 2017.

SDG&E filed comments on December 29, 2017, requesting the Commission to reconsider its denial of the Line Item Billing AL. SDG&E disagreed with the Draft Resolution and believed that the Line Item Billing AL had already been satisfied or consented to – by the conditions required in the Draft Resolution. SDG&E asserted that it is unnecessary for the Commission 1) to deny SDG&E's request at this time and 2) require SDG&E to file a new advice letter addressing these conditions. SDG&E also attached its previous responses to Energy Division's data requests to support its comments.

We disagree with SDG&E. We reviewed the same information and reached the conclusions presented in the Draft Resolution. As discussed earlier, we find that SDG&E's estimated program management costs, as shown in Attachment 3 of its comments, are insufficient to cover SDG&E's described consumer protection costs. Therefore, we have concluded the Line Item Billing AL does not satisfy the condition required in Ordering Paragraph 2.b) of this Resolution.

FINDINGS

1. San Diego Gas & Electric Company's Advice Letter (AL) 2990-E/2525-G requesting authorization to offer a Line Item Billing Service for a Home

Protection Plan Service provided directly by a third-party vendor, on a non-tariffed basis has addressed the concerns raised in Resolution E-4709, which rejected SDG&E's AL 2644-E/2321-G.

2. San Diego Gas & Electric Company's (SDG&E's) proposed Line Item Billing Service may result in cross-subsidization of the non-tariffed product and service from SDG&E's ratepayers, violating the requirements set forth in the Affiliate Transaction Rules, Section VII.D.1.
3. San Diego Gas & Electric Company's (SDG&E's) proposed Line Item Billing Service, if approved, can provide additional home safety benefits for SDG&E's customers. However, the denial neither improves nor reduces safety at SDG&E.
4. San Diego Gas & Electric Company's Advice Letter 2990-E/2525-G has addressed the potential impact of the new product or service on competition in the relevant market as required by the Affiliate Transaction Rules, Section VII.C.

THEREFORE IT IS ORDERED THAT:

1. San Diego Gas & Electric Company's request to offer a Line Item Billing Service to its electric and gas customers, for an optional Home Protection Plan Service provided directly by a third-party home protection plan company, on a non-tariffed basis, as proposed in Advice Letter 2990-E/2525-G, is denied because it does not meet the requirement set forth in the Commission's Affiliate Transaction Rules, Section VII.D.1.
2. If San Diego Gas & Electric Company seeks the Commission's reconsideration of a Line Item Billing Service for an optional Home Protection Plan Service ("Vendor Service") provided directly by a third-party home protection plan company ("Vendor"), on a non-tariffed basis, it may file a new Advice Letter. The New Advice Letter shall meet the following conditions:

    a) SDG&E must address how it will protect its ratepayers to ensure the validity of the customer enrollments of the Vendor Service and guard against customers' being billed for a service they did not request.
    b) SDG&E must include all costs associated with its consumer protection efforts in its calculation of the net revenues from the Line Item Billing Service.

c) Any utility net cost or loss resulting from the Line Item Billing Service shall be borne by SDG&E's shareholders.

d) All liability for the Line Item Billing Service shall be borne by the Vendor. Ratepayers shall not have any liability of the Line Item Billing Service and the Vendor Service.

e) The script followed by the Customer Contact Center (CCC), representatives as well as the script and the marketing material(s) used by the Vendor, must make it clear that the Line Item Billing Service and the Vendor Service are unrelated to the utility's business with the customer and that the customer does not have to entertain the offerings of the Vendor Service. In addition, customers shall have the right to opt out of the Line Item Billing at any time and pay for the Vendor service directly rather than through their utility bills, even if the contract with the Vendor remains in effect.

f) The script(s) to be used by the CCC representatives and the Vendor shall be reviewed and approved by the Energy Division before the Line Item Service is offered. Further, SDG&E shall inform Energy Division, in writing, within seven business days after any changes are made in either script or the Vendor's marketing materials.

g) Energy Division shall review and approve the language on SDG&E customer bills for the Home Protection Plan Service before the service is offered.

h) SDG&E shall comply with all requirements for the non-tariffed products and services including reporting to ED and complaint procedures and remedies as outlined in the Affiliate Transaction Rules adopted in D.06-12-029. In accordance with the ATR, sections VII.D.3 and VII.H.3, SDG&E shall include pertinent information related to the Line Item Billing Service in its semi-annual reports (i.e., January 1 and July 1 of every year) on Non-Tariffed Products and Services. SDG&E shall include, in addition to the revenues and costs, the information that SDG&E uses to ensure the required level of the Home Protection Plan Service. SDG&E should also provide the following information: 1) the total number of active policies for the Vendor service, 2) the total number and types of customer complaints to the Vendor and

SDG&E, 3) 3) total number of customer complaints on billing issues including mis-billing, 4) SDG&E's efforts and costs for detecting and resolving the mis-billing issues, and 5) the total number of claims and denied claims for the Vendor service.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on January 11, 2018; the following Commissioners voting favorably thereon:

/s/*TIMOTHY J. SULLIVAN*
TIMOTHY J. SULLIVAN
Executive Director

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners